

FULL BENCH

REVISIONAL CIVIL

Before R. S. Narula, C.J., Chinnappa Reddy, Prem Chand Jain,

M. R. Sharma and Surinder Singh, JJ.

VINOD KUMAR MINOR, SON OF SHRI BADRI PARSHAD,—

Petitioner

versus

HARBANS SINGH AZAD, SON OF GIANI SUJAN SINGH,—

Respondent.

Civil Revision No. 393 of 1971

November 18, 1976.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (i)—Transfer of Property Act (IV of 1882)—Section 106—Landlord seeking eviction of tenant under the Rent Act—Notice under section 106—Whether necessary—Order of ejection passed ex-parte—Such order set aside and case adjourned for further proceedings—Tenant depositing arrears of rent on the adjourned date—Such deposit—Whether made on the “first date of hearing”.

Held, that the East Punjab Urban Rent Restriction Act, 1949 contains all the necessary provisions for enabling adjudication on the various contentious points which could arise in a dispute between a landlord and the tenant, in connection with their relationship as such. The Rent Act is a complete Code by itself and its provisions supersede the provisions of the Transfer of Property Act 1882. No notice under section 106 of the Property Act is, therefore, necessary to be issued before a landlord applies for eviction of the tenant under the provisions of the Rent Act.

(Paras 12 and 17)

Bhaiya Ram v. Mahavir Parshad, I.L.R. (1969) 1 Pb. & H. 132 (F.B.) overruled.

Held, that at the time when a tenant approaches the Rent Controller with an application for setting aside the *ex-parte* order, he is obviously aware of the filing of the ejection application against him and its disposal on an earlier date, though *ex-parte*. If he is desirous of taking the benefit available to him under the proviso to section 13(2) (i) of the Rent Act, he should tender the arrears of rent etc. on the very day when the proceedings are restored. It is this date

which is the "first date of hearing". The statutory benefit available to a tenant under this provision has a limited scope in that the same affords a convenient last minute escape from the rigours of litigation and the "first date of hearing" cannot be extended merely by a process of reasoning.

(Para 9)

Case referred by Hon'ble Mr. Justice Bal Raj Tuli to a Larger Bench on 11th May, 1972, for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice O. Chinnappa Reddy, Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice M. R. Sharma and Hon'ble Mr. Justice Surinder Singh finally decided the case on 18th November, 1976.

Petition under section 15(v) of Punjab Urban Rent Restriction Act for revision of the order of Shri A. N. Aggarwal Appellate Authority, Hissar, under the Rent Restriction Act, dated the 22nd March, 1971 reversing that of Shri A. S. Garg, Rent Controller (Sub-Judge 1st Class), Sirsa, dated the 15th October, 1970 and dismissing the landlord's (respondent's) application for ejection of the appellant and leaving the parties to bear their own costs on account of partial success of the respondent on some issues.

Hira Lal Sibal, Sr. Advocate with S. C. Sibal, Advocate, for the appellant.

Laxmi Grover, Advocate, for the Respondent.

JUDGMENT

Judgment of the Court was delivered by—

Surinder Singh, J.

(1) The point referred to "the wisdom of five" is not a riddle which only Oedipus could have solved. Though the Revision Petition has been referred to us for decision in toto, in essence the question requiring consideration is whether the issuance of a notice under section 106, Transfer of Property Act, is a must before a landlord can seek eviction of the tenant under the provisions of the East Punjab Urban Rent Restriction Act, 1949 (referred hereinafter as the Rent Act).

(2) Facts must precede percipience and judgment would follow without constraint. Vinod Kumar minor, acting through his father

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as his next friend (to be referred for brevity as the landlord) launched a petition under section 13 of the Rent Act against Harbans Singh Azad, respondent (referred henceforth as the tenant) for his eviction from a shop situated at Sirsa, district Hissar, on two grounds, namely, (i) the tenant had failed to pay the rent for the premises with effect from December 2, 1965, i.e., for a period of more than thirteen months and (ii) he had kept the shop closed and had not occupied the same for his business for about 17/18 months before filing of the petition. An additional ground had also been taken that the tenant had caused damage to the property and had impaired its value and utility. This ground was not, however, agitated at any stage. The Rent Controller issued the necessary notice of the petition to the tenant for February 10, 1967. It was, however, reported that the tenant had refused to accept service of the notice. *Ex parte* proceedings were, therefore, ordered against him on the date mentioned above and the matter was adjourned to February 20, 1967 for recording *ex parte* evidence of the landlord. On the later date after recording the evidence so produced by the landlord, an order for eviction of the tenant was passed by the Rent Controller. Sometime later, to be precise on April 11, 1967, the tenant moved the Controller with a prayer for setting aside the *ex parte* order of ejection and these proceedings culminated with order, dated December 18, 1967 by which the Rent Controller set aside his earlier order dated February 20, 1967. He also directed that the ejection application be put up on January 30, 1968, for further proceedings. On that date, the tenant tendered the arrears of rent and costs, etc. (Rs. 581 in all) to the landlord but the latter refused to accept the tender, claiming that the same had not been made on the "first date of hearing".

(3) The parties faced a contest on the following issues :

(1) Whether the respondent has properly tendered the arrears of rent etc., on the first date of hearing ?

(2) Whether it was necessary for the petitioner to serve the notice before filing this application ? If so, its effect.

(2-A) Whether the respondent is liable for ejection on the grounds mentioned in the application?

(4) The Rent Controller found all the above issues against the tenant and ordered his eviction though he allowed fifteen days time to the tenant to vacate the premises.

(5) The tenant utilised the right of appeal under section 15(b) of the Rent Act and was rewarded with success before the Appellate Authority, which set aside the order of the Rent Controller and dismissed the landlord's application for ejection. While doing so, the Appellate Authority considered the point involved in issue No. 1 and was of the view that the tender of arrears of rent, etc., by the tenant on January 30, 1968, was a valid tender because on the date when the *ex parte* proceedings were set aside, i.e., December 18, 1967, the ejection application was not before the Rent Controller and hence no proceedings had taken place in the said application on that date. The Appellate Authority reinforced its conclusion with the premises that after the *ex parte* order had been set aside on December 18, 1967, there was no due service of the tenant and a copy of the ejection application had not been delivered to him on the basis of which he could have tendered the arrears of rent, etc. on that date. In regard to issue No. 2, the Appellate Authority after concluding that the tenancy between the parties had not expired by efflux of time, nor had it been determined by a notice to quit, proceeded to hold that such a contractual tenancy required issue of a notice under section 106, Transfer of Property Act, before any action for the ejection of the tenant could be brought. No such notice having admittedly been issued, the Appellate Authority non-suited the landlord on this ground also. The finding on the last issue No. 2-A, as recorded by the Rent Controller, that the tenant had ceased to occupy the premises without reasonable cause for more than four months before the filing of the application for ejection was, however, affirmed by the Appellate Authority. In consequence of the findings on other issues, the ejection application filed by the landlord was dismissed.

(6) In the third round of the bout, the landlord approached this Court in Revision, which was heard by a learned Single Judge, who made the present reference for consideration of the matter by a larger Bench in view of an important question of law involved therein. As would be noticed from the order of reference, only two points were urged before the learned Judge in chambers. The first contention was that the Appellate Authority had wrongly accepted January 30, 1968, as the first date of hearing instead of December 18, 1967, on which date the *ex parte* order passed earlier was set aside. The learned Judge left this point undecided, for the reason that he was inclined to refer the petition to a larger Bench for consideration of the second contention that a notice under section 106, Transfer of Property Act, was not necessary to be issued by the landlord

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before invoking the provisions of the Rent Act for the ejection of his tenant. After noticing the decision of a Full Bench of this Court in *Bhaiya Ram v. Mahavir Parshad* (1), the learned Single Judge was of the view that the same required reconsideration and this is how the matter has ambulated to us.

(7) Let us first clear the rickety road-blocks to facilitate travel to the coveted destination. So far as the tenant is concerned, his learned counsel sought reconsideration of the concurrent finding of the Rent Controller and the Appellate Authority that the tenant had ceased to occupy the disputed premises for a period of more than four months. The point was presumably not urged before the learned Single Judge, nor are we inclined to disturb this pure finding of fact in the present Revision Petition on behalf of the landlord, his learned counsel, Mr. Hira Lal Sibal, has, in the first instance, focussed his attention to the subject-matter of issue No. 1, on which a finding adverse to the landlord has been recorded by the Appellate Authority, holding that the tender made before the Rent Controller on January 30, 1968, was a valid tender. It is submitted that the Appellate Authority was in error in distinguishing the facts of the present case for extracting the same from the ambit of the law settled even by this Court in the earlier authorities. Reference has been made in this behalf to *Giani Hari Singh Jachek v. Shrimati Viran Devi and another* (2). A learned Single Judge of this Court was seized of the very point under consideration now, as it was also a case where an *ex parte* order had been set aside. Mahajan, J., while delivering the short judgment, repelled the contention that the first date of hearing would be the date of hearing after re-registration of the case. The learned Judge observed that no fresh notice is required under law on re-registration, when a matter has been restored after it had been dismissed in default. In such a situation, there was no second petition which had been filed and it was only the original petition which had been revived. Mahajan, J., placed reliance upon an earlier decision of this Court in *Manohar Lal Chopra v. Bal Raj Arora* (3), in which the same view had been expressed, that the first date of hearing would be the date on which the *ex parte* order had been set aside. The observations of Soni, J.,

(1) I.L.R. (1969) 1 Pb. and Haryana, 132.

(2) 1964 Pb. Law Reporter, 762.

(3) (1963) 55 Pb. Law Reporter, 295.

in the said case, pertinent to the point under consideration are best noticed verbatim:

“As I have said before, so far as the payment of the arrears of rent on the first day of hearing was concerned, the matter is concluded by the provisions of Rule 7 of Order 9. If the Court sets aside the *ex parte* proceedings, it means that the Court accepts the defendant's excuse for not being able to be present at the hearing. The result of the Court's acceptance is that the defendant is put in the same position as if he had actually appeared on the first day of hearing and on the first day of hearing he did bring the money. But even if he did not, if his excuse is accepted that he was misled by the plaintiff and, therefore, was not able to come, his tender of money to the Court immediately is a proper tender on the first day of hearing.”

(8) Harbans Singh, J. (as he then was) drew assistance from the above observations while holding in *Dwarka Devi and others v. Hans Raj* (4), that the deposit made on the date on which *ex parte* order was set aside, would be treated as if the same was made on the first date of hearing fixed for appearance. The correctness of the view contained in the decisions noticed above cannot be doubted.

(9) The Appellate Authority, in the present case, has placed emphasis on the fact that the original ejection application was not before the Rent Controller on December 18, 1967 and this would confer upon the tenant an option to tender the arrears of rent, etc. on the next date fixed in the case. This is not a correct approach to the matter. At the time when the tenant approached the Rent Controller with an application for setting aside the *ex parte* order, he was obviously aware of the filing of the ejection application against him and its disposal on an earlier date, though *ex-parte*. If he was desirous of taking the benefit available to a tenant under the Rent Act, he should have tendered the arrears, etc., on the very day when the proceedings were restored. There is nothing on the record to show that he made any such attempt on December 18, 1967. Indeed, the tenant may have been heard to plead in this behalf if on that date he had done his duty to tender the rent and other charges before

(4) 1963 (xiv) P.L.R. 705.

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the Rent Controller but the needful had not been done by the Controller in spite of request. Mehar Singh, J., was closeted with a somewhat similar situation in *Gulshan Rai and another v. Devi Dayal* (5), and drew a conclusion that where the Rent Controller makes an omission to assess costs on the first date of hearing but the tenant does not invite him to do so, to facilitate compliance with law, the tenant cannot have benefit of his failure to invite the Controller to do his duty. This is a correct view of the matter. The statutory benefit available to the tenant under the proviso to section 13(2)(i) has a limited scope in that the same affords a convenient last minute escape from the rigours of litigation. "The first date of hearing" cannot be extended merely by a process of reasoning as adopted by the Appellate Authority, whose finding on the point is, therefore, reversed.

(10) Mr. Sibal tried to touch upon another criticism in regard to the insufficiency of the tender of Rs. 581 made by the tenant before the Controller even on January 30, 1968. The argument is that the said amount did not include the rent and interest from December 2, 1965 till the date of tender. No such ground having been urged either before the Controller or the Appellate Authority, Civil Miscellaneous Application No. 6269 of 1971 was filed on behalf of the petitioner in the present Revision Petition with a prayer to permit this new ground of attack. An *ex parte* order was recorded on September 17, 1971, by Chief Justice Harbans Singh (as he then was) allowing the prayer made in the said Miscellaneous Application, though subject to just exceptions. This objection has now been taken. In view of the fact that the point was never pressed before either of the two Authorities under the Rent Act, we are not inclined to go into the matter of calculations in the present Revision Petition, which is mooted only on question of law.

(11) The landscape is no longer shrouded in mist. Let us now view the material point which has necessitated the present reference, i.e., whether the issue of a notice under section 106, Transfer of Property Act, is an unavoidable pre-requisite before a landlord can seek assistance of the Rent Act for the ejection of his tenant. We must have before us the relevant provision of law which requires interpretation. Section 13 of the East Punjab Urban Rent Restriction Act, 1949, reads as under:

"13(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree

passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

- (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 by 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 six 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 the time aforesaid.

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The matter received the attention of the Supreme Court a quarter of century ago in *Rai Brij Raj Krishna and another v. S. K. Shaw and Brothers* (6). That case arose under the Bihar Rent Act and Fazl Ali, J., speaking for the Bench made the following material observations:

“Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what

(6) 1951 S.C.R. 145.

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conditions he can be evicted. It clearly provides that a tenant is not liable to be evicted except on certain conditions, and one of the conditions laid down for the eviction of a month to month tenant is non-payment of rent."

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"The Act thus sets up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly makes his order final and subject only to the decision of the Commissioner. The Act empowers the Controller alone to decide whether or not there is non-payment of rent, and his decision on that question is essential before an order can be passed by him under section 11. Such being the provisions of the Act, we have to see whether it is at all possible to question the decision of the Controller on a matter which the Act clearly empowers him to decide."

(12) A bare reading of the present Rent Act would show that as in the case of the Bihar Act, it also contains all the necessary provisions for enabling adjudication on the various contentious points which could arise in a dispute between the landlord and tenant in connection with their relationship as such. Two Division Benches of this Court followed the view taken in regard to the Bihar Act. In *Bawa Singh and another v. Kundan Lal*, (7), which was a case under the present Rent Act, it was held that the Act was a complete Code by itself and its provisions superseded the provisions of the Transfer of Property Act. The issue of a notice under section 106 of the Transfer of Property Act was, therefore, found unnecessary. In the second case, *Hem Chand v. Shrimati Sham. Devi*, (8), placing reliance upon the observations of the Supreme Court in *Raj Brij Rai Krishna*, the Bench once again affirmed the view aforesaid in a case under the Delhi and Ajmer Merwara Rent Control Act. At the end of the main judgment which was recorded by Khosla, J., Kapur, J., specifically disagreed with the contrary view expressed by the

(7) (1952) 54 P.L.R. 358.

(8) I.L.R. (1955) 8 Pb. 36.

Calcutta High Court in *Gurupada Haldar Jiban Krishan Dass v. Arjoondas Goenka* (9). The matter was once again agitated in the Supreme Court in *Bhaiya Punjalal Bhagwanddin v. Dave Bhagwat-prasad: Prabhuprasad and others*, (10), but in the judgment, their Lordships abstained from expressing any opinion in regard to the correctness or otherwise of the law laid down in *Hem Chand's case* (supra).

(13) There appears to be some diversion in the breeze after *Bhaiya Punjalal's case* (supra). In *Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai*, (11), it was observed in regard to clause (1) of section 12 of the Bombay Rents Control Act, that the said clause applies to a tenant who continues to remain in occupation after the contractual tenancy is determined and it does not grant a right to evict a contractual tenant without determination of the contractual tenancy. This case was followed by another authority from the same pedestal as reported in *Mangilal v. Sujan Chand Rathi*, (12). The case arose in reference to the provisions of Madhya Pradesh Accommodation Control Act and it was specifically held that the requirements of section 106 of the Transfer of Property Act, for terminating a lease from month to month, necessitated the issue of fifteen days' notice from either the landlord or the tenant and that such a notice was essential before the relationship of landlord and tenant could be brought to end. As a corollary, it was further held that without validly terminating this relationship, the landlord could not obtain possession of the premises by evicting the tenant. In still another case *Manujendra Dutt v. Purnedu Prosad Roy Chowdhury and others*, (13), the view expressed in the two cases mentioned above was reaffirmed by the Supreme Court.

(14) In the wake of the disturbed weather, the point as to whether the provisions of the East Punjab Urban Rent Restriction Act abrogated the necessity for issue of a notice under section 106 of the Transfer of Property Act was mooted before a Division Bench of this Court in *Sawaraj Pal v. Janak Raj*, (14). The Bench after consideration of the various pronouncements of the Supreme Court

(9) A.I.R. 1949, Calcutta 61.

(10) A.I.R. 1963 S.C. 120.

(11) A.I.R. 1964 S.C. 1341.

(12) A.I.R. 1965 S.C. 101.

(13) A.I.R. 1967 S.C. 1419.

(14) (1968) 70 P.L.R. 720.

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drew a conclusion that according to the ratio of these judgments, unless there was an express statutory provision abrogating the requirement of service of notice under the Transfer of Property Act, the mere fact that the rights of a landlord for eviction were restricted on account of the Rent Act, did not absolve a landlord from serving the requisite notice. Hardly two months had elapsed after the decision in *Sawaraj Pal's case* (supra) that the matter once again cropped up before P. C. Pandit, J., who felt that there was a difference of opinion in the Division Benches of this Court, namely, *Bawa Singh's case* and *Sawaraj Pal's case*. As reported in *Bhaiya Ram v. Mahavir Prasad*, (15). P. C. Pandit, J., referred the following three points to a Full Bench for decision:—

- “1. Whether an ejection application under section 13 of the East Punjab Urban Rent Restriction Act, 1949, can be filed without the prior issue of a notice under section 106 of the Transfer of Property Act;
2. Whether the objection regarding non-issue of a notice under section 106 of the Transfer of Property Act, can be waived by the tenant;
3. Whether objection as to the validity of the notice can be waived by a tenant in a case in which a defective notice has been issued.”

The matter was laid before the Full Bench and a detailed resume of several authorities including those of the Supreme Court, culminated with the verdict in *Bhaiya Ram v. Mahavir Parshad*, (16). The material conclusions of the Full Bench have been reproduced by Tuli, J., in the present referring order. All these need not be recapitulated but suffice it to say that one of the conclusions was that want of service of notice under section 106 of the Transfer of Property Act continues to be a good defence despite the enforcement of the Rent Act in every case in which such a defence would have been valid and available under the general law of the State, if the Rent Act had not been enacted. It was further held that the Punjab Rent Act had not impliedly repealed or abrogated section 106 of the Transfer of Property Act of the principles of the said provision

(15) (1968) 70 P.L.R. 897.

(16) (1968) 70 P.L.R. 1011.

in so far as they are applicable in Punjab as principles of equity, justice and good conscience.

(15) Sometime before the decision of the Full Bench of our Court, the same point fell for consideration down South before a Full Bench of the Madras High Court. That Court, in *Messrs. Raval and Company v. K. G. Ramachandran and others*, (17) preferred to follow the earlier view of the two Division Benches of this Court that no notice was necessary to be issued by the landlord for terminating the tenancy of the tenant, on account of the Rent Legislation.

(16) In the same year (1967) came the ruling of the Supreme Court, i.e. *Manujendra Dutt v. Purnedu Prosad Roy Chowdhury and others*, (18), wherein the following observations were made :

“Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new right of action but restricting the existing rights either under the contract or under the general law.”

(17) When the tensility of the conclusions of the Madras Full Bench came for test in the very case, before the Supreme Court, it affirmed the view taken by the Full Bench. The verdict of the Supreme Court in this case is reported in *Messrs. Raval and Company v. K. G. Ramachandran and others*, (19). It is worthy of note that Alagiriswami, J., made specific reference to the observations made in *Manujendra Dutt's case*, reproduced above, and expressed that the said observations should not be held to apply to all Rent Acts irrespective of the scheme of those Acts and their provisions. In a later decision of the Supreme Court, i.e., *Puwada Venkateswara Rao v. Chidamana Venkata Ramana*, (20), while dealing with a case under the Andhra Pradesh Building Control Act, 1960, it was held that the said Act is a complete Code, providing procedure for eviction and a prior notice under section 106 of the Transfer of Property Act terminating the lease, is not necessary before filing a petition

(17) A.I.R. 1967 Madras 57.

(18) A.I.R. 1967 S.C. 1419.

(19) A.I.R. 1974 S.C. 818.

(20) A.I.R. 1976 S.C. 869.

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for eviction under the Andhra Act. It was also held that the decision of the Supreme Court in *Mangilal's case* (12) (supra), had been rightly distinguished by the Andhra High Court. Our attention was also invited to another recent decision of the Supreme Court reported in *Rattan Lal v. Vardesh Chander and others* (21), wherein Krishna Iyer, J., observed, "It follows that even where, under a particular rent control statute, the landlord makes out grounds for eviction, he can institute proceedings in this behalf only if *de hors* the said grounds he has cause of action under the Transfer of Property Act. However, while discussing the point now under consideration, the learned Judge expressly declared that "if the Rent Control Legislation specifically provides grounds for eviction in supersession, not in supplementation, of what is contained in the Transfer of Property Act, the situation may conceivably be different." It is obvious, therefore, that the Supreme Court has put a final seal in the matter and the proposition that no notice under section 106 of the Transfer of Property Act is necessary to be issued before a landlord applies for eviction of the tenant under the provisions of the East Punjab Urban Rent Restriction Act, 1949, is beyond doubt or debate.

(18) My lord, the Chief Justice, in Civil Revision No. 355 of 1976 decided on November 3, 1976, and R. N. Mittal, J., in Civil Revision No. 267 of 1976 decided just today, have disposed of the point in controversy in accordance with the above-mentioned conclusion. Legal vacillations have rocked the judicial minds for long enough. The scales are now at rest. We do not wish to disturb them again.

The Revision Petition is accepted and the order of the Rent Controller directing the eviction of the tenant is restored. We, however, allow to the tenant, two months time from today, to vacate the premises. No costs.

R. S. Narula, C.J.

(20) I have had the benefit of perusing the erudite judgment prepared by my learned brother Surinder Singh, J., and agree with every word of the same. Since, however, I was the author of the judgment of the Full Bench in *Bhaiya Ram v. Mahavir Parshad*, (1)

(21) A.I.R. 1976 S.C. 588.

supra, I consider it a duty to observe that the said judgment of the Full Bench was given in the light of the judgments of their Lordships of the Supreme Court in the following cases:—

- (i) *Vora Abhasbhai Alimahomed v. Haji Gulamnadi Haji Safibhai*, (11) supra.
- (ii) *Mangilal v. Sukan Chand Rathi*, (12) supra.
- (iii) *Manujendra Dutt v. Purnedu Prosad Roy Chowdhury and others*, (13) (supra).

(21) In view, however, of the subsequent pronouncement of their Lordships in *Messrs. Raval and Company v. K. G. Ramachandran and others*; (19) Supra and in *Puwada Venkateswara Rao v. Chidamana Venkata Ramana*; (20) Supra; there appears to be now no escape from reversing the Full Bench judgment of this Court in *Bhaiya Ram's case*. It is precisely in this situation that even when sitting in Single Bench while deciding—*Mool Raj Jain v. Messr. Jayua Engineering Works* (22); I did not follow the Full Bench of this Court which has been impliedly overruled by the Supreme Court partly in *Puwada Venkateswara Rao v. Chidamana Venkata Ramana* (supra) and partly in *Rattan Lal v. Vardesh Chander and others*; (21) (supra). It is with these observations that I agree that this revision petition should be accepted and the order of the Rent Controller, directing the eviction of the tenant-respondent be restored allowing him two months' time to vacate, but leaving the parties to bear their own costs.

N.K.S.

FULL BENCH

Letters Patent Appeal.

Before S. S. Sandhwalia, S. S. Sidhu and S. P. Goyal, JJ.
KAILASH VATI WIFE OF AYODHIA PARKASH,—Appellant.

versus

AYODHIA PARKASH, SON OF SHRI LACHHMAN DASS,—
Respondent.

Letters Patent Appeal No. 418 of 1975

November 19, 1976.

Hindu Marriage Act (XXV of 1955)—Section 9—Restitution of conjugal rights—Wife gainfully employed at a place away from her

(22) C.D. 355/76 decided on November 3, 1976.