Rubber House vs Excellsior Needle Industries Pvt. Ltd on 10 March, 1989

Equivalent citations: 1989 AIR 1160, 1989 SCR (1) 986, AIR 1989 SUPREME COURT 1160, 1988 HRR 193, (1989) 1 JT 488 (SC), 1989 (1) JT 488, 1989 HRR 193, (1989) 1 PUN LR 584, 1989 95 PUN LR 584, 1989 (2) SCC 413

Author: S.R. Pandian

Bench: S.R. Pandian, L.M. Sharma

PETITIONER:
RUBBER HOUSE

Vs.

RESPONDENT:
EXCELLSIOR NEEDLE INDUSTRIES PVT. LTD.

DATE OF JUDGMENT10/03/1989

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
SHARMA, L.M. (J)

CITATION:
1989 AIR 1160 1989 SCR (1) 986
1989 SCC (2) 413 JT 1989 (1) 488
1989 SCALE (1)572

ACT:
Haryana Urban (Control of Rent and Eviction) Act, 1973-Haryana Urban (Control of Rent and Eviction) Rules, 1976--Section 13(2)(i)(Rules 4(c), 5(1) and 6--Tenant--Eviction of on ground of arrears of rent--Non-mentioning of quantum of arrears of rent-Whether involves invalidating consequences on eviction petition.

Statutory Construction--Mandatory and directory provisions of statute--Distinction and consequences of.

HEADNOTE:
This is a tenant's appeal filed after obtaining Special Leave from the Court. The Respondent-landlord of tenanted premises (i.e. two sheds) filed a petition for ejectment of

the appellant from the premises in question before the Rent Controller. According to the Respondent-landlord the monthly rent payable by the appellant was Rs.950 p.m. which was liable to be enhanced under the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 from Rs.950 to Rs.1142 p.m. Accordingly, the respondent caused a notice to be given to the appellant claiming rent @ Rs. 1142 w.e.f. 26.6.1974 till June 1977 and since the appellant defaulted in making payment of the rent, he was liable to be ejected from the demised premises. The tenant denied that the rent was liable to be enhanced as claimed by the landlord. He further asserted that he had already paid rent upto March 1975 by means of cheques and that he had tendered the arrears of rent together with interest and costs as assessed by the Rent Controller on 5.12.1977. On this reasoning he urged that he was not liable to be evicted on the ground taken in the Petition. The landlord in the replication denied the receipt of rent for the period from May 1974 to November, 1977 @ Rs.1142 p.m. Alternatively he claimed that the rent to the extent of Rs.36,100 was due to him from the appellant @ Rs.950 p.m. from 1st May, 1974 to June 30, 1977.

The Rent Controller held that the landlord-respondent was not entitled to recover the rent @ Rs.1142 p.m. but only Rs.950 p.m. as agreed between the parties and the appellant has failed to pay the rent from 1.4.1975. Accordingly, the Rent Controller directed the ejectment of the appellant from the premises by granting him two months time.

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The appellate-authority having affirmed the order of the Rent Controller, the appellant filed a Civil Revision before the High Court under Sub-s. (6) of Sec. 15 of the Act. Before the High Court it was urged by the appellant that since in the application for ejectment no specific amount of arrears of rent due was mentioned as contemplated by CI. (c) of Rule 4 and Clause (1) of Rule 5 of the Haryana Urban (Control of Rent and Eviction) Rules he could not be evicted. Finding no substance in the said contention, the High Court rejected the Civil Revision. Hence this appeal.

The appellant raised two contention before this Court viz., that the High Court has ignored to note the statutory obligation cast on the Rent Controller as per the proviso attached to Sec. 13(2)(1) of the Act requiring him to calculate and determine the quantum of arrears of rent; even at the first instance has not been complied with and (ii) that the application for ejectment was not in accordance with the mandatory provisions of Rule 4(c) 5(1) and 6 of the Rules framed under the Act.

Dismissing the appeal, this Court,

HELD: The proviso to Sec. 13(2)(i) requires the tenant to pay or tender the actual arrears of rent within 15 days of the first hearing of the application for ejectment after due service alongwith the interest to be calculated by the Controller at 8 per cent per annum on such arrears together

with such costs of the application, if any, as may be allowed by the Controller. [994B]

When there is a statutory obligation on the tenant either to pay or tender the arrears of rent within a period of 15 days of the first hearing of the application for ejectment after due notice it is for him to calculate the exact arrears of rent due and to pay or tender the same and if the tenant fails to do so he is deemed to have not paid or made the valid tender of the rent. [994D]

The non-compliance of Rule 4(c) i.e. the non-mentioning of the quantum of arrears of rent, does involve no invalidating consequence and also does not visit any penalty. [999B-C]

Rules 4(c), 5(1) and 6 are not mandatory but only directory. [999C]

If the statute is mandatory, the things done not in the manner or form prescribed have no effect or validity. But if it is directory, the non-compliance may not lead to any serious and adverse consequence. [995H; 996A]

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The word "shall" in its ordinary import is obligatory. Nevertheless the word "Shall" need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. [998H; 999A-B]

No prejudice is writ large in the present case because proof of prejudice is also one of the necessary criteria besides non-compliance of the provision to invalidate the Act. [999G]

Sheo Narain v. Sher Singh, [1980] 1 SCR 836, Not applicable.

Sham Lal (dead) by Irs. v. Atme Nand Jain Sabha (Regd.) Dal Bazar, [1987] 1, SCC 222, Not applicable.

Montreal St. Rly. Co. v. Normandin, [1917] A.C. 170, referred

to.

Seth BikhrajJaipuria v. Union of India, [1962] 2 SCR 880, referred to.

Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur, [1965] 1 SCR 970, referred to.

K. Kamraj Nadar v. Kunju Thevar and Others, [1959] SCR 583, referred to.

Ch. Subbarao v. Member, Election Tribunal, Hyderabad, [1964] 6 SCR 213, referred to.

State of U.P. & Others v. Babu Ram Upadhya, [1961] 2 SCR 679, referred to.

Ajit Singh v. State of Punjab, [1983] 2 SCC 217, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2789 of 1980.

From the Judgment and Order dated 29.5.1980 of the Punjab and Haryana High Court in Civil Revision No. 2 16 of 1980.

R.F. Nariman and D.N. Misra for the Appellant.

Rakesh Sahney, K.M.M. Khan and Vineet Kumar for the Respondent.

The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. This appeal by special leave under Article 136 of the Constitution is against the judg- ment and order dated 29.5.1980 in Civil Revision No. 216 of 1980 passed by the High Court of Punjab and Haryana at Chandigarh.

The respondent herein being the owner of the tenanted premises (i.e. two sheds) filed a petition for ejectment before the Rent Controller against the tenant, the appellant herein on the ground that the tenant had not paid the rent from 1.5.74. The monthly rent for the premises was orginally Rs.950. According to the landlord under the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the 'Act') the rent of the demised premises was liable to be increased from Rs.950 to Rs. 1142 per mensem. The landlord gave notice to the tenant to pay the rent at the enhanced rate of Rs. 1142 per mensem with effect from 26th June 1974 but the tenant defaulted in making the payment of rent and as such he was liable to be ejected from the premises on the ground of nonpayment of rent. The tenant resisted the application stating that the landlord was not entitled to claim enhanced rent at the rate mentioned in the ejectment application under the provisions of the Act and no legal notice was served on him claiming the arrears of rent and he had already paid the rent upto March 1975 by means of cheques and he had tendered the arrears of rent together with interest and cost as assessed by the Rent Controller on 5th December 1977 and hence the sole ground of his ejectment from the demised premises was no longer available to the landlord. In the replication the landlord denied that the tenant had paid the rent to him for the period from May 1974 to 30th November 1977 @ Rs.1142 per mensem. In the alternative, he claimed that the rent to the extent of Rs.36,100 was due to him from the tenant @ Rs.950 per mensem for the period 1st May 1974 to 30th June, 1977 and that the tenant having defaulted in making the payment was liable to be ejected. It may be stated that the applica- tion for eviction was filed on 7.6.77.

The Rent Controller held that the landlord was not entitled to recover the rent @ Rs. 1142 p.m. but only @ Rs.950 p.m. as agreed between the parties and he had failed to pay the rent from 1.4.75. On the basis of the above finding the Rent Controller directed the eject-

ment of the tenant from the premises by granting two months' time.

This order of the Rent Controller, on appeal, was con- firmed by the Appellate Authority. On being aggrieved with the Order of the Appellate Authority, the tenant preferred a Civil Revision Petition before the High Court under Sub- section (6) of Section 15 of the Act. On behalf of the tenant, it was urged before the High Court on the strength of Clause 'C' of Rule 4 and Clause (1) of Rule 5 of the Haryana Urban (Control of Rent and Eviction) Rules 1976 framed under Section 23 of the Act that

since in the appli- cation for ejectment no specific amount of arrears due was mentioned, the application was not maintainable. The High Court rejected this plea observing thus:

> "Admittedly, no such objection as to the non- compliance of the said rules was taken either in the written statement or before the Rent Controller, inasmuch as it was not raised even before the Appellate Authority. Moreover, it has not been shown that any prejudice was caused to the tenant on account of this non- compliance on the part of the landlord. Under these circumstances, no such plea can be available to the tenant in this revision petition for the first time particularly when it does not affect the merits of the case nor has it caused any prejudice to him."

Thereafter, coming to the question of arrears of rent, the High Court found thus:

> "Moreover, the tenant clearly stated on 5th December 1977 that according to him, the total amount, due from him at the rate of Rs.950 p.m. from 1st April 1975 to 31st May 1977 was Rs.24,700 out of which Rs.21,696 had already been paid by him to the landlord, which he subsequently failed to prove by leading evi- dence. Under these circumstances, since the tenant failed to prove the payment of the arrears of rent as claimed by him in his statement recorded on 5th December 1977 he was liable to ejectment on the ground of non- payment of rent as provided under Section 13(2)(i) of the Act."

On the above finding, the Revision Petition was dis- missed. Hence this present appeal.

We shall point out at this juncture that the amount of Rs.21,696 which the tenant claims to have paid includes a sum of Rs. 18,844.14 which was found by the Rent Controller and the Appellate Authority as arrears of rent.

Mr. R.F. Nariman, learned counsel appearing on behalf of the appellant/tenant assails the impugned judgment of the High Court on two legal grounds; firstly, that the High Court has ignored to note that the statutory obligation cast on the Rent Controller as per the proviso attached to Section 13(2)(i) of the Act requiring him to calculate and determine the quantum of arrears of rent even at the first instance has not been complied with and secondly that the application for ejectment was not in accordance with the mandatory provisions of Rule 4(c), 5(1) and 6 of the Rules framed under the Act and as such the impugned judgment is liable to be set aside on both the grounds. We shall now take the first ground of attack. Before dealing with the point of law involved, it may be necessary to extract the relevant portion of Section 13(2)(i) of the Act with its first proviso with which we are concerned.

> "13(2) A landlord who seeks to evict his tenant shall apply to the Controller, for direction in that behalf. If the Controller, after giving the tenant a reasonable opportu- nity of showing cause against the application, is satisfied--

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable.

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and inter- est, to be calculated by the Controller, at eight percenturn per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid."

The answer to the first legal question mainly turns on the interpretation of the proviso to Section 13 which refers to the following essential conditions namely:

1. There must be an application for ejectment before the Court;

2. The tenant, within a period of fifteen days of the first hearing of the application after due service, pays or tenders:

(a) the arrears of rent; and

(b) the interest to be calculated by the Controller at eight per cent per annum on such arrears together with such costs of the application, if any as may be allowed by the Controller;

If the above said two conditions are satisfied, then the tenant shall be deemed to have duly paid or tendered the rent within the time required by law.

The last paragraph of Section 13(2) enjoins that where the above second condition of the proviso is not fulfilled the Controller shall make an Order directing the tenant to put the landlord in possession of the building and where he is satisfied that the rent has been paid the application of the landlord must be rejected.

Therefore, the sole question which has to be determined in the case on hand is whether or not the deposit made by the appellant was legally valid. On facts, the Rent Control- ler, the Appellate Authority and the High Court found that the appellant/tenant has not deposited the actual rent due payable by him except a part of it namely Rs.2902.96 along with the interest of Rs.261.27 and the cost of Rs.35 totall- ing to Rs.3199.23 which deposit was less by Rs.18844.14 even calculated at the rate of Rs.950 per mensem. In fact, the learned counsel who appeared for the appellant/tenant before the Appellate Authority has conceded the arrears of rent which fact is found in paragraph 6 of the Order of the Appellate Authority reading thus:

"The learned counsel for the appellant frankly conceded before me that he did not challenge the finding of the Court below that the re- spondent was in arrears of rent

> in the amount of Rs. 18,844 on the date he tendered the arrears of rent together with interest and costs assessed by the Rent Controller."

An attempt on the part of the tenant that he had paid that amount has been totally rejected by all the Courts. Only on the above finding, the Courts below held that the tenant had not deposited the full and valid rent actually due but only a small part of it and as such it is manifest that the second condition enjoined by the proviso was not fulfilled at all and on that ground alone it could be held that the deposit was not valid one.

The learned counsel, Mr. R.F. Nariman drew our attention to two judgments of this Court in Sheo Narain v. Sher Singh, [1980] 1 SCR 836 and Sham Lal (dead) by Lrs. v. Atme Nand Jain Sabha (Regd.), Dal Bazar, [1987] 1 SCC 222. In our considered view both these decisions cannot be of any as- sistance to the appellant in the present case because the points for determination that arose in those two cases were different.

Mr. R.F. Nariman then advanced an argument that a statu- tory duty is cast under Section 13(2)(i) of the Act on the Rent Controller to calculate and determine the arrears of rent as well as the interest to be paid by the tenant within a period of 15 days of the first hearing of the application for ejectment after due service, but since the Controller has failed to discharge that obligation no eviction can be ordered particularly when there is a dispute with regard to the quantum of arrears of rent. From the judgment on appeal, it seems that a contention substantially identical to the one presently made was advanced before the High Court which repelled the same holding thus:

> "Going through the whole scheme of the Act, there is no provision that the Rent Controller should decide at the first date of hearing the amount due as arrears of rent .... If this argument of the learned counsel for the peti- tioner is accepted, in that situation the tenant will have another opportunity for making the payment of the arrears due from him, which, as stated earlier, is neither the scheme of the Act nor is in consonance with the language used in the proviso to Section 13(2)(i). On the first date of hearing, it is the duty of the tenant to calculate the ar- rears of rent, which according to him are due from him and which he intends to tender on the first date of hearing ..... Since payment of rent is obligatory on the tenant and that too within the time prescribed in Section 13(2)(i) of the Act, it is for him to calculate the rent which is in arrears and pay the same as provided by the statute."

After a careful scrutiny of the Section 13(2)(i) and the first proviso annexed thereto, we see no force in the sub- missions of the learned counsel that there is any statutory duty cast on the Rent Controller even in the first instance to determine and calculate the arrears of rent and the interest but on the contrary the proviso requires the tenant to pay or tender the actual arrears of rent within 15 days of the first hearing of the application for ejectment after due service alongwith the interest to be calculated by the Controller at 8 per cent per annum on such arrears together with such costs of the application, if any, as may be al- lowed by the Controller. What the proviso requires is that the Controller has to calculate the interest at 8 per cent per annum on such arrears of rent and

determine the costs of the application, if any. If the argument of the learned counsel is to be accepted then in every case the Rent Con- troller has to hold an enquiry at the first instance and determine the arrears of rent even on the first date of hearing which is in the nature of things not possible with- out any evidence, nor is it contemplated under the scheme of the Act. When there is a statutory obligation on the tenant either to pay or tender the arrears of rent within a period of 15 days of the first hearing of the application for ejectment after due notice it is for him to calculate the exact arrears of rent due and to pay or tender the same and if the tenant tails to do so he is deemed to have not paid or made the valid tender of the rent. Hence we hold that this argument advanced on behalf of the appellant is miscon- ceived and fallacious.

For the reasons aforementioned, we hold that there is no merit in the first contention.

We shall now examine the second legal contention with reference to Rules 4(c), 5(1) and 6 of the Rules under the Act which rules read as follows:

> 4. Application for eviction. Section 13 Application under section 13 of the Act, shall besides the particulars mentioned in Rules 5 and 6 contain the following particulars name-

ly: (emphasised)

(a) xxxxxxxxxx

(b) xxxxxxxxxx

(c) The amount of arrears due and the period of default.

5(1) Applications Section 4 and 13(1) In addition to the particulars mentioned in rules 3, 4 and 6 as far as these may be applicable, every application made under this Act shall contain simple and concise narrative of the facts which the party by whom or on whose behalf the statement of pleading is made, believes to be material to the case and which he either admits or believes that he will be able to prove. (emphasised)

6. Particulars to be furnished to the Controller Section 21(1) Every landlord and every tenant of a building or rented land shall furnish to the Controller, or any person authorised by him in that behalf, the follow- ing particulars namely: (emphasised)

(a) name and number of the building or rented land, if any, or its description and bound- aries sufficient to identify it;

(b) street and municipal ward or division in which the building or rented land is situated;

(c) name and address of the landlord, if the particu lars are furnished by the tenant and name of the tenant, if the particulars are furnished by the landlord;

(d) whether the building is a residential, non-residential or a scheduled building; and

(e) nature of amenities provided by the land- lord to the tenant Mr. R.F. Nariman laid stress on the word "shall" occur- ring in the above rules particularly Rule 4(c) and contended that these rules are mandatory in character and so the non- compliance would amount to violation of the imperative (i.e. mandatory) provisions of these rules. According to him the respondent/landlord has not specified the 'amount of arrears due' in strict substantial compliance of Rule 4(c) and as such the present application for ejectment has to be thrown.out. The answer to the above contention depends upon whether these rules are mandatory or directory which ques- tion has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. No doubt, if the statute is mandatory , the things done not in the manner or form prescribed have no effect or validity, but if it is directory, the non-compli- ance may not lead to any serious and adverse consequence. A valuable guide for ascertaining the intention of the Legis- lature is found in Maxwell "The Interpretation of Statutes"

> (Twelfth Edition) Chapter 13 at page 3 14) under the caption "Intentions attributed to the legislature when it expresses none" reads thus:
>
> "Passing from the interpretation of the lan- guage of statutes, it remains to consider what intentions are to be attributed to the legis- lature on questions necessarily arising out of its enactments and on which it has remained silent.
>
> ..... It is impossible to lay down any general rule for determining whether a provision is imperative or directory."

Lord Cambell in Liverpool Borough Bank v. Turner, [1860] 2 De G.F. & J. 502 at pp. 507,508 observed:

> "No universal rule can be laid down for the construction of statutes as to whether manda- tory enactments shall be considered directory only or obligatory with an implied nullifica- tion for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

Lord Penzance in Howard v. Bodington, [1877] 2 P.D. 203 at p. 211 said:

> "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directo- ry."

In 'Craies on Statute Law' (Sixth Edition) at page 63, the following quotation is found:

> "When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its per- formance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done, are called directory"

See Montreal Street Rly. Co. v. Normandin, [1917] AC 170. With reference to non-compliance of the directory enact- ment in 'Craies on Statute Law' it is said at page 261:

> "But on the other hand, if a statute is merely directory, it is immaterial, so far as relates to the validity of the thing to be done, whether the provisions of the statute are accurately followed out or not."

See also 'On the Construction of Statutes' by Crawford. In Woodward v. Sarsons, [1875] L.R. 10 C.P. 733 at page 746 it is explained as to what is called an absolute enactment or mandatory enactment as follows:

> "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially."

In Seth Bikhraj Jaipuria v. Union of India, [1962] 2 SCR p. 880 a question arose whether Section 175(3) of the Government of India Act, 1935 which requires that contracts on behalf of the Government of India shall be executed in the form prescribed is mandatory or directory. The Supreme Court at page 893 expressed its view as follows:

> "Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non- compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legisla- ture as disclosed by the object, purpose and scope of the statute. If the statute is manda- tory, the thing done not in the manner or form prescribed can have no effect or validity; if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good."

In Raza Buland Sugar Co. Ltd. v. Municipal Board, Ram- pur, [1965] 1 SCR 970, certain questions arose for consider- ation whether the whole of Section 131(3) of U.P. Municipal- ities Act was mandatory or the part of it requiring publica- tion in the manner laid down in Section 94(3) of the said Act i.e. in a Hindi Newspaper was merely directory; Wancboo, J as he then was speaking for the majority said:

> "The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word "shall"--as in the present case is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been

> made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclu- sion whether a particular provision is manda- tory or directory."

See also K. Kamaraja Nadar v. Kunju Thevar and Others, [1959] SCR 583 and Ch. Subbarao v. Member, Election Tibunal, Hyderabad, [1964] 6 SCR 2 13.

It is apposite to refer to the observation of this Court in Hari Vishnu Kamath v. Syed Ahmad Ishaque, [1955] 1 SCR 1104 dealing with this problem:

> "It is well established that an enactment in form mandatory might in substance be directory and that the use of the word "shall" does not conclude the matter."

Reference may be had to (1) State of U.P. & Ors. v. Babu Ram Upadhya, [1961] 2 SCR 679 and (2) Ajit Singh v. State of Punjab, [1983] 2 SCC 217.

The word "shall" in its ordinary import is obligatory. Nevertheless, the word "shall" need not be given that conno- tation in each and every case and the provisions can be interpreted as directo- ry instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. While interpreting the concerned provisions, regard must be had to the context, subject matter and object of the statute in question. On a close scrutiny of the relevant rules referred supra in the light of the above principles of statutory interpre- tation, we are of the view that the non-compliance of rule 4(c) i.e. the non-mentioning of the quantum of arrears of rent, does involve no invalidating consequence and also does not visit any penalty.

From the above discussion we hold that the rules 4(c), 5(1) and 6 are not mandatory but only directory. In that view, we see no force in the contention of the learned counsel that the non-mentioning of the amount of arrears of rent due in the application for ejectment has adversely affected the proceedings of this case and as such the appli- cation for ejectment is liable to be dismissed on that score. Accordingly, we reject this contention also. In the present case, the tenant himself was well aware of the amount of arrears of rent due about which we have already mentioned in the earlier portion of this judgment. The present objection as to the non-compliance of the rules admittedly was not taken either in the written statement or before the Rent Controller or before the Appellate Authori- ty. For the first time such a contention was raised before the High Court which has tightly rejected the same, observ- ing thus:

> "It has not been shown that any preju- dice was caused to the tenant on account of this non-compliance on the part of the land- lord."

We are in full agreement with the above view of the High Court as no prejudice is writ large in the present case because proof of prejudice is also one of the necessary criteria besides non compliance of the provision to invali- date the Act complained of as held by Chinnappa Reddy, J in Dalchand v. Municipal Corporation, Bhopal and Another, [1984] 2 SCC 486.

In the result, both the contentions raised by the appellant fail. For the reasons hereinbefore mentioned, the appeal is dismissed with costs.

Y.L. Appeal dis-
missed.