Supreme Court of India
Bhoja @ Bhoja Ram Gupta vs Rameshwar Agarwala And Ors on 16 March, 1993
Equivalent citations: 1993 AIR 1498, 1993 SCR (2) 369
Author: A Anand
Bench: Anand, A.S. (J)

PETITIONER:
BHOJA @ BHOJA RAM GUPTA

Vs.

RESPONDENT:
RAMESHWAR AGARWALA AND ORS.

DATE OF JUDGMENT16/03/1993

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1993 AIR 1498 1993 SCR (2) 369
1993 SCC (2) 443 JT 1993 (2) 375
1993 SCALE (2)58

ACT:
Bihar Building (Lease, Rent and Eviction) Control Act:
Section 4-Rent-Enhancement of-Procedure-Excess rent paid by tenant whether could be automatically adjusted against subsequent defaults in payment of monthly rent.

HEADNOTE:
The defendant-appellant was a tenant under the plaintiff-landlord on a monthly rent of Rs.70. The appellant defaulted In the payment of the rent or the suit-premises-residential-cum-shop premises-with effect from October, 1975 to June, 1976.
As the appellant did not vacate the premises even after being served with a notice under section 106. Transfer of Property Act, a suit was filed for his eviction from the suit premises,, being a defaulter. The landlord also pleaded his own bona fide requirement of the suit-promises.
The appellant-tenant submitted that he was originally a tenant under one Smt. Sita Devi, the owner of the suit premises at a monthly rent of Rs.55; that he was paying the rent to Smt. Sita Devi and after the plaintiff landlord purchased the house from her in 1968, he continued its tenant of plaintiff. that the plaintiff illegally increased

the rent from Rs.55 to Rs.65 per month (and not Rs. 70 per mouth.) under threat of eviction that town(paid the rent at the rate of km, 6.5 per mouth upto the month commencing from 16.1.1976, when the plaintiff landlord refused to accept the same with effect from 16.2..1976 that defendant-tenant did not default In payment of rent as subsequently rent had been sent by Money Order that the landlord-plaintiff did not have any bona fide necessity for the premises and that the suit was not maintainable.

The Trial Court hold that the suit was maintainable the plaintiff had cause of action for the suit and tenancy of the defendant was validity terminated. It also held also held that the defendant tenant was a defaulter and was 369
370
liable to be evicted from the primises. It however held that the plaintiff had failed to prove his case regarding bona fide requirement of the suit premises. The Trial Court however held that the plaintiff-landlord could not have enhanced the rent without taking recourse to the provisions of Bihar Building (Lease, Rent and Eviction) Control Act and therefore the Court calculated the arrears of rent at Rs.55 per month.

The Trial Court decreed the suit partly and directed the defendanttenant to vacate the suit premises and to deliver the vacant possession of the same to the plaintiff-landlord within 90 days from the date of the decree.

Tenant-appellant filed a First Appeal against the Trial Court's judgment. Plaintiff-landlord also filed cross-objections challenging the finding of the Trial Court regarding determination of the rate of rent and the arrears of rent. The First Appellate Court dismissed the Cross-objections and confirmed the finding of the Trial Court to the effect that the rent lawfully payable was Rs. 55 per month. It held that the defendanttenant was a defaulter with effect from 16.5.1976 onwards and he was liable to be evicted and dismissed the appeal of the tenant.

The Second Appeal filed by the appellant-tenant was dismissed by the High Court in limine, against which by special leave the present appeal was filed in this Court.

The appellant contended that since the rent lawfully payable per month was Rs. 55 per month and not Rs. 65 which was paid by the appellant, the excess amount paid should be adjusted, there could be no quotation of holding appellant a defaulter. (This plea of appellant was rejected by the First Appellate Court on the ground that no prayer for adjustment in writing was made by him.)

The respondent-landlord submitted that the excess rent paid by the tenant to his landlord in pursuance of a mutually agreed illegal enhancement, could not get automatically adjusted against the subsequent defaults in the payment of monthly rent.

Dismissing the appeal of the tenant, this Court,

HELD- 1.01. Section 4 of the Bihar Building (Lease, Rent and

Eviction) Control Act creates an absolute prohibiton against illegal increase or enhacement of rent except in the manner provided by the
371
provisions of the Act itself and lays down that it is not even permissible for the parties to contract themselves out of such a prohibition. Thus, on its plain language any increase or claim to increase in the rent by the landlord would be unlawful and any agreement to do so except in accordance with the provisions of the Act would not cure the illegality. [377B-C]

1.02. The Act does not contain any provision for automatic adjustment of excess rent. Neither in reply to the notice under Section 106 of the Transfer of Property Act nor in the written statement or through any other writing was the adjustment of excess rent towards the arrears claimed by the tenant from the landlord. There also was no agreement between the parties at any point of time for adjustment of the excess rent illegally paid towards the rent falling due subsequently. [377F]

1.03. The rent payable in the instant case was only Rs.55 per month and the tenant was made to pay Rs.65 per month from 1968 onwards after the property had been purchased by the plaintiff-landlord under threat of eviction, it must be held that the increase in the rent from Rs.55 per month to Rs.65 per month was unlawful and the landlord was not entitled to recover anything more than Rs.55 per month by way of rent. [377C-D]

1.04. The excess rent paid by the tenant in pursuance of mutually agreed illegal enchancement thereof by the parties does not get automatically adjusted against the subsequent defaults in the payment of the monthly rent under the Act and even under the general law such an automatic adjustment is not countenanced. [381B]

1.05. A tenant cannot save himself from the conseqences of eviction under the Act on the ground of default in the payment of rent by claiming automatic adjustment of any excess rent paid consequent upon mutual enhacement of rent, even if illegal unless there is an agreement between the parties for such an adjustment. The tenant may also in a given case seek adjustment of the excess rent in the hands of the landlord against the arrears by specifically asking the landlord for such an adjustment before riling of the suit or in response to the notice to quit and even in the written statement by way of set off within the period of limitation and by following the procedure for claiming such a set off, while resisting the claim for eviction on the ground of default in payment of arrears of rent but, he cannot claim 'automatic adjustment. [381 H, 382A-B]
372
Mohd. Salimuddin v. Misri Lal and Anr., [1986] 1 NCR 622, M/s, SarwanKumar Onkar Nath v. Subhus Kumar Agarwalla [1987] 4 SCC 546, distinguished,,

Gulab Chand Prasad v. Budhwanti and Anr., AIR 1985 Patna 327 (F.B.) and Nune Panduranga, Rao v. Divvala Gopala Rao, AIR 1952 Madras 827, approved.
Budshwanti and Anr. v. Gulab Chand Prasad [1987]2 SCC 153, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No.2924 of 1985, From the Judgment and Order dated 124, 1985 of the Patna High Court in SA, No.2A of 1985(R).

J.P. Goyal. M.R. Bidsar and Rajesh for the Appellant D.P. Mukherjee for the Respondents.

The Judgment of the, Court was delivered by DR. ANAND, J. This appeal by special leave, filed by the tenant, is directed against the dismissal of his Second Appeal, in limine by the High Court of Patna (Ranchi Bench) on 12,4.1985, The landlord filed a suit for eviction of the appellant from the residential-cum-shop premise, situate at holding No.224/D Ward No.7 Bazar Mohalla Jugsalai, Shorn of details the case of the landlord is that the appellant was a tenant Under him on a monthly rent of Rs. 70, but had not paid the rent of the disputed premises with effect from October 1975 to June, 1976 and being a defaulter for more than two months. was liable to be evicted. The landlord also claimed arreas of rent from October 1975 to June, 1976 amounting to Rs. 630. The landlord also pleaded his own bona fide requirement of the suit premises. The suit was filed in the Court of Munsif, Jamshedpur in 1976 because even after a notice under Section 106 of the Transfer of Property Act, terminating the tenancy had been served on the tenant he did not vacate the priemises. The suit was resisted and it was pleaded on behalf of the tenant-appellant that the premises in dispute originally belonged to one Suit. Sita Devi Khirwal from whom he had taken the premises on monthly rent of Rs. 55; that he had been paying the rent to Smt. Sita Devi Khirwal,all along and after the plaintiff-landlord purchased the house from her in MS, the defendant continued as his tenant but the plaintiff-landlord illegally increased the rent of the suit from Rs. 55 to Rs. 65 p.m (and not Rs. 70 pm.) under threat of eviction and the tenant paid the rent at the rate of Rs. 65 per month upto the month commencing from 16th of January, 1976 when the plaintifflandlord refused to accept the same with effect from 16.2.1976. It was maintained that the defendant-tenant had not defaulted in the payment of rent as subsequent rent had been sent by money order. It was also asserted that the landlord-plaintiff did not have any bona fide necessity for the premises. On the pleading of the parties, the following issues were framed: "1. Is the suit as framed maintainable?

2. Have the plaintiffs any cause of action for the suit? 3, Has the tenancy of the defendant been validly deter. mined?

4. Is the defendant a-defaulter?

5. Do the plaintiff require the suit promises for their bona fide use mind occupation?

6. Is the defendant liable to be evicted from the suit premise?

7. Am the plaintiffs entitled to the arrears of rent as claimed?

8. To what relief or reliefs, if any. are the paintiffs en- titled?"

Issue Nos. 1, 2 and I were decided against the defendant- tenant. Issue No.5 was decided against the plaintiff- landlord and it was hold that he had failed to prove the case regarding bonafide requirement of the suit premises, Issue No.4 and 6 were taken up together for consideration, The Trial Court held on facts that the defendant-tenant was a defaulter of and was liable to be evicted from the suit premises.

Dealing with Issue No.7, the Trial Court noticed that the plaintifflandlord had claimed arrears of rent from the defendant from October, 1975 to June, 1976 @ Rs. 70 per month. It was found that originally the rent of the suit premises was Rs. 55 per month and that the plaintifflandlord had after purchaing the suit premises unlawfully enhanced the rent of the premises from Rs. 55 to Rs. 65 per month and that the tenant continued to pay the rent @ Rs. 65 per month under threat of eviction. The learned Trial Court accepted the plea of the defendant-tenant that the plaintiff-landlord could not have enhanced the rent for the suit premises without taking recourse to the provisions of Bihar Building (Lease, Rent and Eviction) Control Act (hereinafter the Act) and held that rate of rent for the suit premises shall be deemed to be Rs. 55 per month only. The Trial Court, however, found, on facts, that the defendant-tenant had not paid rent to the plaintiff-landlord from the month commencing from 16th October, 1975 upto the month commencing 16th June, 1976 and therefore, the defendant-tenant was in arrears of rent for 7 months calculated at Rs-55 per month. A decree for the arrears of rent for Rs.385, calculated at Rs.55 per month for 7 months, was, therefore, passed in favour of the plaintiff-landlord and issue No.7 decided accordingly.

As a result the suit of the plaintiff-landlord wad decreed in part with proportionate costs and the defendant-tenant was, directed to quit and vacate the suit premises and deliver the vacant possession of the same to the plaintiff- landlord within 90 days from the date of the decree. The defendant-tenant was also directed to pay a sum of Rs.385 to the plaintifflandlord, being the arreas of rent within the aforesaid period of 90 days Aggrieved by the judgment and decree of the Trial Court, the tenant filed a First Appeal in the Court of the 3rd Additional Subordinate Judge, Jamshedpur. The plaintiff-landlord also filed cross objections challenging the findings on Issue No.7 stating therein that the Trail Court ought to have passed a decree for arrears of rent calculated @ Rs.70 per month and not @ Rs.55 per month. The defendant-tenant, however, did not assail the judgment and decree of the Trial Court except as regards the findings relating to the default of the tenant in payment of rent. Before the 1st Appellate Court only the following two points were canvassed:

> 'Point No.1: Whether the findings of the learned lower court fixing the monthly rent of the suit premises at Rs.55 is correct and sustainable in the eye of law?
>
> Point No.11: Whether the findings of the learned court below with regard to the default of the defendant appellant is correct and sustainable in the eye of law?"

The 1st Appellate Court confirmed the finding of the Trial Court to the effect that the rent lawfully payable was Rs.55 per month and consequently the cross objections were dismissed. While deciding Point No.11 (supra), it was found that the defendant-tenant had paid the rent @ Rs. 65 per month and after taking into account the rents remitted by money-order etc, it was held that the defendant-tenant was a defaulter with effect from 16.5.1976 onwards and thus liable to be evicted.

Before the 1st Appellate Court, a plea was raised on behalf of the defendant-tenant that since the rent lawfully payable per month as found by the courts below was only Rs.55 per month and not Rs.65, as had been admittedly paid by the defendant-tenant, the excess amount paid should have been automatically adjusted in the future rent and if so adjusted, there could be no question of the defendant-tenant being held a defaulter. This plea was rejected by 1st Appellate Court on the ground that no prayer for adjustment in writing had been made by the defendant-tenant and, there- fore, he could not be permitted to claim any such adjustment. The appeal and the cross objections were, therefore, dismissed. The Second Appeal, as already noticed, was dismissed by the High Court in limine. In this appeal, learned counsel for the appellant-tenant has confined his submission to the question of adjustment of the excess rent received by the landlord against the arrears and it was submitted that had the excess payment of Rs.10 per month made by the tenant from September 1968 to September 1975, amounting to Rs.840, been taken into account toward the claim of arrears, the plaintiff-landlord could not obtain the decree of either arrears of rent or of eviction against the tenant. In support of his submission, learned counsel has relied upon the judgment of this Court in Mohd Salimuddin v. Misri Lal and Anr., [1986] 1 SCR 622. Reliance was also placed on M/s. Sanvan Kumar Onkar Nath v. Subhas Kumar Agarwalla, [1987] SCC 546 Learned counsel for the respondent on the other hand placed reliance upon the judgment of the Full Bench of the Patna High Court in Gulab Chand Prasad v. Budhwanti and Anr., AIR 1985 Patna 327 to urge that excess rent paid by the tenant to his landlord in pursuance of a mutually agreed illegal enhancement, could not get automatically ad-

justed against the subsequent defaults in the payment of the monthly rent under the Act.

Before we take up the judgments relied upon by the learned counsel for the parties for consideration, it would be appropriate to first notice some of the admitted facts in the case, It is an admitted case of the parties before us that the rent of the premises was Rs.55 per month and that the sum had been raised to Rs.65 per month without following the provision contained in the Act, though, according to the landlord, the tenant had agreed to the increase of the rent voluntarily, Admittedly, the tenant had been in fact in arrears of rent for a period of 7 months and was as such a defaulter.

In the notice under Section 106 of the Transfer to Property Act served by the landlord on the tenant, determining the tenancy the tenant had been put on notice that his eviction was sought not only on the ground of bonafide requirement of the landlord but also on the ground that he was a defaulter in the payment of rent. In response to the notice, it was asserted that the rent had been arbitrarily increased from Rs.55 per month to Rs.65 per month and it was asserted that the tenant was not a defaulter. However, no adjustment of the excess payment of rent was claimed against the arrears. In the plaint filed by the landlord, the claim of arrears of rent amounting to Rs, 630 was specifically

made and though in the written statement, the claim was refuted but no adjustment of the excess rent paid was claimed in the written statement either. Before the Trial Court also,. as it would appear from the judgment of the Trial Court, no such plea was raised.

It is in this fact situation, that we shall now consider the submissions made by the learned counsel for the tenant about the right of the tenant to the adjustment of the excess amount against subsequent arrears.

Section 4 of the Act reads thus:-

"4. Enhancement of rent of buildings.-

Notwithstanding anything contained in any agreement or law to the contrary, it shall not be lawful for any landlord to increase, or claim any increase in the rent which is payable for the time being in respect of any building except in accordance with the provisions of this Act."

This Section which begins with the non-obstante clause declares that any agreement to' increase the rent except in accordance with the provisions of the Act, would not only be void but indeed illegal, The Section creates an absolute prohibition against illegal increase or enhancement of rent except in the manner provided by the provisions of the Act itself and lays down that it is not even permissible for the parties to contract themselves out of such a prohibition. Thus, on its plain language, any increase or claim to increase in the rent by the landlord would be unlawful and any agreement to do so except in accordance with the provisions of the Act would not cure the illegality. Since, the rent payable in the instant case as has been admitted before us and found by the courts below was only Rs.55 per month and the tenant was made to pay Rs.65 per month from 1968 onwards after the property had been purchased by the plaintifflandlord under threat of eviction, it must be held that the increase in the rent from Rs.55 per month to Rs.65 per month was unlawful and the landlord was not entitled to recover anything more than Rs.55 per month by way of rent. Considered in this light, it is manifest at the landlord had illegally recovered from the tenant Rs.10 per month more than what was lawfully due to him. The question, however, which arises for our consideration is whether the excess rent paid by the tenant, on account of the unlawful enhancement, could be automatically adjusted against the subsequent defaults in payment of the monthly rent? The Act does not contain any provision for automatic adjustment of the excess rent. As already noticed, neither in reply to the notice under Section 106 of the Transfer of Property Act nor in the written statement or through any other writing was the adjustment of excess rent towards the arrears claimed by the tenant from the landlord. There also was no agreement between the parties at any point of time for adjustment of the excess rent illegally paid toward the rent falling due subsequently.

In Mohd Salimuddin v. Misri Lal and Anr., (supra), the facts were that the tenant had advanced a sum of Rs.2,000 to the landlord in order to secure the tenancy by an agreement which specifically provided that the loan amount could be adjusted against the rent which accured subsequently. The landlord filed a suit against the tenant for eviction on the ground of arrears of rent. The lower Appellate Court dimissed the suit holding that the tenant was not in arrears of rent since the amount

advanced by the tenant as loan as per the agreement could be adjusted against the rent and the said amount was sufficient to cover the landlord's claim of arrears. The High Court in the Second Appeal filed by the landlord however set aside the judgment of the 1st Appellate Court holding that the loan advanced by the tenant being in violation of the provisions contained in Section 3 of the Act could not be adjusted and that the tenant was in arrears of rent and therefore liable to be evicted. On an appeal by special leave this Court noticed the following admitted facts:

> "(1) The tenant had advanced a sum of Rs.2000 under an agreement which inter alia contained a stipulation that the loan amount was to be adjusted against the rent which accured. (2) The amount so advanced by the tenant was sufficient to cover the landlord's claim of arrears.
>
> (3) If the loan amount was accordingly adjusted towards the rent which accrued, the tenant was not in arrears of rent.

This Court did not agree with the High Court that since the loan advanced by the tenant was in violation of the prohibition contained in Section 3 of the Rent Ac, the tenant was not entitled to claim adjustment of the loan amount against rent which had accrued subsequently. Allowing the appeal the Court rejected the application of doctrine of pari delicto to the facts of the case by observing:

> The doctrine of pari delicto is not designed to reward the 'wrong-doer', or to penalize the 'wronged', by denying to the victim of exploitation access to justice. The doctrine is attracted only when none of the parties is a victim of such exploitation and both par- ties have voluntarily and by their free will joined hands to flout the law for their mutual gain. Such being the position the said doctrine embodying the rule that a party to a transaction prohibited by law cannot enforce his claim in a Court of law is not attracted in a situation like the present....."

Consequently, the judgment and decree passed by the High Court was set aside and that of the 1st Appellate Court restored. This Judgment, has no application to the facts of the present case as leaving aside everything else, the agreement by which the sum of Rs.2,000 had been advanced, by the tenant to the landlord to secure the tenancy, had specifically provided that the loan amount could be adjusted against the rent which may accure subsequently. It would have been perpetuating immorality if the landlord after taking loan of Rs. 2,000 with the clear stipulation regarding its adjustment against arrears falling due subsequently was to rely on the illegal nature of the transaction and deny adjustment. There is not even a demand, much less any agreement, between the parties in the present case for adjustment of the excess amount of rent illegally paid towards the rent accruing subsequently.

In M/s Sarwan Kumar Onkar Nath v. Subhas Kumar Agarwalla (supra), the facts were as follows:

The appellant was a lessee of the building belonging to the respondent on a monthly rent of Rs.70. At the time of taking the premises on rent, he paid in advance two months rent i.e. Rs.140. The

appellant paid rent regularly thereafter but did not pay rent for the months of September and October 1972. Taking advantage of the non-payment of the rent in respect of the said two months, the respondent-landlord filed a petition for eviction against the appellant-tenant contending that the appellant being a defaulter in payment of rent for two months had become liable to be evicted from the premises in quention under clause (d) of Section 11(1) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. The tenant pleaded inter alia in his written statement that from the time of inception of the tenany, he had paid the respondent a sum of Rs.140 as advance rent with an understanding that the amount of advance could be set off against the rent whenever necessary or required and that since under Section 3 of the Act it was not lawful for the landlord to claim to receive, in consideration of the grant, renewal or continuance of the tenancy of any building, any amount by way of advance or premium the appellant could not be considered to be a defaulter in payment of rent. Agreeing with the plea of the tenant, the Trial Court dismised the suit and the appeal filed by the landlord before the Additional Subordinate Judge also failed. The landlord filed a Second Appeal before the High Court. The High Court on facts found that the tenant had failed to pay the rent for the months of September and October 1972. It accepted the plea of the tenant that he had paid the sum of Rs.140 as rent in advance but set aside the concurrent judgments of the Courts below on the ground that since the tenant had neither..orally nor in writing informed the landlord that he was exercising the option, under the agreement, to adjust the amount paid in advance towards the rent due for the months of September and October 1972 he could not get the benefit of that amount paid to save himself from eviction. This Court allowed the appeal and held that the tenant was, in view of the advance paid and the agreement between the parties, not in arrears of rent and setting aside the judgment of the High Court restored that of the Trial Court which had been affirmed by the 1st Appellate Court.

This Court took notice of the fact that though the receipt under which the advance rent of Rs.140 had been paid did state that the amount received 'was liable to be adjusted towards the arrear of rent only on the appellant informing the respondent orally or in writing that such adjustment is to be made" but it construed the plea set out in the written statement to adjust the advance towards the rent due as amounting to an assertion as contemplated by the agreement and therefore it was held that the tenant could not be treated as a defaulter. Sarwan Kumar's case also is not an authority for the proposition of "automatic adjustment" as canvassed by learned counsel for the appellant because the construction placed by this Court on the written statement in Sarwan Kumar's case was to the effect that the tenant had sought adjustment of the advance paid against the rent for two months. That judgment also, therefore, does not advance the case of the appellant.

On the other hand, the opinion expressed by the Full Bench of the Patna High Court in Gulab Chand Prasad v. Budhwanti and Anr., which has received the seal of approval of this Court in Budhwanti and Anr. v. Gulab Chand Prasad,'[1987] 2 SCC 153 fully supports the case of the landlord. The precise question which was considered by the Patna High Court was:

> "Whether the excess rent paid by the tenant to his landlord, consequent upon a mutual (though illegal) enhancement of rent would be automatically adjusted against all subsequent defaults in payment of monthly rent for purposes of Ss. 4, 5 and 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 After a detailed

> discussion and reference to a catena of authorities, the answer to the above question was rendered in the negative and it was held that the excess rent paid by the tenant in pursuance of mutually agreed illegal enchancement thereof by the parties does not get automatically adjusted against the subsequent defaults in the payment of the monthly rent under the Act and even under the general law such an automatic adjustment is not countenanced.

The Madras High Court in Nune Panduranga Rao v. Divvala Gopala Rao, AIR 1952 (Madras) 827 while construings a somewhat similar provision contained in Section 7(2) of the Madras Buildings (Lease and Rent) Control Act held:

> "Under the express provisions of this section if the tenant has not paid or tendered the rent due by him within the time prescribed therein he is liable to be evicted. The section does not compel a landlord to adjust the excess amounts in his hands towards any arrears of rent if the said amounts were not paid by the tenant towards the rent of any particular month. It is true that on the date when a tenant authorities the landlord to adjust the amounts with him towards the rent of any particular month or months the amount will be deemed to have been paid on that date towards rent. But till that adjustment is made and the amount is so appropriated, any amounts in excess of the rent due with the landlord will only be payments made in suspense. The facs that such excess came into the hands of the landlord by reason of the Rent Controller's order fixing the fair rent does not really affect the question. I am, therefore, of opinion that the amount not paid towards rent of any particular month and the amount not agreed to be adjusted towards any rent of a particular month is not Payment of rent within the meaning of S.7(2) of the Act."

(Emphasis supplied) We are in broad agreement with the view of the Full Bench of the Patna High Court and the Madras High Court on the question of 'automatic adjustment' and hold that a tenant cannot save himself from the consequences of eviction under the Act on the ground of default in the payment of rent by claiming automatic adjustment of any excess rent paid consequent upon mutual enhancement of rent, even if illegal unless there is an agreement between the parties for such an adjustment. The tenant may also in a given case seek adjustment of the excess rent in the hands of the landlord against the arrears by specifically asking the landlord for such an adjustment before filing of the suit or in response to the notice to quit and even in the written statement by way of set off within the period of limitation and by following the procedure for claiming such a set off, while resisting the claim for eviction on the ground of default in payment of arrears of rent but be cannot claim 'automatic adjustment'.

Thus, in the facts and circumstances of this case, we find that the 1st Appellate Court was fully justified in holding that the tenant could not get any automatic adjustment of the excess rent paid against the subsequent defaults and since the tenant had been found on admitted facts to be in default in the payment of rent, his eviction was well merited. The judgment of the High Court dismissing the second appeal, directed against concurrent findings, in limine, does not call for any interference. This appeal consequently fails and is dismissed but without any order as to costs.

The appellant, however, is given time till 31st May, 1993, to yield vacant possession to the landlord subject to filing of the usual undertaking within three weeks from today. V.P.R.

Appeal dismissed.