Supreme Court of India
Madan Mohan And Another vs Krishan Kumar Sood on 12 January, 1993
Equivalent citations: 1993 SCR (1) 107, 1994 SCC Supl. (1) 437
Author: Y Dayal
Bench: Yogeshwar Dayal (J)

PETITIONER:
MADAN MOHAN AND ANOTHER

Vs.

RESPONDENT:
KRISHAN KUMAR SOOD

DATE OF JUDGMENT12/01/1993

BENCH:
YOGESHWAR DAYAL (J)
BENCH:
YOGESHWAR DAYAL (J)
VERMA, JAGDISH SARAN (J)
VENKATACHALA N. (J)

CITATION:
1993 SCR (1) 107 1994 SCC Supl. (1) 437
JT 1993 (1) 162 1993 SCALE (1)71

ACT:
Himachal Pradesh Urban Rent Control Act, 1987--Legislative intention--Protection to tenant--When available.
Himachal Pradesh Urban Rent Control Act, 1987--Section 14--Eviction on the ground of non-payment of rent--Execution on application of landlord--Extension of time to deposit arrear by executing Court--Whether justified.
Himachal Pradesh Urban Rent Control Act, 1987--Section 14(2)(i), 3rd proviso, (v)--"Amount due"--Construction Rent Controller to specify what the amount due--"May"--Meaning of.

HEADNOTE:
The respondent was a tenant at the rate of Rs. 183.33 per month In the suit-premises. The respondent was in arrears of rent with effect from 13.1980 to 28.2.1983.
On 7th March, 1983, predecessor-in-interest of appellant No.2 and appellant No.1, flied an application for eviction of the respondent on the ground of non-payment of rent.
The Rent Controller on 29.7.1986 passed an order of eviction.
On 13.8.1986 the respondent deposited a sum of Rs. 9,500 In the court of the Rent Controller.

According to the appellant the account deposited was not In according with the order dated 29th July 1986. They filed the execution petition before the Rent Controller seeking possession of the suit premises.

The Rent Controller framed two Issues: (a) whether the tender made by the respondent of the rent amount was short as alleged-, (b) Relief.

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The Rent Controller held that the tender made by the respondent was short of Rs. 161.29. While deciding issue No. 2, the Rent Controller allowed 15 days' time to deposit the said amount.

The appellants being aggrieved by the order of the Rent Controller riled a revision petition in the High Court.

Before the High Court the appellants submitted that the executing court had no jurisdiction to extend the time for making good the deficiency of Rs. 161.29 inasmuch as since period of 30 days was fixed by the Himachal Pradesh Urban Rent Control Act, 1987 itself, the court could not either enlarge or abridge this period.

The High Court dismissed the revision petition, holding that the respondent was not liable to be evicted and also held that the order of the executing court extending time to deposit Rs. 161.29 in pursuance of its order dated 29.7.1986 was of no consequence.

The landlord riled this appeal by special leave against the High Court's judgment.

The respondent-tenant submitted that sub-section (2) of Section 14 gave discretion to the Controller to pass an order of eviction or not to pass an order of eviction, even if the ground mentioned in clauses (i) to (v) of Sub-section (2) of Section 14 were made out; that the order of eviction which was passed was not the final order in the sense that it was an interim order and the final order was passed only after the expiry of 30 days if the tenant failed to avail of the second opportunity provided by the third proviso to clause (i) of sub-section (2) of Section 14.

Allowing the appeal of the landlord, this Court

HELD:1.01. The Rent Control Acts are measures to protect tenants from eviction except on certain specified grounds if found established. Once the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood. [117H]

1.02.The legislature which made the Act could not have envisaged that after the parties finish of one round of litigation, the party should be

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relegated to another round of litigation for recovery of rent which accrued pendente lite. Whatever protection Rent Acts give, they do not give blanket protection for "non-payment of rent'. This basic minimum has to be complied

with by the tenants. Rent Acts do not contemplate that if one takes a house on rent, he can continue to enjoy the same without payment of rent. [118A-B]

1.03.Rent Control Acts are necessary social measures for protection of tenants. The Rent Control Laws have tried to balance the equity. Landlord is duty bound to satisfy the ground of eviction mentioned in various Rent Acts and if he does not satisfy, he cannot get the order of eviction merely because the Act restricts his rights. [122E]

1.04.There are certain Rent Acts which, even when a ground of eviction is satisfied, still confer powers on the Rent Controller to consider the question of comparative hardship and it is only in those types of cases, if the Controller is satisfied, he cap decline passing orders of eviction. But if there is no such limitations, the Rent Controllers after the ground of eviction specified in the Act is made out, have no discretion to reject the application. Once the order of eviction is passed the executing court is duty bound to execute its orders. No question of equity or hardship arises at that stage. [122F-G]

2.01.There is no provision in the Act for giving powers to the Controller to direct payment or deposit of "pendente lite" rent for each month during the pendency of the petition for eviction of the tenant. First Proviso to sub-section (2) of Section 14 shows that in order to show payment or valid tender as contemplated by clause (i) of sub-section (2) of Section 14 by a tenant in default, he has to pay on the first date of bearing the arrears of rent alongwith interest and costs of the application which are to be assessed by the Controller. [116G-H]

2.02.Sub-clause (i) of sub-section (2) of Section 14 gives two opportunities to the tenant to avoid eviction. Ile first opportunity to avoid eviction is if the tenant avails of the benefit of first proviso. This opportunity is before the passing of the order of eviction. The second opportunity is after the order of eviction. The order which is passed for eviction, is final in the sense as it is not an interim order. If the tenant avails of the second opportunity as provided in the third proviso then the order of eviction becomes inexecutable and he saves himself from eviction. [119G]

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2.03.The Controller is required to dismiss the eviction application if he is not satisfied to the existence of any ground mentioned in clauses (i) to (v) of sub-section (2) of Section 14 of the Act but where the Controller is satisfied with existence of any of the grounds mentioned in clauses (1) to (v) of sub- section (2) of Section 14 the Controller has no discretion to decline to pass the order of eviction. [119B]

2.04.The order which the Controller passed was a composite order of eviction in the sense that if the tenant

wanted to save himself from eviction, he had to comply with the order. The order which was passed by the Controller cannot be said to be an order without jurisdiction. It may be a right order, it may have been a wrong order. It was not a nullity that the executing court will ignore it. But at the stage when the execution application was riled, the Rent Controller could not go behind its own order dated 29.7.1986. [118C]

2.05.If the Controller could not go behind Its own order in execution proceedings, the High Court could not also go behind the order in revision against the order of Controller refusing execution. It was not the appropriate stage for the High Court to examine what order ought to have been passed or to limit the efficacy of the order to its interpretation of the words "amount due" as mentioned in the third proviso to clause (i) of subsection (2) of Section 14. [118D-E]

2.06.The landlord, as per the scheme of the section, cannot be worse off vis-a-vis a tenant who was good enough to deposit in court the arrears of rent together with interest and costs on the first date of hearing. [117D]

2.07.In the present case the tenant spared no efforts to harass the landlords. After the order of eviction dated 29th July, 1986 the matter did not rest there. The tenant again failed to pay the rent and the landlord was forced to file another eviction petition on the ground of non-payment of rent for the period from 1.3.1983 to 30.11.1986 and it was only after the filing of the said eviction petition and in order to avoid eviction he deposited the rent. It was only after the notice of the Special Leave Petition was issued, the tenant chose to pay the rent from 1.12.1986 after keeping it in arrears for practically six years. [123A-B]

Om Parkash v. Sarla Kumari & Ors., 1991 (1) Sim. L.C. 45, referred to.

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Shri Krishnan Kumar v. Shri Gurbux Singh, 1977 (2) RCR 62, approved.

Shyamcharan Sharma v. Daramdas, [1980] 2 SCC 151; Miss Santosh Mehta v. Om Prakash and others, [1980] 3 SCC 610; Ram Murti v. Bhola Nath and another, [1984] 3 SCC Ill and Ganesh Prasad Sah Kesari and another v. Lakshmi Naryan Gupta, [1985] 3 SCC 53, distinguished.

3.01.The 'amount due" occurring in the third proviso in the context will mean the amount due on and upto the date of the order of eviction. It will take into account not merely the arrears of rent which gave cause of action to file a petition for eviction but also include the rent which accumulated during the pendency of eviction petition as well. If the tenant has been paying the rent during the pendency of the eviction petition to the landlord, the 'amount due" will be only arrears which have not been paid. [117C-D]

3.02.It will be advisable if the Controller while passing the order of eviction on the ground specified in clause (1) of sub-section (2) of Section 14 of the Act specifies the 'amount due" till the date of the order and not merely leave it to the parties to contest it after passing of the order of eviction as to what was the amount due. [117F]

3.03.In the context in which the expression "may' is used it means .shall". Otherwise the section would read that 'got only the Controller can reject an application when he is not satisfied with the ground but is also entitled to dismiss the application when he is so satisfied." Such an intention cannot be attributed to the legislature particularly when the consequences of non-satisfaction is expressly mentioned. Even if the consequences of non-satisfaction was not mentioned, the expression .may' occurring would still mean "shall" and all that would mean Is that if the grounds are not made out, he will be bound to dismiss the application and If the grounds are made out, he is bound to pass the order of eviction. If any other interpretation Is given to the word "may" the section may itself become subject matter of challenge under Article 14 of the Constitution of India. The Court shall avoid interpretation which make the provisions violative of the Constitution if possible.

[117C-F]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 131 of 1993. From the Judgment and Order dated 17.12.1991 of the Himachal Pradesh High Court in Civil Revision No. 210 of 1990. P.P. Rao and Ashok K. Mahajan for the Appellants. D.D. Thakur, N.N. Bhat, E.C. Agrawala, A.V. Palli and Ms. Purnima Bhat for the Respondent.

The Judgment of the Court was delivered by YOGESHWAR DAYAL J. Special leave granted. With the consent of learned counsel for the parties, the appeal itself was heard.

The respondent is a tenant at the rate of Rs. 183.33 per month in the premises in dispute i.e. Shop No. 50, The Mall Shimla. On 7th March, 1983, late Smt. Dhani Devi, Predecessor-in-interest of appellant No. 2 and Shri Madan Mohan, appellant No.1, filed an application for eviction of the respondent on various grounds. One of the grounds on which the eviction was claimed was non-payment of rent. It was stated in eviction petition that the respondent was in arrears of rent with effect from 1.3.1980 to 28.2.1983. The Rent Controller on 29.7.1986 passed an order of eviction on the ground of non-payment of arrears of rent. The operative part of the said order is as under:

"In the tight of my finding on issue No.1 above, the application is allowed on the

> ground of non-payment of arrears of rent and the petition fails on other grounds. However, the respondent shall not be evicted from the premises in question if he pays to the petitioner or deposit in this court a sum of Rs. 6,600, being arrears of rent from 1.3.1980 to 28.2.1983 @ 2,200 p.a. plus interest thereon @ 6% p.a. amounting to Rs. 609.39, upto 28.2.1983and further interest on Rs.

6,600/- @ 6% p.a. from 1.3.1983 till 28.8.1986 plus costs assessed at Rs. 100 within a period of 30 days from today.' On 13.8.1986 the respondent deposited a sum of Rs. 8,500 in the court of the Rent Controller, Shimla. According to the appellants, decree holders, the amount due inclusive of interest and costs upto 29.7.1986 was Rs. 8,661.29 and till the date of deposit it worked out to Rs. 8,677.79 if the interest was to be calculated at the ordered rate till 13.8.1986.

According to the appellants the amount deposited was not in accordance with the order of the ejectment dated 29th July, 1986 and was short, and they filed the execution petition before the Rent Controller seeking possession of the suit premises.

On the execution petition being opposed, the Rent Controller framed the following two issues:

> "(a) Whether the tender made by the respondent of the rent amount is short as alleged?
>
> (b) Relief"

By an order dated 18.5.1990 the Rent Controller while deciding issue No. 1 held that the tender made by the respondent was short to the tune of Rs. 161.29. However, while deciding issue No.2, the Rent Controller allowed 15 days' time from the date of the order for deposit of the said amount.

The appellants being aggrieved by the order of the Rent Controller dated 18.5.1990 filed revision petition in the High Court. It was submitted on behalf of the appellants that the executing court had no jurisdiction to extend the time for making good the deficiency of.Rs. 161.29 inasmuch as since period of 30 days has been fixed by the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as 'the Act') itself, the court could not either enlarge or abridge this period.

By the impugned judgment dated 17.12.1991, the High Court dismissed the revision petition. The High Court while interpreting the words "amount due" occurring in the third proviso to Section 14(2) (i) of the Act held that these words referred to arrears of rent only and do not include interest and costs.

It will be noticed that neither of the parties had challenged the order 29.7.1986 by which the order of eviction was passed on the ground of non-payment of rent against the respondent but the respondent had been given the liberty of avoiding eviction provided he deposited the amounts as stated in the order within the period of 30days from the date of the said order. Before the High Court it was submitted on behalf of the appellants that the executing court had no jurisdiction to extend the time to make good the deficiency in the amount as directed by the order dated 29.7.1986.

It was submitted on behalf of the appellants that since the period of 30 days had been fixed in the Act itself the court could not enlarge or abridge this period. The High Court agreed with this submission but posed a question for itself, whether short fall of Rs. 161.29 which had been ordered to be deposited constitutes arrears of rent or interest and costs. While following an earlier decision of the same High Court reported as Om Parkash v. Sarla Kumari & Ors., 1991 (1) Sim. L.C. 45 interpreted the word "amount due" occurring in the third proviso to Section 14(2)(i) of the Act wherein it had been held that in order to save eviction the tenant is required to deposit only arrears of rent due at the time of filing application for eviction and not arrears of rent together with interest and costs within the statutory period of 30 days from the date of eviction order. After answering the question the High Court took the view that the deficiency of Rs. 161.29 pertains to interest and costs. So far as the arrears of rent which amountedto Rs. 6,600 for the period in question i.e. from 1.3.1980 to 28.3.1983 at the rate of Rs. 2,200 p.a. is concerned, it had been deposited within 30days. In view of this finding the High Court was of the view that the respondent was not liable to be evicted. High Court also held that the order of the executing court extending time to deposit Rs. 161.29 in pursuance of its order dated 29.7.1986 is of no consequence.

The relevant part of Section 14 of the Act may be noticed:-

'14. Eviction of tenant (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decre passed before or after the commencement of this Act or otherwise, whether before or after the termination of the tenancy, except in accordance with the provisions of this Act.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, 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 on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at the rate of 9 per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within time aforesaid:

Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 per cent per annum:

Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non- payment of rent due from him, shall not be evicted as a result of his order, if the tenant pays the amount due within a period of 30 days from the date of order; or

(ii).; or

(iii) ...; or (iV).; or

(v)..;

> the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:"

A reading of the aforesaid relevant part of the Section shows that sub-section (1) of Section 14 creates a ban against the eviction of a tenant except in accordance with the provisions of the Act. The ban is liable to be lifted. Sub-section (2) of Section 14 provides the circumstances in which the ban is partially lifted. It contemplates that where an eviction petition is filed, inter alia, on the ground of non-payment of rent by the landlord, the Controller has to be satisfied that the tenant has neither paid nor tendered the rent in the circumstances mentioned in clause (i) of sub-section (2) of Section 14. He has to arrive at this satisfaction after giving a reasonable opportunity of showing cause against it to the tenant. But there may be cases where the tenant, on being given notice of such an application for eviction, may like to contest or not to contest the application. The tenant is given the first chance to save himself from eviction as provided in the first proviso to clause (i) of sub-section (2) of Section 14. This first proviso contemplates that the tenant may on the first hearing of the application for ejectment pay or tender in court the rent and interest at the rate mentioned in the proviso on such arrears together with the cost of application assessed by the Controller and in that case, the tenant is deemed to have duly paid or tendered the rent within the time as contemplated by clause

(i) of sub-section (2) of Section 14. Where the tenant does not avail of this opportunity of depositing as contemplated by the first proviso and waits for an ultimate decision of the application for eviction on the ground of non-payment of rent, the Controller has to decide it and while deciding, the Controller has to find whether the ground contained in clause (i) of sub-section (2) of Section 14 has been made out or not. If the Controller finds that the ground as contemplated by clause (i) of sub-section (2) of Section 14 is made out, he is required to pass an order of eviction on the ground of non-payment of rent due from him. A second opportunity to avoid eviction is provided by the third proviso to clause (i) of sub-section (2) of Section 14. But the second opportunity is provided after the order of eviction. The benefit of avoiding eviction arises if the tenant pays the "amount due' within the period of 30 days of the date of order.

The question is what is the meaning of the words 'amount due" occurring in the third proviso to clause (i) of sub- section (2) of Section 14 of the Act.

It will be noticed that there is no provision in the Act for giving powers to the Controller to direct payment or deposit of 'Pendente lite" rent for each month during the pendency of the petition for eviction of the meant. First Proviso to sub-section (2) of section 14 shows that in order to show payment or valid tender as contemplated by clause

(i) of sub-section (2) of Section 14 by a tenant in default, he has to pay on the first date of hearing the arrears of rent alongwith interest and costs of the application which are to be assessed by the Controller. Surely where a tenant does not avail of the first opportunity and contests the eviction petition on the ground of non-payment of arrears of rent and fails to show that he was not in default and court finds that the ground has been made out, an order of eviction has to follow. Therefore, it does not stand to reason that such a tenant who contests a claim and fails to avoid order of eviction can still avoid it by merely paying the rent due till the date of the filing of the application for ejectment. The third proviso to clause (i) of sub- section (2) of Section 14 should also receive an interpretation which will safeguard the rights of both the landlord and tenant. The "amount due" occurring in the third proviso in the context will mean the amount due on and upto the date of the order of eviction. It will take into account not merely the arrears of rent which gave cause of action to file a petition for eviction but also include the rent which accumulated during the pendency of eviction peti- tion as well. If the tenant has been paying the rent during the pendency of the eviction petition to the landlord, the "amount due" will be only arrears which have not been paid. The landlord, as per the scheme of the section, cannot be worse off vis-a-vis a tenant who was good enough to deposit in court the arrears of rent together with interest and costs on the first date of hearing. If the interpretation given by the High Court is accepted the result would be that the tenant will be better off by avoiding to pay the arrears of rent with interest and costs on the first date of hearing and prefer suffering order of ejectment after contest and then merely offer the amount due as mentioned in the application for ejectment to avoid eviction. This could not be the intention of the legislature.

In such cases it will be advisable if the Controller while passing the order of eviction on the ground specified in clause (i) of sub-section (2) of Section 14 of the Act specifies the "amount due" till the date of the order and not merely leave it to the parties to contest it after passing of the order of eviction as to what was the amount due.

Surely the Rent Control Acts, no doubt, are measures to protect tenants from eviction except on certain specified grounds if found established. Once. the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood.

Surely the legislature which made the Act could not have envisaged that after the parties finish off one round of litigation, the party should be relegated to another round of litigation for recovery of rent which accrued pendente lite. Whatever protection Rent Acts give they do not give blanket protection for "non-payment of rent". This basic minimum has to be complied with by the tenants. Rent Acts do not contemplate that if one takes a house on rent, he can continue to enjoy the same without payment of rent. The order which the Controller passed was a composite order of eviction in the sense that if the tenant wanted to save himself from eviction, he had to comply with the order. The order which was passed by the Controller cannot be said to be an order without jurisdiction. It may be a right order; it may have been a wrong order. It was not a nullity that the executing court will ignore it. But at the stage when the execution application was filed, the rent Controller could not go behind its own order dated 29.7.1986. If the Controller could not go behind its own order in execution proceedings, surely the High Court could not also go behind the order in revision against

the order of Controller refusing execution. It was not the appropriate stage for the High Court to examine what order ought to have been passed or to limit the efficacy of the order to its interpretation of the words "amount due" as mentioned in the third proviso to clause (i) of sub-section (2) of Section

14. The question which the High Court posed never arose. Mr., Thakur, who appeared on behalf of the respondent submitted:

(1)that sub-section (2) of Section 14 gives discretion to the Controller to pass an order of eviction or not to pass an order of eviction even if the ground mentioned in clauses

(i) to (v) of sub-section (2) of Section 14 are made out; (2)that the order of eviction which was passed is not the final order in the sense that it is an interim order. The final order is passed only after the expiry of 30 days if the tenant fails to avail of the second opportunity provided by the third proviso to clause (i) of sub-section (2) of Section 14.

With due respect to learned counsel for the respondent we are not able to persuade ourselves to agree with either of his submissions. It is true that sub-section (2) uses the expression "the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application". It will be noticed that the Controller is required to dismiss the eviction application if he is not satisfied to the existence of any ground mentioned in clauses (i) to (v) of sub-section (2) of Section 14 of the Act but where the Controller is satisfied with existence of any of the grounds mentioned in clauses (i) to (v) of sub-section (2) of Section 14 the Controller has no discretion to decline to pass the order of eviction. In the context in which the expression "may" is used it means "shall'. Otherwise the section would read that "not only the Controller can reject an application when he is not satisfied with the ground but is also entitled to dismiss the application when he is so satisfied". Such an intention cannot be attributed to the legislature particularly when the consequences of non- satisfaction is expressly mentioned. Even if the consequences of non-satisfaction was not mentioned, we are of the view that the expression "may" occurring would still mean "shall" and all that would mean is that if the grounds are not made out, he will be bound to dismiss the application and if the grounds are made out, he is bound to pass the order of eviction. If any other interpretation is given to the word "may" the section may itself become subject matter of challenge under Article 14 of the Constitution of India. The Court shall avoid interpretation which make the provisions violative of the Constitution, if possible.

Coming to the second submission, as we have noticed earlier, subclause (i) of sub-section (2) of Section 14 gives two opportunities to the tenant to avoid eviction. The first opportunity to avoid eviction is if the tenant avails of the benefit of first proviso. This opportunity is before the passing of the order of eviction. The second opportunity is after the order of eviction. The order, which is passed for eviction, is final in the sense as it is not an interim order. If the tenant avails of the second opportunity as provided in the third proviso then the order of eviction becomes inexecutable and he saves himself from eviction. Having found that the question posed and answered by the High Court was not relevant at the stage it was posed, namely during the execution proceedings and, therefore,

the order is bad.

The validity of the order of the executing court dated 18th May, 1990 now needs to be considered. The executing court, on consideration of the evidence recorded during the execution proceedings held that the judgment-debtor, respondent, himself calculated the interest for the period 1.3.1983 to 28.2.1986 with the result that Rs. 161.29 ps. was deposited less by the judgment-debtor and thought that it had power to extend the time for making up the deficiency and accordingly extended the time.

So far as the Himachal Pradesh High Court is concerned it has consistently taken the view that the executing court has no such power since the time is fixed by the statute. R.S. Pathak, CJ. (As His Lordship then was) in Shri Krishan Kumar v. Shri Gurbux Singh, [1977] 2 R.C.R. 62 while interpreting the third proviso to Section 14(2) (i) of the Act took the view thus:

> "It is apparent that the statute itself provides a period of 30 days from the date of the order for payment of rental arrears by the tenant. On such payment, the statute declares, effect will not be given to the order of eviction. The statute does not leave the determination of the period to the Rent Controller. It is not open to the Rent Controller, when disposing of the petition for eviction, to make an order either abridging or enlarging the period of 30 days. Indeed, the period having been determined by the statute itself, no order was necessary by the Rent Controller. There being no power in the Rent Controller to vary the period mentioned in the statute, it is apparent that the order made by him in the execution proceedings is a nullity. The Appellate Authority is right in the view taken by it."

Mr. Thakur, learned counsel for the respondent, referred us to Shyamcharan Sharma v. Dharamdas, [1980] 2 SCC 151; Miss Santosh Mehta v. Om Prakash and others, [1980] 3 SCC 610; Ram Murti v. Bhola Nath and another, [1984] 3 SCC 111 and Ganesh Prasad Sah Kesari and another v. Lakshmi Narayan Guptta [1985] 3 SCC 53 and submitted that this Court had, in spite of there being no express provisions to extend time taken the view that the Court has inherent powers to extended time for deposit of rent. We are of the view that the reliance placed on these cases is wholly misplaced. It may be noticed that the case of Shyamcharan Sharma (supra) related to the powers of the Court under Section 13(6) of the Madhya Pradesh Accommodation Control Act, 1961. This Act contemplated an eviction petition being filed under Section 12 and one of the grounds for eviction was for failure of the tenant to pay or tender within two months from the date of service of notice of demand of rent and Section 12 (3) thereof provided that the order of eviction will not be passed on this ground if the tenant makes the payment of deposit as required by Section 13. Section 13(1) contemplated that when a suit has been instituted on any of the grounds against the tenant for his eviction, the tenant shall, within one month of the service of summons on him or within such further time as the court may, allow in this behalf, deposit in the court or pay to the landlord the arrears of rent and shall also continue to pay, month by month, the future rent as well. Sub-section (5) of Section 13 contemplated that if the deposit was made as contemplated by sub-section (1) of Section 13 no order for recovery of possession should be made on the ground of default in the payment of rent. Sub-section (6) of Section 13 provide that if the tenant fails to pay any amount as required by Section 13 the court had the power to strike out the defence and proceed with the hearing of the suit.

While dealing with the powers under Section 13(6) of the said Act this Court took the view that the court had discretion to strike off the defence or not even if there is delay in depositing rent falling due after institution of suit for eviction. The Court held :

> "In case of non-deposit or non-payment of rent by the tenant, Section 13(6) vests a discretion in the Court to order striking off the tenant's defence against eviction; it neither clothes the landlord with an automatic right to an eviction decree nor visits the tenant with the penalty of such a decree being automatically passed. If the court has the discretion to strike off or not to strike off the defence, it has further discretion to condone the default and extend the time for making the payment or deposit. Such a discretion is a necessary implication of the discretion not to strike off the defence. A different construction might lead to perversion of an object of the Act, namely 'adequate protection of the tenant'."

An express provision for extending time for deposit or payment was not made in Section 13(1) because the consequences of non-payment was proposed to be dealt with separately by Section 13(6) and the discretion to extend time is incidental to the discretion in the said section to strike off or not to strike off the defence.

This view in Shyamcharan Sharma's case (supra) was followed by this Court in Miss Santosh Mehta's case (supra) and Ram Murti's case (supra), which were the cases under the Delhi Rent Control Act, 1958, which also had the provisions similar to the Madhya Pradesh Accommodation Control Act, 1961 contemplating direction by the court to direct the tenant to pay the pendente lite rents which have become due and consequences for not complying with such directions. Again the case of Genesh Prasad Sah Kesari (supra) related to the provisions for striking out the defence for failure of the tenant to deposit arrears of rent within 15 days of date of the courts's order and this court again followed the decision in the case of Shyamcharan Sharma. These cases have no application where the final orders were passed after satisfaction of the Controller for entitling the landlord to seek eviction on the grounds specified in the Act.

Mr. Thakur then submitted that this Court should not exercise its powers under Section 136 of the Constitution of India as the rent laws are meant for protection of the tenants. Rent Control Acts are necessary social measures for protection of tenants. The Rent Control Laws have tried to balance the equity. Landlord is duty bound to satisfy the ground of eviction mentioned in various Rent Acts and if he does not satisfy, he cannot get the order of eviction merely because the Act restricts his rights. There are certain Rent Acts which, even when a ground of eviction is satisfied, still confer powers on the Rent Controllers to consider the question of comparative hardship and it is only in those types of cases, if the Controller is satisfied, he can decline passing orders of eviction. But if there is no such limitations, the Rent Controllers. after the ground of eviction specified in the Act is made out, have no discretion to reject the application. Once the order of eviction is passed, in the circumstances like the present, the executing court is duty bound to execute its orders. No question of equity or hardship arises at that stage. We are in complete agreement with the view expressed by R.S. Pathak, CJ (as His Lordship then was ) in the aforesaid case of Shri Krishan Kumar.

In the present case the tenant spared no efforts to harass the landlords. After the order of eviction dated 29th July, 1986 the matter did not rest there. The tenant again failed to pay the rent and the landlord was forced to file another eviction petition on the ground of non-payment of rent for the period from 1.3.1983 to 30.11.1986 and it was only after the filing of the said eviction petition and in order to avoid eviction he deposited the rent. The matter did not rest there even and it was only after the notice of the Special Leave Petition was issued in the present case that the tenant chose to pay the rent from 1.12.1986 after keeping it in arrears for practically six years. In view of the aforesaid facts and circumstances of the case we set aside the impugned order of the High Court dated 17th May, 1991 and the order of the Rent Controller dated 18th May, 1990 and direct the Rent Controller, Shimla, to issue the warrants of possession for ejectment of the respondent from the premises in dispute and place the landlords/appellants in possession.

V.P.R. Appeal allowed.