Kailash Chand & Anr vs Dharam Dass on 4 May, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2362, 2005 AIR SCW 2634, (2006) 1 SIM LC 86, 2005 (4) SCALE 603, 2005 (5) SCC 375, 2005 SCFBRC 337, (2005) 30 ALLINDCAS 83 (SC), 2005 (6) SRJ 321, 2005 (2) ALL CJ 1502, 2005 (30) ALLINDCAS 83, 2005 (4) SLT 297, 2005 ALL CJ 2 1502, (2005) 5 JT 139 (SC), (2005) 3 LANDLR 14, (2005) 4 SUPREME 221, (2005) 4 SCALE 603, (2005) 2 WLC(SC)CVL 20, (2005) 59 ALL LR 764, (2005) 3 MAD LW 672, (2005) 1 RENCR 551, (2005) 2 RENTLR 129, (2005) 1 RENCJ 141

Author: R.C. Lahoti

Bench: R.C. Lahoti, G.P. Mathur

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           CASE NO.:
Appeal (civil)  390 of 2004

PETITIONER:
Kailash Chand & Anr.

RESPONDENT:
Dharam Dass

DATE OF JUDGMENT: 04/05/2005

BENCH:
CJI R.C. Lahoti, Y.K. Sabharwal & G.P. Mathur

JUDGMENT:
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J U D G M E N T R.C. Lahoti, CJI An application seeking an order of eviction under Section 14 (3)(a)(i) of the Himachal Pradesh Urban Rent Control Act, 1987, hereinafter, the Act for short, was allowed by the Rent Controller and the tenant was ordered to be evicted. The order was maintained in appeal by the Appellate Authority. The High Court has in exercise of revision jurisdiction set aside the order of eviction. The aggrieved landlords have come up in appeal by special leave.

It will be necessary to set out the relevant material facts in order to appreciate the controversy arising for decision. The suit premises are part of a double-storeyed building, bearing house number 108, situated in the city of Shimla, where the Act is applicable. The ground floor consists of one shop, one godown, one store-room and one kitchen. The first floor consists of two rooms, a kitchen, latrine and one verandah. The property belonged to one Ramji Dass. The two appellants before us, namely, Kailash Chand and Nokha Ram are real brothers. They purchased the property from Ramji Dass. The exact date of purchase is not known but it was sometime in the year 1980. Ramji Dass was carrying on his own business on the ground floor while the first floor was in occupation of the

tenant, Dharam Dass, the respondent herein. The appellants got vacant possession of the ground floor from their vendors while the tenant continued to be in occupation of the first floor which he was holding on tenancy at a monthly rent of Rs.15/-.

Having purchased the premises, the landlords initiated proceedings for the eviction of the tenant from the first floor premises by an application filed on 1.8.1980 before the Rent Controller under the Himachal Pradesh Urban Rent Control Act, 1971 the law as it was applicable then. The ground for eviction was that the family of the appellants was living in miserable conditions. On purchasing the building No. 108, appellant No. 2 commenced his commercial activity by opening a shop on the ground floor of the building. He started using the godown for the residence of himself along with his wife and two school going children. One room was used as a store room and one room as a kitchen. Before purchasing house No.108, appellant No. 1 was living in a rented accommodation which he had to vacate perforce as it was in a dilapidated condition and unsafe for human habitation. Appellant No. 1 joined appellant No. 2 for residence. At night, he had to sleep in the shop. Appellant no.1 was of marriageable age but his marriage was not being performed for want of living accommodation. The landlords urged that the residential accommodation on the first floor in occupation of the tenant was required by them to accommodate their large family. The Rent Controller vide order dated 31.10.1984 allowed the landlords' application and directed the respondent-tenant to be evicted.

The tenant preferred an appeal. During the pendency of appeal before the Appellate Authority the parties entered into a compromise which is recorded in the order dated 17.9.1986 passed by the Appellate Authority. The landlords agreed to create a new tenancy in favour of tenant-respondent in respect of a room, a kitchen and a passage on the ground floor of the building with effect from 1.10.1986 on a monthly rent of Rs.30. Appellant No.2 and his family members shifted to the first floor accommodation which was in occupation of the tenant earlier. The tenant entered into occupation of the ground floor, as per the terms of the agreement, though the ground floor premises were not fit for human residence as per the version of the landlords itself.

On 1st March, 1988, the landlords filed another application against the tenant-respondent seeking his eviction from the ground floor accommodation in his possession. It was alleged in the application that subsequent to the induction of respondent as tenant in the ground floor, appellant No.1 was blessed with a female child. It appears that this appellant was married during the pendency of the earlier eviction proceedings. The family of appellant No.1 was kept at village Panhoi i.e. away from Shimla but then for the purpose of giving education to his child, the wife of appellant no.1 and the child were shifted permanently to Shimla in view of the educational facilities needed for the child being available in the city. But the family of appellant no.1 was residing in a rented residential accommodation where the rent was being paid at the rate of Rs.225/- per month beside taxes. The upper floor accommodation continued to be in occupation of the family of appellant no.2. Looking at the number of members in the family of appellant no.2 and the small size of accommodation on the first floor which was already occupied by the family of appellant No.2, the family of appellant no.1 could not have been accommodated therein.

Vide Order dated 20.1.1993, the Rent Controller directed tenant-respondent to be evicted. The tenant's appeal was dismissed by the Appellate Authority. In Civil Revision preferred by the tenant, the High Court has vide its Order dated November 27, 2001 allowed the Civil Revision and directed the eviction petition to be dismissed. The High Court has placed reliance on one of the provisos appended to sub-Section (3) of Section 14 of the Act (called the 'third proviso' in this judgment) as noticed hereinafter and the decision of this Court in Molar Mal (dead) through L.Rs. v. M/s. Kay Iron Works (Pvt.) Ltd., (2000) 4 SCC 285. In the opinion of the High Court the landlords had admittedly obtained the possession of another building (as defined in Section 2 clause (b) of the Act) on the same ground of bona fide requirement for his own occupation under Section 14(3)(a)(i) of the Act and as against this very tenant and, therefore, the eviction petition filed by the landlords was not maintainable even prima facie. The landlords have come up in appeal by special leave.

The relevant part of sub-Section (3) of Section 14 of the Act reads as under:

> "(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession :-
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> (a) in the case of a residential building, if -
>
> (i) he requires it for his own occupation:
>
> Provided that he is not occupying another residential building owned by him in the urban area concerned:
>
> Provided further that he has not vacated such a building without sufficient cause within five years of the filing of the application, in the said urban area;"
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> xxx xxx xxx "Provided further that where the landlord has obtained possession of any building or rented land under the provisions of clause (a) or clause (b), he shall not be entitled to apply again under the said clause for the possession of any other building of the same class or rented land."
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> The relevant proviso quoted hereinabove and which has been relied on by the High Court, we will refer to as the third proviso for the sake of convenience.
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> When the appeal came up for hearing before a two-Judge Bench of this Court, reliance was placed on behalf of tenant again on the case of Molar Mal (supra), as was done before the High Court. The Bench felt the need of giving a fresh look at the law laid down in Molar Mal's case and hence for the appeal being heard by a three-Judge Bench inasmuch as Molar Mal's case is a two-Judge Bench decision.
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> The two-Judge Bench has, in its referral order dated October 7, 2004, for hearing by a Bench of three Judges, noted two contentions advanced before it on behalf of the landlords. First, the present case is not a case of obtaining possession. Secondly, the

landlords were not seeking eviction on the "self same ground". If the circumstances have changed and the necessity has increased, it may be possible and permissible for the landlord to apply again under Sub-section (3) of Section 14 of the Act on the ground of bona fide requirement. The requirement may continue to subsist or the circumstances may have changed to a different state. In either case, the third proviso to Section 14(3) of the Act would not apply. These are the reasons which persuaded the learned two Judges to place the matter for consideration by a Bench of three Judges.

In our opinion, the third proviso has no application to the facts of the present case and this we say for two reasons. First, the third proviso would apply when an order for eviction has been passed under clause (a) or (b) and possession is obtained by the landlord pursuant to that order. In this case, the parties entered into a compromise and, therefore, an occasion for the Appellate Authority passing an order for eviction did not arise. Secondly, by virtue of settlement arrived at between the parties, the landlords did not obtain possession of the building; the tenant shifted from one part of the building to another part of the same building. The tenant did not 'vacate' the building. 'Vacate', normally, means to go away, to leave. (See Surinder Singh Sibia v. Vijay Kumar Sood, (1992) 1 SCC 70 para 2). The landlord can be said to have obtained possession of any building if the tenant has correspondingly vacated such building. Such is not the case before us.

Molar Mal's case which has been relied on by the High Court deals with a pari materia provision contained in the Haryana Urban (Control of Rent) & Eviction Act, 1973. There the plea taken by the tenant in his written statement was that the landlord had filed other petitions against other tenants alleging personal requirement and during the pendency of the eviction petition in question he had obtained possession of building and lands from three other tenants and hence the landlord's plea for the tenant's eviction was not maintainable, in view of the third proviso. The contention of the landlord was that the possession from other tenants was obtained during the pendency of the eviction petition and not on the date of filing of the eviction petition and, therefore, the proviso did not apply. This contention of the landlord was repelled by this Court observing that the proviso needed to be interpreted keeping in view the Legislative intent and not in a pedantic manner. Not the letter of the law by assigning a literal meaning, but the purpose sought to be achieved by the legislature had to be kept in view. This Court opined that if the landlord had obtained possession of the premises/land belonging to the same class of building or tenanted land, wherefrom the eviction was being sought for in the proceedings, then the applicability of the proviso would be attracted. To record a finding in that regard, the case was remanded to the trial court by framing an issue and allowing liberty to the parties to adduce evidence. Molar Mal's case (supra) does not deal with the situation like the one before us nor does answer the question as is posed in the case before us.

In Molar Mal's case this Court has not expressed any opinion if the applicability of the third proviso would be attracted if there was no order of eviction pursuant to which the landlords came into occupation of another residential building and what was done, was only an exchange of accommodation by way of mutual settlement and without intervention of the Court, though such settlement was brought to the notice of the Court.

We find it difficult to accept the construction placed on the third proviso, in para 14 of the judgment in Molar Mal's case. In Rakesh Wadhawan and Ors v. Jagdamba Industrial Corporation and Ors, (2002) 5 SCC 440, this Court has held that a statute can never be exhaustive. Legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. The scope is always there for the Court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the Court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated. "Law is part of the social reality" (See - Law in the Scientific Era by Justice Markandey Katju, 2000 Ed., p.33) "Though Law and Justice are not synonymous terms they have a close relationship, as pointed out by the American jurist Rawls. Since one of the aims of the law is to provide order and peace in society, and since order and peace cannot last long if it is based on injustice, it follows that a legal system that can not meet the demands of justice will not survive long. As Rawls says "Laws and institutions no matter how efficient and well arranged, must be reformed or abolished if they are unjust"." (ibid, p.72). Clearly law cannot be so interpreted as would cause oppression or be unjust.

Life is not static and so the law cannot afford to be static. The third proviso cannot be so interpreted as to restrict the right conferred by sub-Section (3)(a)(i) on the landlord to be exercisable only "once in a life time". The proviso has to be read as providing a statutory expression of a situation which would otherwise have been held to be mala fides of a requirement. A landlord, having obtained possession of any building to satisfy a requirement, cannot again and again plead the same set of circumstances or similar circumstances for evicting tenants one after other. That is what the third proviso aims at providing. The proviso cannot be interpreted to mean that in spite of the requirement having undergone a change or a new requirement unrelated to the previous one having come into existence, the landlord would yet be denied relief under sub-Section (3)(a)(i) merely because at some point of time in the past he had resorted to this provision for seeking an eviction. Such an interpretation is too rigid an interpretation and would cause such hardship to the landlord as the Legislature cannot be said to have intended. The examples are available in decided cases and two such are: Jagir Singh v. Jagdish Pal Sagar, 1980 (1) R.C.R. 494 and Brij Lal Puri and Anr v. Smt. Muni Tandon, AIR 1979 Punjab & Haryana 132.

In Jagir Singh's case there were five tenants on the ground floor of the premises in dispute and the respondent filed applications for ejectment against all the tenants simultaneously. Orders of ejectment were passed against all the tenants. Four tenants vacated; the fifth one took his battle to the Appellate Court. The premises got vacated from the four tenants consisted of five rooms out of which two were very small rooms which can be used only as stores. The entire construction of the house lay in two hundred square yards. The requirement of the landlord was of the ground floor in its entirety and was found to be bona fide as a matter of fact. The contention that the landlord

having evicted four other tenants cannot evict the fifth tenant in spite of the proven requirement was rejected by the High Court.

In Brij Lal Puri's case the interpretation placed by the High Court on the third proviso in similar set of facts runs, thus____ "A plain reading of the proviso mentioned above shows that a landlord after getting one building vacated, which can reasonably meet his needs, cannot get another building vacated. The proviso does not lay down that if the entire building, which is needed by a landlord for his personal use, is occupied by more than one tenant, he or she cannot take out eviction proceedings against the other tenants after having evicted one. The object of this proviso is that a landlord should not be allowed to seek unreasonable ejectments of tenants from independent buildings if he has already succeeded in evicting a tenant from a building which is sufficient for his personal occupation."

In our opinion, the interpretation placed by the High Court on the local law takes a practical, pragmatic, reasonable and balanced view of the law and deserves to be upheld. We find it difficult to subscribe to the view taken in Molar Mal's case that eviction of three other tenants from the premises which are part of the same building, would disentitle the landlord from pursuing the proceedings for eviction against yet another tenant in spite of his requirement for possession over such part of the building being found to be bona fide, subsisting and real.

Having held that third proviso is not attracted to the facts and circumstances of the present case and, therefore, that provisio cannot cause any dent in the entitlement of the landlords to seek eviction of the tenant-respondent under Section 14(3)(a)(i), it is still necessary to examine whether the order for eviction passed by the Rent Controller and upheld by the Appellate Authority could have been sustained by the High Court.

Sub-Section (3)(a)(i) contemplates an order of eviction being made against tenant in the case of a residential building if the same was required by the landlord for his own occupation. The two provisos appended to sub-clause (i) of clause (a) of sub- section (3) of Section 14 place two restrictions on the right of the landlord to seek eviction. These are :-

> (i) the landlord must not be in occupation of another residential building owned by him in the urban area concerned;
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> (ii) the landlord having another residential building of his own in the urban area concerned though not in occupation thereof on the date of the filing of the application, must not have vacated such a building without sufficient cause within five years of the date of the filing of the application.

In short, availability of another residential building of his own in the same urban area would disentitle the landlord from seeking eviction of the tenant on the ground of his requirement for his own occupation if he is in occupation of such another building or has vacated such another building within five years. On a plain reading, the availability of another building by reference to the first proviso disentitles the landlord from seeking eviction if the building satisfies these tests: (i) it is

another building; (ii) it is residential in nature; (iii) it is in occupation of landlord; (iv) it is owned by him; and (v) it is situated in the same urban area in which another building in occupation of the tenant is situated. The building referred to in the second proviso, availability whereof disentitles the landlord to seek eviction is not in occupation of the landlord. In all other manner it has to be a building satisfying the tests as above, and in addition, it must be a building vacated by landlord within five years of the date of filing of the application and that too without sufficient cause. The applicability of any of the two provisos would not be attracted if the landlord is occupying or has vacated another residential building which is rented or is not owned by the landlord.

What is the scope of the first Proviso? Whether the occupation by landlord of any other residential accommodation of whatever nature, in abstract and without consideration of any other relevant factor would be enough to attract the applicability of the first Proviso and to deny the landlord his right to seek an order of eviction against the tenant? In our opinion, the first Proviso is not to be read in isolation. It has to be read along with the principal provision to which it is appended. The ground for eviction in the case of a residential building is "he requires it for his own occupation". If the pleadings and the evidence adduced by the landlord do not make out a case of requirement, there would be no question of the tenant being directed to put the landlord in possession. Even on the requirement having been proved, the landlord would be denied the order for possession from the tenant because of his being in occupation of 'another residential building owned by him in the same urban area'. The occupation of another residential building, to act in denial of the landlord's right to evict the tenant to satisfy his requirement, must have correlation with the requirement of the landlord. To illustrate, another residential building in occupation of the landlord may be crumbling, or may be in dilapidated condition or may consist of very little residential space, say one small room alone, which it would be misnomer to call availability of a residential building in occupation of the landlord by any stretch of imagination. The legislature could not have intended such an absurd and unreasonable consequence to follow. In our opinion, the first Proviso would come into play only if the landlord is occupying another residential building of his own in the same urban area and such building is considered by the Court as reasonably enough and suitable to satisfy the proven requirement of the landlord. Hence, the first Proviso would not apply in the case before us. It is impractical and unreasonable to hold that the accommodation which is already fully occupied and actually in use of appellant No.2, though technically in occupation of both the landlords can satisfy the requirement of appellant No.1 and his family as well. Rightly the tenant has not urged the plea that the landlord being in occupation of other parts of the building excluding the portion in occupation of the tenant would attract applicability of the first proviso so as to disentitle the landlord from seeking his eviction on the ground of requirement of appellant No. 1 who is actually living in a rented house.

We have to see if the landlords' entitlement to evict the tenant can be faulted by reference to the second proviso. For two reasons we are of the opinion that the applicability of the second proviso is also not attracted so as to disentitle the landlord-appellants from seeking eviction of the tenant-respondent. First, the landlords cannot be said to have 'vacated' any building. It is not the case of the tenant, pleaded or proved, that the accommodation which was given to the tenant by way of settlement in the earlier round of litigation was in actual occupation of the landlords. If the accommodation was non- residential (though the tenant agreed to use it for his residence) or was

already and genuinely lying vacant as of no use to the landlords and not deliberately or mala fide kept vacant to create a false ground for eviction, it cannot be said that the landlords had 'vacated' a residential building. It is for the tenant to raise and substantiate the plea attracting applicability of the proviso so as to disentitle the landlord from evicting him in spite of the requirement having been proved. On the tenant having pleaded and proved that the landlord has vacated another residential building in the same urban area within five years of the filing of the application, the onus will shift again on the landlord to either rebut the plea or to prove sufficient cause for such vacating. In the present case, there is complete lack of pleadings and evidence so as to enable a finding of fact being recorded which would attract applicability of the second proviso.

Secondly, 'sufficient cause' is also discernible from the facts available on record in the present case. As held in Surinder Singh Sibia's case (supra), 'Sufficient cause' "has been construed liberally in keeping with its ordinary dictionary meaning as adequate or enough. That is, any justifiable reason resulting in vacation has to be understood as sufficient cause. For instance economic difficulty or financial stringency or family reasons may compel a landlord to let out a building in his occupation. So long as it is found to be genuine and bona fide it would amount to vacating a building for sufficient cause and the bar of second proviso stands lifted. In other words if the vacation of the building was not a pretence or pretext the proviso could not frustrate the right of landlord to approach the Controller for necessary direction to tenant to hand over possession to him."

The landlords were earlier litigating for eviction of the tenant from the upper floor. In the first round of litigation, they succeeded and yet the fruits of the decree were denied to them on account of pendency of the appeal. They thought it proper to shift the tenant from the first floor to the ground floor so as to satisfy their own requirement as it existed on that date. The tenant also agreed to occupy the ground floor for residence as he was in dire need of some space to live though the premises were not fit for human residence and could not be termed 'residential'. This is 'sufficient cause' within the meaning of the second proviso. Circumstances changed. Subsequent events took place. The family of appellant no.1 enlarged. A new requirement came into existence which did not exist earlier. The bona fides of such requirement of the landlords cannot be doubted.

The expression 'his own occupation' as occurring in sub- clause (i) of clause (a) of section (3) is not to be assigned a narrow meaning. It has to be read liberally and given a practical meaning. 'His own occupation' does not mean occupation by the landlord alone and as an individual. The expressions "for his own use" and "for occupation by himself" as occurring in two other Rent Control Acts, have come up for the consideration of this Court in Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397 and Dwarkaprasad v. Nirnajan and Another, (2003) 4 SCC 549. It was held that the requirement of members of family of the landlord or of the one who is dependent on the landlord, is the landlord's own requirement. Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for 'his own occupation'.

Undoubtedly, the Himachal Pradesh Urban Rent Control Act, 1987 has been enacted for the purpose of providing for the control of rents and evictions because of paucity of accommodation in urban

areas. The Rent Control Legislations, generally aim at preventing rack-renting and resorting to evictions by unscrupulous and greedy landlords, who take advantage of the shortage in availability of accommodations in cities and dictate their terms to the tenants and if they do not follow the dictates, subject them to eviction. The Rent Control Legislations are generally heavily loaded in favour of the tenants and the provision dealing with which the courts at times lean in favour of the landlords is the one which permits the landlord to seek eviction of the tenant on the ground of requirement for his own occupation, residential or non-residential. There are weak amongst the tenants as also amongst the landlords. (See Joginder Pal's case, supra, paras 9 and 32) Take the case of a landlord knocking the doors of the court seeking its assistance for a roof over his head or for a reasonably comfortable living, when he is himself either in a rented accommodation or squeezing himself and his family members in a limited space, while the tenant protected by the Rent Control Law is comfortably occupying the premises of the landlord or a part thereof. Provisions like Section 14(3)(a)(i) of the Act should be so interpreted as to advance the cause of justice instructed by the realties of life and practical wisdom. While the tenant needs to be protected, the courts would not ordinarily deny the relief to the landlord, who genuinely and bona fide requires the premises in occupation of the tenant for occupation by himself or for the members of his family, unless they feel convinced that the so- called requirement of the landlord was a ruse for getting rid of an inconvenient tenant or was otherwise mala fide and did not fall within the four corners of the ground for eviction provided by the law.

On a perusal of the pleadings and the findings arrived at by the Rent Controller and the Appellate Authority (which findings have not been dislodged by the High Court), the picture which emerges may briefly be projected. The tenant was in occupation of the upper floor of the building before and during the first round of litigation. Through the compromise arrived at during the pendency of the appeal, the tenant agreed to take one room, one kitchen and one covered passage accommodation situated on the ground floor under the new tenancy at a new rate of rent with effect from 1.10.1986. The arrangement made by the compromise having been implemented, the family of the appellant No. 2 one out of the two landlords, who are two brothers, actually occupied the entire first floor and also a part of the ground floor. The appellant no.2, who is the brother of appellant No.1 herein and was impleaded as a performa defendant before the Rent Controller and the Appellate Authority, is running a shop on the ground floor and is also using a portion of the ground floor as godown and staircase. The upper floor accommodation consists of two rooms, one kitchen and one open veranda which is being used by appellant No.2 with his family members namely his wife and three school going children. Appellant No.1 is staying in a rented accommodation for the reason that the wives of the two brothers not carrying on well with each other to permit their living together and also on account of paucity of accommodation. During the pendency of the proceedings another female child was born to appellant No.1 and thus by the time the appeal came to be decided by the Appellate Authority on 1.3.1988, appellant No.1 had two children, as has been noted by the Appellate Authority.

As an upshot of the above discussion we hold that the High Court was not right in applying third proviso to the facts of the case and deny the relief of eviction to the appellants. The first and the second proviso also do not come in the way of appellants. Their case of requirement within the meaning of Section 14(3)(a)(i) is fully made out.

The appeal is allowed. The order of the High Court is set aside and that of the Rent Controller as upheld by the Appellate Authority is restored. However, the tenant-respondent is allowed time upto 31.8.2005 for vacating the suit premises and delivering peaceful possession to the landlords, subject to filing the usual undertaking before the Rent Controller within a period of four weeks from today. The costs incurred by the landlords shall be borne by the tenant-respondent throughout.