

**Ram Chandra Vs. Kanak Ram**

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**Court :** Rajasthan

**Decided On :** Feb-12-1980

**Reported in :** 1980WLN128

**Judge :** S.C. Agrawal, J.

**Appeal No. :** S.B. Civil Revision Petition No. 78 of 1979

**Appellant :** Ram Chandra

**Respondent :** Kanak Ram

**Advocate for Pet/Ap. :** Shri. Samdaria

**Disposition :** Petition Dismissed

**Judgement :**

**S.C. Agrawal, J.**

1. This revision petition has been filed by the defendant Ram Chander against the order dated 3rd March, 1979, passed by the Civil Judge, Sirohi dismissing the appeal filed by the petitioner against the order dated 14th December, 1978 passed by the Munsiff, Abu Road, in civil suit No. 157 of 1975. By the order dated 14th February, 1978, the Munsiff, Abu Road struck out the offence of the petitioner on the ground that he had committed default in the payment of rent during the pendency of the suit.

2. The facts briefly stated, are that there is a shop situate at Abu Road belonging to Nanakram respondent. The said shop was let out by the defendant to the petitioner. On 3rd September, 1976, the respondent filed a suit (suit No. 167/76) in the Court of the Munsiff, Abu Road against the petitioner for his ejection from the said shop and for the recovery of Rs. 505/- on account of arrears of rent. In the said suit it is alleged that the shop had been let out at the rate of Rs. 50/- per month and the tenancy was a monthly tenancy beginning from the 1st date of each calendar month and that the petitioner had failed to pay the rent for the said premises since 1st December, 1975 in spite of notice and as he has committed default in the payment of rent, he is liable to be evicted. In the said suit the respondent landlord has also pleaded that the shop is required reasonably and bonafide for the use of the respondent and his family. In the aforesaid suit the petitioner has filed his written statement dated 22nd November, 1976 wherein he has pleaded that he has not committed any default in the payment of rent in as much as the rent for the shop had been agreed to be paid on yearly basis and that the respondent had deliberately stopped receiving rent for the shop since 1st December, 1975, although the same had been tendered by the petitioner to him on several occasions and that a money order for the rent for the period 1st November, 1975 to 31st May, 1976 was also sent by the petitioner and the same was received back with the remark 'refused', and, therefore, the petitioner is not a defaulter in the matter of payment of rent. In his written statement the petitioner has denied that the shop is required by the respondent reasonably and bonafide for himself and the members of his family. The respondent has filed a replication dated the 14th February, 1977 wherein he has denied that the rent for the shop had been agreed to be paid on yearly basis and has stated that the rent was payable at the end of each month. In the replication aforesaid the respondent has denied that the petitioner has tendered rent for the period subsequent to 1st December, 1975 or that he has refused to accept the same. The respondent has further denied that any money order for the rent for the period 1st November, 1975 to 31st May, 1976 was sent to him. The Munsiff Abu Road by his order dated 21st March, 1977 determined that the amount of rent payable for the period from 1st December, 1975 to 28th February, 1977 was Rs. 750/- and the interest payable on the same was Rs. 26.25 and the total amount payable by the petitioner to the

respondent was Rs. 776.25 which amount the petitioner was required to deposit within a period of one and a half month. By the order aforesaid the petitioner was further directed to deposit the future rent at the rate of Rs. 50/- P.M. in accordance with law. It appears that the petitioner deposited the aforesaid amount of Rs. 776.26 in accordance with the order dated 21st March 1977 and also deposited the rent for the months of March to June, 1977. but the rent for the month of July, 1977, which had to be deposited by 15th August, 1977 was tendered on 14th September, 1977 alongwith the rent for the months of August and September, 1977. On 17th October, 1977 the respondent moved an application before the Munsiff, Abu Road for striking out the defence of the petitioner on the ground that the rent for the month of July, 1977 which should have been deposited by the 15th August 1977 was not deposited by that date and thus the petitioner had committed default in the payment of rent. In his reply dated 31st October 1977 to the aforesaid application the petitioner pleaded that he had not committed any default in the payment of rent and that there was no ground for striking cut the defence of the petitioner. In his aforesaid reply the petitioner also pleaded that in case it was found that the petitioner was a defaulter in the payment of rent for the month of July, 1977, the time for depositing the aforesaid rent may be extended. The aforesaid reply dated 31st October, 1977 was subsequently amended by the petitioner on 6th December, 1977 and as a result of the aforesaid amendment the only plea which was raised by the Petitioner in his reply to the application of the respondent dated, 17th October, 1977 was that the petitioner had not committed any default in the payment of rent and the defence of the petitioner could not be struck out. The Munsiff, Abu Road, by his order dated 14th February, 1978 found that the under for depositing the rent for the month of July, 1977 was submitted by the petitioner on 14th September, 1977 and as it was submitted more than 15 days after the expiry of the date by which the rent was payable, the period for depositing the rent should not be extended and that the petitioner had committed default in the payment of rent, and, therefore, his defence was liable to the struck out. The petitioner filed an appeal (CAO15/79) against the order dated 14th February, 1978 passed by the Munsiff, Abu Road. The said appeal of the petitioner was dismissed by the Civil Judge, Sirohi, by his order dated, 3rd March, 1979 on the view that under Section 13(4) of the Rajasthan Premises (Control of

Rent and Eviction) Act, 1950 (hereinafter referred to as the 'Act', the defendant during the pendency of the suit is liable to deposit, the rent in accordance, with the said provisions and that the Court has the power to extend the time for depositing the rent only by 15 days & that the court cannot grant extension for a period longer than 15 days. The Civil Judge held that the petitioner had submit the tender for depositing the rent for the month of July 1977 on 14th September, 1977, i.e. long after the expiry of 15 days, period, the petitioner was clearly a defaulter in the matter of depositing the rent and his defence was liable to be struck out by the Munsiff. The Civil Judge, therefore, dismissed the appeal of the petitioner. Being aggrieved by the aforesaid order passed by the Civil Judge dated the 3rd March, 1979, the petitioner has filed this revision petition.

3. Shri K.C. Samdaria, the learned Counsel for the petitioner, has not disputed that under Section 13(4) of the Act the tenant is required to deposit in court or pay to the land-lord the monthly rent subsequent to the period upto which determination has been made month by month by the 15th of each succeeding month or within such further time, not exceeding 15 days as may be extended by the Court, at the monthly rate at which the rent was determined by the court under Sub-section (3) and that in case the tenant fails to pay the rent in accordance with Sub-section (4) on the date or within the time specified therein, the deference against eviction can be struck out by the court under Sub-section (5) of Section of the Act. The submission of Shri Samadaria is, however, that the provisions of Sub-sections (4) & (5) of Section 13 of the Act are not attracted to the present case in as much as no order determining the amount had been passed by the Court under Sub-section (3) of Section 13 of the Act in the present case and in the absence of an order under Sub-section (3) the provisions of Sub-sections (4) and (5) of Section 13 do not come into operation. The submission of Shri Samadria is that the order dated 31st March, 1977 passed by the Munsiff, Abu Road, cannot be regarded as an order passed under Sub-section (3) of Section 13 of the Act.

4. Before dealing with the contention urged by Shri Samdaria in support of his submission that the order dated 21st March, 1977 was not an order passed under Sub-section (3) of Section 13 of the Act, it will be convenient to set out the provisions contained in Sub-sections (3), (4), (5), (6), (7) and (8) of Section 13 of

the Act, as amended by the Rajasthan Premises (Control of Rent and Eviction (Amendment) Act, 1976, Rajasthan Act 15 of 1976). The said provisions read as under:

Sub-section (3) In a suit for eviction on the ground set forth in Clause (a) of Sub-section (1) with or without any of the other grounds referred to in that Sub-sections, the Court shall, on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after filing of the written statements and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant. Such amount shall be established at the rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent there to upto the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six percent per annum from the date when any such amount was payable upto the date of determination:

Provided that while determining the amount under this Sub-section the court shall not take into account the amount of rent which was barred by limitation on the date of the filing of the suit.

Sub-section (4) The tenant shall deposit in court or pay to the landlord the amount determined by the court under sec-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three month, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month the monthly rent consequent to the period upto which the determination has been made, by the fifteenth of each succeeding month or within such further time, not exceeding fifteen days as may be extended by the court, at the monthly rate at which the rent was determined by the court under Sub-section (3).

Sub-section (5) If a tenant fails to deposit or pay any amount referred to in Sub-section (4) (xxx) on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the

hearing of the suit.

Sub-section (6) If a tenant makes deposit or payment as required by Sub-section (4) no decree for eviction on the ground specified in Clause (a) of Sub-section (1) shall be passed by the court against him.

Provided that a tenant shall not be entitled to any relief under this Sub-section, if having obtained such benefit or benefits under Section 13 A in respect of any such accommodation if he again makes a default in the payment of rent of that accommodation for six months.

Sub-section (7) If in any suit referred to in Sub-section (3) there is any dispute as to the amount of rent payable by the tenant, the court shall decide the dispute finally at the time of decision of the suit and may, at that time, pass such orders regarding costs or interest, as having regard to the circumstances of the case, it deems fit.

Sub-section (8) In case at the time of decision of the suit.

(a) the court finds that the amount of rent provisionally determined by it under Sub-section (3) and deposited in court or paid to the landlord under Sub-section (4) is less than the amount of rent finally decided as payable by the tenant, the court, shall pass a decree for the balance amount against the tenant.

(b) the court finds that the amount determined and deposited or paid as aforesaid in excess of the amount of rent finally decided as payable by the tenant, the court shall, in the event of passing a decree for eviction against the tenant on ground other than set forth. In Clause (a) of Sub-section (1), also pass a decree in favour of the tenant for such excess amount deposited or paid by him and in the event of dismissing the suit for eviction it shall direct in the decree that such excess amount will be adjusted by the landlord against future rent payable by the tenant.

5. Sub-sections (3) and (4) of Section 13 of the Act have been substituted by the Amendment Act of 1976 in the place of Sub-section (3), (4) and (5), Sub-section (5) is the same as Sub-section (6) as it stood prior to the Amendment Act of 1976 and Sub-section (6) has been substituted in the place, of Sub-section (7) as it

stood before the Amendment Act of 1976. Sub-secs. (7) and (8) have been inserted by the Amendment Act of 1976.

6. The first submission of Shri Samdaria, the learned Counsel for the petitioner, is that under Sub-section (3) of Section 13 a mandatory obligation has been imposed on the court to provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant on the first date of hearing or on any other date, as the court may fix in this behalf, which shall not be more than three months after the filing of written statement and shall be before the framing of the issues and that in order passed in contravention of the said provisions is null and void. Shri Samdaria has submitted that in the present case the written statement of the petitioner was filed on 22nd November, 1976 and an order under Sub-section (3) of Section 13 of the Act could only have been passed within three months of the date of filing the written statement i.e. before 21st February, 1977, and that the order dated 21st March, 1977 which was passed more than three months after the filing of the written statement was passed in contravention of the provisions of Sub-section (3) of Section 13 of the Act, and it could not be regarded as an order passed under Sub-section (3) of Section 13 of the Act, and the said order is, therefore, null and void. Shri R.R. Nagori, the learned Counsel for the respondent on the other hand, has submitted that the provisions of Sub-section (3) of Section 13 of the Act are mandatory only to the extent that the court must provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant, but the requirement in the said Sub-section prescribing the time limit within which the aforesaid determination is so be made is of a directory nature only and that a determination made after the expiry of the period prescribed in Sub-section (3) does not become illegal or void.

7. The question which thus arises for consideration is whether the requirement in Sub-section (3) that the court shall provisionally determine the amount of rent to be deposited in court or to be paid to the landlord by the tenant on the first date of hearing or any other date as court may fix in this behalf which shall not be more than three months after the filing of written statement & shall be before the framing of the issued is of mandatory nature and a determination made by the court after the expiry of aforesaid period it illegal and void.

8. In the matter of determining whether a particular provision of a statute is mandatory or directory in nature, the law appears to be well settled that no universal rule can be laid down and it is the duty of the court to ascertain the intention of the legislature upon a review of the language, the subject matter and the importance of the provision in relation to the general object intended to be secured, the mischief, if any, sought to be promoted by the Act. (See *Ramchandra v. Govind* : [1975]3SCR839 ). It is also well settled that the use of the word 'shall' in a statute, though generally taken in mandatory sense does not necessarily mean that in every case it shall have that effect (See *State of U.P. v. Manbodhan Lal* : (1958)11LLJ273SC *Collector of Monghyr v. Keshav Prasad* : [1963]1SCR47 ). *State of Kerala v. Alassomy Mohd* AIR 98 SC 933.

9. As pointed out earlier, the provisions of Sub-section (3) of Section 13 of the Act were substituted by the Amendment Act of 1976 for Sub-section (4) and (6) as they stood prior to the said amendment. In Sub-section (4) as it stood prior to the amendment, it was laid down that in a suit for eviction on the ground set forth in Clause (a) of Sub-section (1) i.e. default in payment of rent, the tenant shall on the first date of hearing on or before such date as court may on an application made to it fix in that behalf or within such time not exceeding two months as may be extended by the court, deposit in court or pay to the landlord an amount calculated at the rate of rent at which it was last paid for the period for which the tenant had made default including the period subsequent thereto upto the end of the month previous to that in which deposit or payment is made together with the interest on such amount calculated at the rate of 6% per annum from the date when such amount was payable upto the date of deposit and must thereafter continue to deposit or pay month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate. In Sub-section (6) as it stood at that time, it was provided that if there was any dispute as to the amount of rent payable by the tenant the court shall determine having regard to the provisions of the Act, the amount to be deposited or paid to the landlord by the tenant within fifteen days from the date of such order in accordance with the provisions of Sub-section (4) Thus under Sub-section (4) of Section 13 as it stood prior to the Amendment Act of 1976, an obligation had been cast on the tenant to deposit on his own the amount of rent alongwith interest and in cases where there was a dispute as to the

amount of rent payable by the tenant, the court could determine the amount to be deposited under Sub-section (6). It was felt that the aforesaid provisions operated harshly against the tenant in the sense that in case he made a mistake in calculating the amount which he was required to deposit or pay to the landlord under Sub-section (4) he would be denied the benefit of the protection given by Sub-section (4) read with Sub-section (7) of Section 13 of the Act as it stood at that time. The said provisions also operated harshly against the landlord in the sense that in Sub-section (5) no time limit was prescribed within which the court was required to determine the amount which was to be deposited or paid by the tenant to the landlord. Sub-sections (3), (4) and (5) were, therefore, substituted by Sub-sections (3) and (4) by the Amendment Act of 1976 with object of relieving the aforesaid hardship caused to the tenants as well as to the landlords.

10. From the statements of objects and reasons for the aforesaid Amendment Act it appears that the Amendments in Section 13 of the Act were made with a view to provide for a simpler procedure for determination of amount of rent due in suit for ejectment on account of default with or without other grounds and to further provide that on deposit by the tenant of the provisional amount of arrears of rent determined by the court, ejectment of the tenant will not be made on the ground of first default on payment or tender of rent of six months to be made by him. In order to achieve the aforesaid objective in obligation has been cast under Sub-section (3), as amendment on the court to provisionally determine in every case the amount of rent to be deposited in court or to be paid to the landlord by the tenant. In order to relieve the hardship to the landlord resulting due to the long time taken in determination of the amount by the court, a duty has been cast on the court to determine the amount of rent on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after the filing of written statement and shall be before the framing of the issues.

11. A perusal of the object of the Act shows that the Act has been enacted for the purpose of conferring protection to the tenants against eviction and the Act is thus a beneficent piece of legislation enacted for the benefit of the tenants. The statement of objects and reasons of the Amendment Act of 1976 also shows, that in enacting the Amendment Act the Legislature intended to give further protection

to the tenants in certain matters, and in enacting the Amendment Act of 1976 it was not the intention of the Legislature to take away the protection against eviction which had been given to the tenant by the Act. Keeping in mind the aforesaid objectives of the Legislature we may now consider whether the requirement in Sub-section (3) of Section 13 of the Act, as amended, that the court shall provisionally determine the amount of rent to be deposited in the court or paid to the landlord by the tenant on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after filing of written statement and shall be before the framing of the issue, is in the nature, of a mandatory obligation so as to disentitle the court from making a determination after the expiry of the said period and thus deny to the tenant the protection against eviction sought to be conferred upon him by the Act. In this context it may be observed that the obligation which has been imposed by Sub-section (3) with regard to the period within which the determination has to be made has been imposed on a public officer viz the court, and the tenant, who is party to the suit, has no control over the discharge of, the functions by the said public officer. In so far as statutes relating to the performance of public duties the rule of statutory construction which is normally applied is that such statutes are directory and are not mandatory in nature.

12. In Crawford on Statutory Constructions it has been stated:

As a general rule, a statute which regulates the manner in which public officials shall exercise the power in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order, and convenience and neither public nor private rights will be injured or impaired thereby', (See page 520 para 266).

13. As a general rule, a statute which specifies a time for the performance of an official duty will be construed as directory so far as the time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure. (See page 536 para 269).

14. Similarly, in Sutherland on Statutory Construction (Vol. III pages 102 and 103) it has been observed:

For the reason that individuals or the public should not be made to suffer for the dereliction of public officers, provisions regulating the duties of public officials and specifying the time for their performance are in that regard generally directory. A statute specifying a time within which a public officer is to perform an official act regarding the rights & duties of others is directory unless the nature of the act to be performed, or the phraseology of the statutes, is such that the designation of time must be considered a limited of the power of the officer. The rule has been applied to hold provisions directory which required a decision of a court, referee, Administrative agency, or the like, to be entered or filed within a certain time.

15. In *Smith v. Jones* 109 PR 809, It has been laid down that:

But it has often been held, where an Act ordered anything to be performed by a public body, and merely pointed out the specific time when it was to be done, that such Act was not inoperative but directory, said might be complied within reasonable time after the period prescribed.

16. In *Montreal Street Railway Company v. Normandin* 1917 Appeal Cases 170, the Judicial Committee at the Privy Council was dealing with a case in which the verdict of the jury was challenged on the ground of irregularities in the due revision of the jury list and the question which came for consideration was whether statutes which provide for revision of the jury list are of a mandatory nature. The Judicial Committee of the Privy Council, holding that the said statutes were directory and not of mandatory nature, his observed.

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or Injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of she Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

17. The aforesaid observations have been quoted with approval by the Supreme Court in *State of U.P. v. Madbodhan Lal* : (1958)IILLJ273SC .

18. In *Remington Rand of India Ltd, v. the Workmen* : (1967)11LLJ866SC , the Supreme Court has negated the contention that the provisions of Section 17(1) of the Industrial Disputes Act, 1947, which lays down that the award of the Industrial Tribunal must be published in the Gazette within a period of 30 days from the date of its receipt by the appropriate Government, are mandatory and has laid down:

Keeping the above principles in mind, we cannot but hold that a provision as to time in Section 17(1) is merely directory and not mandatory. Section 17(1) is obligatory on the Government to publish the award. The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 20 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold that the award would therefore, be rendered invalid. It would be attaching undue importance to a provision not in the mind of the legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non publication of the award within the period of the thirty days does not entail any penalty & this is another consideration which has to be kept in mind.

19. In *Prakas Chand Maheshwari v. The Zila Parishad Muzaffernager* : AIR 1971 SC1696 , the question which arose for consideration before the Supreme Court was whether the provisions of Rules 3 and 4 of the U.P. District Board Rules which prescribed a time schedule for the purpose of assessment of tax by the District Board were mandatory in nature. The Supreme Court held that the time schedule prescribed in the said rule was only directory and not 'mandatory and failure to follow the time schedule prescribed in the said rule did not render the assessment illegal and has observed.

There rules laying down certain dates by which the work was directed to be taken in hand and completed were merely directory and mandatory. There was nothing in these rules to suggest that if the dates were not strictly observed any prejudice would be caused to the assessee.

20. If the provisions of Sub-rule (3) of Section 13 as amended, are construed in the light of the principles referred to above, the conclusion is inescapable that while Sub-section (3) casts a mandatory obligation on the court to provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant, the further requirement in Sub-section (3) that the he said determination shall be made by the court on the first date of bearing or on any other date as the court may fix in this behalf shall not be more than three months after filing of written statement and shall be before the framing of the issue cannot be regarded as mandatory and it is only of a directory in nature a determination made by the court after the expiry of aforesaid period is not rendered illegal or void. The prescription of the time within which the court should make the provisional determination in Sub-section (3) of Section 13 is with a view to emphasise the need for an expeditious determination by the court. But to hold that if the aforesaid determination is not made within the aforesaid period prescribed, the power to make the determination comes to an end and cannot be exercised would result in serious renewal inconvenience and injustice to tenants who have no control over the public officer viz the court, who has been entrusted with the said/duty. Such a construction also would not promote the main object of the legislature in enacting the Act as well as the Amendment Act of 1976, namely, to give protection to the tenants against eviction. It is possible to visualise situations when due to circumstances beyond control, it may not be possible for the court to make the provisional determination within the period prescribed in Sub-section (3) of the Section 13 of the Act. The court may fix a date making determination within three months of the filing of written statement but the date so fixed may be declared a public holiday or on the said date Presiding Officer may go on leave & no judicial officer may be available to take up the case on that date so as to make the determination within the period of three months prescribed in Sub-section (3). Similarly there may be a case where the record may become defective on account of death of one of the parties after the filing of the written statement and it may not

be possible to proceed with the case and to make the determination within a period of three months from the date of filing the written statement as prescribed by Sub-section (3) of Section 13 of the Act. To hold that the period prescribed in Sub-section (3) of Section 13 for the provisional determination of the amount by the court is mandatory would result in penalising the tenant for something for which he is not at all responsible. The legislature, in enacting Sub-section (3) of Section 13 and in prescribing the aforesaid time limit, could not have intended to achieve the said result.

21. At this stage I may refer to the decisions on which reliance has been placed by Shri Simdaria, the learned Counsel for the petitioner, in support of his submission that the provisions of Sub-section (3) of Section 13 prescribing the time limit within which the provisional determination should be made, are mandatory in nature. One of these decision is the judgment of the Supreme Court in *State of U.P. v. Laxmi Ice Factory* : [1962]46ITR640(SC) wherein the Supreme Court while dealing with the question whether Clause, 9(7) of the statutory Order issued by the State Government in exercise of powers conferred on it under the U.P. Industrial Disputes Act, 1947, which provided that the decision of the Tribunal shall be pronounced in open court was mandatory in nature, held that the said provision was mandatory on the view that the object of the legislature would be defeated if the said clause was read as merely directory and further that if the said provision was held to be mandatory in nature it would cause no serious hardship to any one because the Government could always require the Tribunal to pronounce its decision in open court and extend, if necessary, for the purpose, the time fixed for giving its decision and that either party to the proceedings could also ask the Government to call upon the Tribunal to pronounce its decision in open court, In the said case the Supreme Court has referred to the decision of the Judicial Committee of the Privy Council in *Montreal Street Railway Company v. Normandin* 1917 AC 170, and has distinguished it on the view that the proceedings that were held before the Tribunal would not become null and void if Clause 9(7) of the Statutory Order was held to be imperative The aforesaid decision thus does not lead support to the submission of the learned Counsel for the petitioner.

22. The other decision on which reliance has been placed by the learned Counsel for the petitioner is the decision of the Supreme Court in *Laxmi Narain v. Union of India* : [1976]2SCR785 where Section 6(8) of the Bengal Finance (Sales-tax Act), 1941 which empowered the State Government after giving by notification in the official Gazette not less than three months notice of its intention so to do, may by like notification add to or omit from or otherwise amend the schedule was held to be mandatory. In the said case Supreme Court has observed that in prescribing the said period of notice to be not less than three months the legislature had taken into consideration a number of matters and that the span of the notice was the essence of the legislative mandate. It cannot be said that the period within which the determination should be made as laid down in Sub-section (3) of Section 13 is the essence of the legislative mandate. In my view the essence of the legislative mandate is that there must be a provisional determination of the amount of rent payable by the tenant to the landlord. The decision of the Supreme Court in *Laxmi Narain v. Union of India* (supra) does not therefore, assist the learned Counsel for the petitioner.

23. It must, therefore, be concluded that the period prescribed in Sub-section (3) of Section 13 of the Act within which the court should make provisional determination of the amount of rent to be deposited in court or to be paid to the landlord by the tenant cannot be regarded as mandatory and that it is only directory and the order dated 31st March, 1977 cannot be held to be invalid merely because it was passed more than three months after the filing of the written statement.

24. The second contention urged by Shri Samdaria the learned Counsel for the petitioner, was that the order dated 21st March, 1977 does not contain any reference to Sub-section (3) of Section 13 and, therefore, it was not an order passed under Sub-section (3) of Section 13 of the Act but was merely an exercise by the Munsif of his general power to determine the rent. In my opinion the aforesaid contention cannot be accepted. Merely because the order dated 21st March, 1977 does not contain a reference so the provisions of Sub-section (3) of Section 13 of the Act, does not mean that it the said order was not passed in exercise of the powers conferred by Sub-section (3) of Section 13 of the Act. A perusal of the order-sheet of the court of the Munsif in the civil suit shows that on

14th February, 1977 the Munsif had adjourned the suit to 21st March, 1977 for the purpose of determination of rent and by order dated 21st March, 1977 he determined the rent which was payable by the petitioner for the period from 21st December, 1975 to 20th December, 1977 and also determined the interest payable on the aforesaid rent and further prescribed the period within which the aforesaid rent was to be deposited. This shows that, in passing the order dated 21st March, 1977 the Munsiff, Abu Road, was exercising the powers conferred upon him under Sub-section (3) of Section 13 of the Act. Merely because the said order was passed more than three months after the filing of the written statement cannot lead to the inference that the Munsiff Abu Road, was not exercising the powers conferred on him under Sub-section (3) of Section 13 of the Act.

25. The third contention urged by Shri Sumdaria, the learned Counsel for the petitioner, was that the determination under Sub-section (3) of Section 13 postulates that the tenant has actually committed default in the payment of rent and that in a case where the tenant pleads that he was not a defaulter the court cannot strike out the defence without determining whether the tenant was actually a defaulter or not. The submission of Shri Samdaria is that in the present case the petitioner in his written statement has pleaded that he has not committed any default in the payment of rent and it was incumbent upon the Munsiff to first arrive at a finding on the aforesaid plea of the petitioner and only if it rejected the aforesaid plea and found that the petitioner was a defaulter, he could strike out the defence of the petitioner. In support of his aforesaid submission, Shri Samdaria has placed reliance on the decision of a learned Judge, of this Court (Bhargava, J.) in *Vishvanath Singh v. Gopilal* 1970 RLW 223. In my opinion the aforesaid submission of the learned Counsel for the petitioner is without substance. The decision of Bhargava, J. in *Vishwanath Singh v. Gopilal* (supra) was dissented from by another learned Judge of this Court (Lodha J. as he then was) who was of the view that determination of the question whether or not the tenant had committed default as envisaged in Clause (a) of Sub-section (3) of Section 13 of the Act was not contemplated by Sub-section (4) of Section 13 of the Act as it stood before the Amendment Act, 1976 and that all that was required for the applicability of Sub-section (4) of Section 13 was that the suit for eviction must have been filed on the ground set forth in Clause (a) of Sub-section (1) with or

without any other ground inferred to in that Sub-section. In view of this conflict of opinion a reference was made to a Division Bench of this Court in *Saligram v. Narottam Das* 1971 RLW 558, and the Division Bench has affirmed the interpretation placed by Lodha J., and has over ruled the view taken by Bhargava, J. in *Vishwanath Singh's case* (supra). The Division Bench of this Court has Laid down that all that is required for the applicability of Sub-section (4), as It stood prior to the Amendment Act, 1976, was that the suit for eviction must have been filed on the ground sub-forth in Clause (a) of Sub-section (1) with or without any of the other grounds referred to in that Sub-section and that the suit is said to be based on a particular ground if the plaint contained an allegation that ground subsists & that Sub-section .(4) would be applicable even in a case where In a plaint false allegation is made that the tenant has committed a default as envisaged in Clause (a) of Sub-section (1) of Section 13. On a perusal of the provisions of Sub-section (4) of Sub-section 13 of the Act, as it stood prior to the amendment Act of 1976, and the provisions of Sub-section (3), as introduced by the Amendment Act of 1976, I find that the expression 'In a suit for eviction on the ground set-forth in Clause (a) of Sub-section (1) with or without any other ground referred to in that subsection', which was contained in Sub-section (4), as it stood prior to the Amendment Act of 1976, has been repeated in Sub-section (3), as substituted by the Amendment Act of 1976. The decision of the Division Bench of this Court in *Saligram v. Narottam Das* (supra), would, therefore, apply to Sub-section (3) of Section 13, as substituted by the Amendment Act, and in view of the aforesaid decision it must be held that the provisions of Sub-section (3) were applicable in the present case because in the plaint the respondent has alleged that the petitioner had committed default as envisaged in Clause (a) of Sub-section (1) of Section 13 of the Act and it was not necessary for the court to adjudicate upon the said plea before making an order of provisional determination of the rent under Sub-section (3) of Section 13 of the Act *Shri Samdaria* submitted that the decision of the Division Bench of this Court in *Saligram v. Narottam Dass* (supra) does not lay down the correct law and that the law laid down by Justice Bhargava in *Vishwanath Singh v. Gopilal* is the correct law and that the decision of the Division Bench in the *Saligram v. Narottamdas* (supra) requires reconsideration. I do not find any merit in the aforesaid submission

26. Thus I find that none of the contentions urged by Shri Samdaria the learned Counsel for the petitioner, in support of his submission that the order dated 21st March, 1977 was not valid order passed under the provisions of Sub-section (3) of Section 13 of the Act, has any substance.

27. Once it is found that the order dated 21st March, 1977 was an order passed under Sub-section (3) of Section 13 of the Act, the provisions of Sub-section (4) of Section 13 of the Act would be attracted, and under Sub-section (4) of Section 13 of the Act it was incumbent upon the petitioner to deposit in court or pay to the landlord month by month the monthly rent subsequent to the period for which determination had been made, by the fifteenth of each succeeding month or within such further time not exceeding fifteen days as may be extended by the court, at the monthly rate at which the rent was determined by the court under Sub-section (3) Under the order dated 21st March, 1977 the monthly rent had been determined by the Munsiff at Rs. 50/- p.m. and the petitioner was obliged to deposit in the court or pay to the respondent landlord the rent for the month of July, 1977 by 15th August, 1977. The petitioner however, submitted the tender for depositing the rent for the month of July, 1977 on 14th September, 1977. Under Sub-section (4) of Section 13 of the Act the court could extend the period for depositing the rent for a period not exceeding fifteen days, and therefore, even if the court was to exercise its power to extend the period for deposit of the rent for July, 1977 the said rent should have been deposited not later than 30th August, 1977. In submitting the tender for depositing the rent for the month of July, 1977 on 14th September, 1977 the petitioner had committed default in payment of rent which even the Munsif, Abu road, was not empowered by law to condone. The petitioner had thus contravened the provisions of Sub-section (4) of Section 13 of the Act & in view of Sub-section (3) of Section 13 of the Act the said contravention entailed the striking out of his defence against eviction. The order passed by the learned Munsif, Abu road, striking out the defence of She petitioner against eviction, therefore, does not suffer from any illegality and has been rightly affirmed by the Civil Judge in appeal.

28. Thus, there is no merit in this revision petition, and it, is hereby dismissed. But in the circumstances of the case there will be no order as to costs in this revision

petition.

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