without merit and is hereby dismissed. There will, however, be no order as to costs.

Prem Chand Jain J.—I agree

S. C. Mittal J.—I agree

*N. K. S.*

FULL BENCH

*Before S. S. Sandhawalia, C.J., P. C. Jain and S. P. Goyal, JJ.*

HARNAM SINGH,—*Petitioner.*

*versus*

SURJIT SINGH,—*Respondent.*

*Civil Revision No.* 1852 *of* 1977

November 25, 1983.

*East Punjab Urban Rent Restriction Act (III of* 1949)—*Section* 13(2) (*i*) *and* (3) (*a*) (*i*)—*Code of Civil Procedure* (*V of* 1908)—*Section* 11 *Explanation IV—Ejectment of a tenant sought on the ground of non-payment of rent—Subsequent application for ejectment on the ground of personal necessity of the landlord—Non-payment of rent and requirement for personal use and occupation—Whether constitute distinct and separate causes of action—Cause of action—Meaning of—Subsequent application—Whether barred by the rule of constructive* res-judicata.

*Held*, that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favour. In other words it is a bundle of facts which taken with the law applicable to them give the plaintiff a right to relief against the tenant. Negatively, it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff. A broad perspective of the provisions of section 13 of the East Punjab Urban Rent Restriction Act, 1949 would indicate that sub-sections (2) and (3) thereof spell out with great exhaustiveness and meticulous detail the causes of action which would enable a landlord to evict his tenant or

entitle him to the possession of the premises in dispute. The test for determining as to whether the two causes of action are different is that if the evidence to support the two claims is different then the causes of action are also different. It seems to be self-evident that the evidence to support the claim for eviction on the basis of non-payment of rent by the tenant under sub-section (2)(i) of section 13 is entirely distinct and different and unconnected from that necessary to establish the *bona fide* requirement for personal use and occupation of the landlord of the premises. Again, the very scheme of section 13, the particular language in which the respective provisions are couched and even the nature of the relief granted by the statute in each case appears to be instructive. The cause of action for the eviction of the tenant on the ground of non-payment of rent is placed in sub-section (2) of section 13 whereas the cause of action for seeking possession on the ground of personal use and occupation is in sub-section (3) thereof. In the case of the former it is primarily, if not wholly, the default of the tenant which gives rise to the cause of action, whilst in the case of the latter no question of any default or dereliction on the part of the tenant is involved. Therein it is only the *bona fide* requirement of the landlord for his personal use and occupation of the tenanted premises which is the determining factor giving rise to the cause of action. Thus, the causes of action for eviction for non-payment of rent and the right to possession for the personal use and occupation of the landlord are distinct and separate ones.

(Paras 7, 8, 11, 12 and 13).

(*Case referred by a Single Judge Hon'ble Mr. Justice S. P. Goyal to a larger Bench on 31st March, 1980 for decision of an important question of law involved in this case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. P. Goyal on 14th October, 1981 held that the issue of law discussed in their order should be settled by an authoritative pronouncement by a Full Bench. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice S. P. Goyal finally decided the case on 25th November,* 1983).

*Petition under Section* 115 *of the East Punjab Rent Restriction Act for revision of the order of the court of Shri M. L. Merchea, Appellate Authority, Faridkot dated the 26th September,* 1977 *reversing that of Shri M. R. Batra, Rent Controller, Muktsar, dated the 9th November,* 1976 *setting aside the order of ejectment of the appellant and dismissing the application for ejectment holding that the same was barred by the principles of constructive res-judicata and leaving the parties to bear their own costs.*

M. L. Sarin and R. P. Jagga, Advocates, *for the Petitioner.*

D. V. Sehgal, Sr. Advocate R. P. Sood, B. R. Mahajan and P. S. Rana, Advocates with him, *for the Respondent.*

JUDGMENT

*S. S. Sandhawalia, C.J.*

1. Is the requirement of personal use and occupation by the landlord under sub-section 3(a)(i) a distinct and separate cause of action from that of non-payment of rent under sub-section 2(i) for the eviction of the tenant as prescribed by section 13 of the East Punjab Urban Rent Restriction Act, 1949—has come to the fore as the spinal question in this reference to the Full Bench.

2. Harnam Singh, the petitioner-landlord had originally on the 7th of March, 1973 brought an application for the ejectment of the respondent-tenant on the ground of the non-payment of rent. This application was disposed of by the order Exhibit R-5. A perusal of the said order would show that therein no other ground including the one for personal use and occupation was taken by the petitioner-landlord.

3. Later on the 15th of April, 1974, the petitioner-landlord preferred a fresh application on the ground *inter alia* that the respondent-tenant was in arrears of rent and the premises in dispute were required by the applicant *bona fide* for his own use and occupation. On notice of the said application, the respondent-tenant appeared and tendered in Court the amount for which he was alleged to be in arrears of rent along with interest and costs thereof which was accepted on behalf of the petitioner-landlord and the ground of ejectment for being in arrears of rent was consequently given up. The contest was thus confined to the ground of the requirement of personal use and occupation by the landlord. However, a further objection was taken on behalf of the tenant that the said ground was not available to the landlord now because when he made the earlier application for ejectment the said ground was available to him and the same having not been taken then he was barred on the principles of constructive *res-judicata*. The trial Court accepted the application and ordered the eviction of the respondent-tenant and the appeal directed against the same was also rejected by the appellate authority. However, on a revision preferred by the respondent-tenant, the High Court held that all the ingredients mentioned in section 13(3)(a)(i) of the Act were not pleaded in the petition and consequently remanded the matter to the Rent Controller with the direction to allow the amendment of the application for incorporating the ingredients of section

13(3)(a)(i) of the Act and to decide the matter afresh after recording evidence of the parties. After compliance with the said direction, the Controller decided the matter afresh and finding that the premises were *bona fide* required for the personal use and occupation of the landlord and his family, and further holding that the same claim was in no way barred on principles of constructive *res-judicata,* allowed the application and directed the eviction of the respondent-tenant. On an appeal preferred by the respondent-tenant, the appellate authority without giving any categoric finding on issue No. 1, with regard to the *bona fide* requirement of the petitioner for the personal use and occupation of the premises held on issue No. 2 that the claim of the applicant was barred by the principles of constructive *res judicata* since he had not taken up the said ground in the earlier application. The appeal was consequently allowed and the application dismissed.

4. This civil revision by the petitioner-landlord originally came up before my learned brother S. P. Goyal, J., sitting singly. Considering the significance of the issue involved and raising some doubts about the correctness of the earlier view in *Rattan Singh* v. *S. Jagjit Singh Mann,* (1), the matter was referred to a larger Bench. For somewhat similar reasons the Division Bench has now referred the matter for an authoritative adjudication by the Full Bench.

5. Before I come specifically to the two significant questions arising in this case, it seems apt to first advert to the larger question of the true approach to the Rent Legislation for the purposes of its construction. It was sought to be argued on behalf of the respondent-tenant that the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act) was a piece of legislation for the purpose of the protection of tenants and must, therefore, be interpreted wholly in their favour. There can possibly be no dispute with the proposition that the Act is a beneficial piece of legislation with an eye to safeguard the interest of tenants. However, from that it does not follow that the statute has loaded the dice inflexibly against the landlords and every provision thereof must be construed against them. Indeed there is binding authority for holding that the Rent Acts are social legislation which while

(1) 1978(1) Rent Law Report 120.

protecting the tenants give co-equal statutory rights to the landlords as well. It is unnecessary to digress on principle on this point because it is covered by binding authority in *Kewal Singh* v. *Mt. Lajwanti* (2).

> "° ° *. Before discussing the relevant provisions of the Act it may be necessary to observe that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant so as to destroy their legal right to property certain salutary provisions have been made by the legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant either on the determination of the tenancy by efflux of time or for default in payment of rent or other grounds afetr giving notice under the Transfer of Property Act. This broad right has been curtailed by the Rent Control Legislation with a view to give protection to the tenants having regard to their genuine and dire needs. While the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's *bona fide* personal necessity. The concept of *bona fide* necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical."

In view of the aforesaid authoritative enunciation, the plea for a slanted approach to the construction of rent laws must be rejected.

6. Mr. M. L. Sarin appearing *amicus curice* has contended on behalf of the petitioner-landlord that section 13 of the Act spells out distinct and separate causes of action for the relief of eviction against a tenant. Particularising his contention, it was argued that the requirement of the personal necessity of the landlord under sub-section 3(a)(i) was a wholly independent cause of action from that provided under sub-section 2(1) for non-payment of rent. From

(2) AIR 1980 S.C. 161.

this it was sought to be deduced that the landlord is entitled to separately claim the relief under the independent causes of action available to him and was not in any way obliged to combine the same. On the other hand, Mr. D. V. Sehgal assisting the Court *amicus curiae* on behalf of the tenant took the stand that section 13 provided a single cause of action for the relief of eviction from the premises based on the title of a landlord and the various sub-sections thereof merely spelt out the ground therefor.

7. The aforesaid rival arguments inevitably confront one with the question of the true nature of a cause of action. I would not wish to enter the thicket of attempting a precise definition thereof. It is, however, well-settled that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favour. In other words it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the tenant. Negatively it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff. It is against this broad concept of the cause of action that one has now to construe the provisions of section 13 of the Act in order to determine whether different sub-sections thereof provide certain distinct and separate causes of action for the landlord to secure the eviction of his tenant.

8. It would appear that no universal rule of general application can possibly be laid down on the point whether the particular provisions of a statute provide for a single cause of action or for a variety of them for the relief provided. In each case, the scheme of the particular statute; the specific language of the provision: the nature of the causes of action provided as also the statutory relief in each particular case would have to be closely examined for precisely determining the question. Now a broad perspective of the provisions of section 13 would indicate that sub-sections (2) and (3) thereof spell out with great exhaustiveness and meticulous detail the causes of action which would enable a landlord to evict his tenant or entitle him to the possession of the premises in dispute. Without widening the arena of controversy it is best to focus oneself on the narrow question arising herein, namely, whether sub-section 2(i) provides a distinct and separate cause of action than that spelt out in sub-section 3(a)(i) of section 13 of the Act.

9. I am inclined to take the view that the focal issue before us is covered by binding precedent, if not on all fours, at least by the closest logical analogy. It seems, therefore, unnecessary to examine it at any great length on principle without first adverting to *Kewal Singh* v. *Mt. Lajwanti* (3). Therein section 14(1)(e) and (f) and 14(a)(i) of the Delhi Rent Control Act, 1958 had particularly fallen for construction. It deserves highlighting that section 14(1)(e) and (f) of the Delhi Act providing for the eviction of the tenant on the ground of *bona fide* personal necessity of the landlord as also of the case where the premises had become unsafe and were required *bona fide* by the landlord for carrying out the repairs which cannot be carried out without the premises being vacated, are closely analogous, though not in *pari materia* with the corresponding provisions of the Act. Section 14-A (i) of the Delhi Act on the other hand provided for eviction in cases where a Government servant was required to vacate Government accommodation under the rules. The point that the second application for eviction by the landlord was barred by the principle of *res judicata*, as enshrined in Order 2 rule 2 of the Civil Procedure Code, was pointedly raised. On an express consideration of this question and after adverting to the true nature of a cause of action their Lordships repeatedly referred to the aforesaid three causes of action as separate and distinct ones which could be taken up or abandoned by the landlord in his discretion. It was observed as follows :—

> "Applying the aforesaid principles laid down by the Privy Council we find that none of the conditions mentioned by the Privy Council are applicable in this case. The plaintiff had first based her suit on three distinct causes of action but later confined the suit only to the first cause of action, namely, the one mentioned in Section 14A(1) of the Act and gave up the cause of action relating to Section 14(1)(e) and (f). Subsequently, by virtue of an amendment she relinquished the first cause of action arising out of Section 14A(1) and sought to revive her cause of action based on Section 14(1)(e). At the time when the plaintiff relinquished the cause of action arising out of Section 14(1) (e) the defendant was not in the picture at all. Therefore, it was not open to the defendent to raise any objection to the amendment sought by the plaintiff. For these reasons, we are satisfied that

(3) AIR 1980 S.C. 161.

> the second amendment application was not barred by the principles of Order 2 rule 2, Civil Procedure Code, and the contention of the learned counsel for the appellant must fail".

It would follow from the above that under the similar and analogous provisions of the Delhi Act, their Lordships have conclusively observed that the three conditions specified under section 14A(1), 14(1)(e) and 14(1)(f) were distinct and separate causes of action. These observations appear to me as applicable *mutatis mutandis* to the provisions of section 13 of the Act as well. In fact these would be more pointedly attracted in the cases of the non-payment of rent on one hand and the *bona fide* requirement for personal necessity and the use and occupation of the premises.

10. Though the aforesaid enunciation in *Kewal Singh's case* (supra) might well conclude the matter, yet reference must be made also to the elaboration of the principle by Misra, J., in *Dr. Hans Raj Dawar and another* v. *Shri Shyam Kishore* (4). Therein also the provisions of section 14 of the Delhi Act were under consideration in the context of the specific claim of constructive *res-judicata* being attracted to the proceedings. On a consideration of the matter at some length, it was observed as under :—

> "° ° *. In my opinion, therefore, the cause of action in a petition for eviction does not consist in merely obtaining an order for eviction but the cause of action consists in obtaining an order of eviction on one or the other grounds specified in the statute. In *Faqir Chand* v. *Ram Rattan Bhanot* (5), Alagiriswami, J., speaking for the Court observed that the grounds of eviction under clause (k) and clause (c) are different and the mere fact that the landlord was estopped from claiming eviction on the ground of misuser mentioned in clause (c), (since he had consented to the misuser) did not debar him from claiming eviction on the ground mentioned in clause (k).

and again

> ° ° *. But the landlord cannot be compelled to raise in a petition all the statutory grounds that entitle him to

(4) 1977 (2) R.L.R. 253.
(5) AIR 1973 S.C. 921.

obtain eviction. I am of the view that if it is the legal right of the landlord to obtain eviction on the grounds afforded to him by the statute, he is free to claim it on any of them and is not obliged to press all of them in one petition nor can he be debarred from claiming eviction or pressing the grounds that may be available to him in a subsequent petition, provided he satisfies the ingredients of the ground, e.g., if a landlord claims eviction on the ground of non-payment of rent he may not even be aware of existence of the sub-letting and if he comes to know about it later, he cannot be debarred from claiming eviction on the ground of subletting which he may succeed in establishing irrespecitve of the fact when the subletting had occurred."

It would seem to follow from the above that both binding and persuasive precedent have taken the view that rent legislation may provide distinct and separate causes of action for the relief of eviction from the tenanted premises.

11. The matter also deserves examination from yet another angle. In the authoritative summing up of the nature of a cause of action it has been, held *inter alia* in *Md. Khalil Khan* v. *Mahbub Ali Mian* (6), as under :—

"The principles laid down in the cases thus far discussed may be thus summarised :—

(1) X X X

(2) X X X

(3) If the evidence to support the two claims is different then the causes of action are also different (*Brunsden* v. *Humphery*," (6A).

12. Applying this test, it seems to be self-evident that the evidence to support the claim for eviction on the basis of non-payment of rent by the tenant under sub-section 2(i) of Section 13 is entirely distinct and different and unconnected from that necessary to establish the *bona fide* requirement for personal use and

(6) AIR 1949 P.C. 78.

(6A) 1884 Q.B.D. 141.

occupation of the landlord of the premises. This indeed calls for no further elaboration and it would be unnecessary to labour this point. On this acid test as well, since the evidence to establish the two is clearly distinct and different, a *fortiori* the two causes of action are thus equally distinct and separate. They cannot possibly be termed as merely grounds for a single cause of action.

13. Yet again the very scheme of section 13, the particular language in which the respective provisions are couched and even the nature of the relief granted by the statute in each case appear to be equally instructive. As is manifest, the cause of action for the eviction of the tenant on the ground of non-payment of rent is placed in sub-section (2) of Section 13 whereas the cause of action for seeking possession on the ground of personal use and occupation is in sub-section (3) thereof. In the case of the former it is primarily, if not wholly, the default of the tenant which gives rise to the cause of action, whilst in the case of the latter no question of any default or dereliction on the part of the tenant is involved. Therein it is only the *bona fide* requirement of the landlord for his personal use and occupation of the tenanted premises which is the determining factor giving rise to the cause of action. Some distinction with regard to the nature of relief afforded is equally relevant. Whilst in the case of non-payment of rent, if established leads to an absolute forfeiture of the tenancy, in the case of personal necessity the right to the possession of premises is conditional. Sub-section (4) of Section 13 provides that in cases where the landlord does not himself occupy the premises he may forfeit the right and the tenant may be restored the possession thereof. All these factors are thus further pointers to the fact that the causes of action for eviction for non-payment of rent and the right to possession for the personal use and occupation of the landlord are distinct and separate ones.

14. In fairness to the learned counsel for the respondents, one must notice the four cases decided under the Delhi Rent Laws on which particular reliance was placed. In *Man Mohan Lal* v. *B. D. Gupta* (7), the landlord had originally brought a suit for eviction under section 9 of the Delhi-Ajmer-Marwar Rent Control Act, 1947 and later sought to evict the tenant under section 13(1)(k) of the Act of 1952. The Bench held that the ground of ejectment of the tenant was based on the identical set of facts, namely, the use of

(7) AIR 1964 Pb. (Circuit Bench, Delhi) 408.

the residential premises for purposes of business and, therefore, the second suit was barred by the Fourth Explanation to section 11 of the Civil Procedure Code. It was also found that the latter ground of eviction was sought to be raised on the mere technicality of an omission on the part of the landlord to perform some formal act like serving of a notice on the tenant which was entirely in his own volition. No question of there being separate and distinct causes of action for eviction at all arose and consequently was not even remotely the matter for adjudication. It seemed to be common ground that on the established facts, the provisions of Section 11, Civil Procedure Code, were attracted and the primary question was the application of the Fourth explanation thereto. It is thus plain that this case is obviously distinguishable and is of no aid to the respondents.

15. In the Single Bench judgment in *Raidev Singh* v. *Royal Studios and others* (8), the two applications under the Delhi Rent Control Act, 1958 were sought to be rested on the same set of facts of the tenant having either sub-let, assigned or otherwise parted with the possession of the premises without the consent of the landlord. No question whatsoever of there being separate causes of action for the eviction of the tenant either arose or was actually decided. The case virtually proceeded on the admitted premise that Explanation iv to Section 11 was attracted and turned on its application. Indeed on the specific point before us, V. S. Deshpande, J., had observed as follows with regard to Section 14(1) of the Delhi Act :—

> "* ° °. *Each of these grounds may be said to be independent of each other in so far as each constitutes a separate cause of action.* Order II, Rule 2(1) Civil Procedure Code only requires that the plaintiff shall include the whole of the claim which he is entitled to make in respect of the cause of action in every suit. It does not therefore, seem to require that the landlord must plead in the same eviction petition all the grounds available to him under the various provisos to Section 14(1) on the date of the filing of the petition for eviction."

The aforesaid observations indeed go more in aid of the stance taken by the petitioner rather than detract therefrom. In *Rajkishen*

(8) AIR 1972 Delhi 150.

*Jain v. Master Hoshiar Singh,* (9), the same learned Judge has merely made general observations in paragraph 7 of the report with regard to the applicability of the principle of *res judicata* to proceeding under the Delhi Rent Act. In the Single Bench Judgment in *Bhim Sen* v. *Raj Devi* (10), also no question of the claim being raised on separate and distinct causes of action at all arose or was adjudicated. Indeed it would appear that on virtually the same set of facts, the second application for ejectment was sought to be maintained. This case is thus equally distinguishable.

(16) Lastly, the submission on behalf of the respondent that successive applications would amount to a harassment to a tenant calls for notice. Undoubtedly the law disfavours a multiplicity of proceedings. However, equally settled it is that if there are distinct and separate causes of action, there is no legal obligation to combine them in a single action, though, if the plaintiff chooses to do so, he may well be permitted. It would thus appear that the theory of harassment by the landlord is somewhat speculative. Bringing of successive applications is equally, if not more, burdensome to the landlord than perhaps to the tenant who remains securely in possession whilst in defence. As was pointed out by Mr. Sarin, the issue herein is more of propriety and if successive concurrent applications exist they can either be consolidated or one or the other of them can be stayed. The argument, therefore, of a peculiar hardship accruing to the tenants is, therefore, not well-merited and indeed if there is any it is mutual to both the litigating parties.

(17) To finally conclude it must be held that on the larger scheme of Section 13 of the Act; the specific language of the respective provisions; on principle; and precedent, the requirement of personal use and occupation by the landlord is a distinct and separate cause of action from that of non-payment of rent by the tenant. The answer to the question posed at the very outset is, therefore, rendered in the affirmative.

(18) Now once it is held as above, then Mr. D. V. Sehgal with his illimitable fairness conceded that if the causes of action are separate and distinct then obviously no question of the "might and ought" rule (as envisaged in Explanation IV to Section 11 of the

(9) 1972 Rent Control Journal (Delhi) 876.
(10) 1973 R.C.J. (Delhi) 785.

Civil Procedure Code) being attracted would arise and consequently no issue of the bar of constructive *res judicata* to the proceedings falls for adjudication.

(19) I must, however, notice in fairness to the learned counsel for the petitioner that they forcefully projected their alternative stand that the provision of Section 14 of the Act severely limit the application of the wide-ranging principle of constructive *res judicata* to the proceedings under the East Punjab Rent Restriction Act, 1949. However, in view of the aforeme finding, this question does not now arise for determinatio uld, therefore, eschew any pronouncement thereon.

(20) Adverting now to the merits of the case in the light of the aforesaid legal conclusion, it necessarily follows that the findings of the appellate Court on issue No. 2 must be reversed, and that of the trial Court affirmed whilst holding that the claim of the applicant was in no way barred by the principles of constructive *res judicata.*

(21) As has already been noticed, the appellate Court apparently in view of what it had held on issue No. 2 did not give any categoric finding on issue No. 1. We had, therefore, heard the learned counsel for the respondent on the said issue. No meaningful challenge to the finding of the trial Court on the same could be levelled. For the detailed reasons recorded by the trial Court, we affirm the same in favour of the petitioner-landlord. As a necessary consequence this Civil Revision succeeds and the order of the appellate authority is set aside and that of the Rent Controller restored. In view of the somewhat ticklish question involved, we leave the parties to bear their own costs.

Before parting with this judgment, we must record our great appreciation of the able and erudite assistance rendered by Messrs. M. L. Sarin and D. V. Sehgal appearing *amicus curiae.*

Prem Chand Jain, J.—I agree.

S. P. Goyal, J.—I also agree.

*N. K. S.*

13003 HC—Govt. Press, U.T., Chd.