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Court : Rajasthan

Decided On : Oct-23-2002

Reported in : 2003(1)WLC528; 2003(2)WLN566

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Revision Petition No. 435 of 1994

Appellant : Dhan Raj

Respondent : Brijesh Kumar

Advocate for Pet/Ap. : Mr. Lalit Kawadia

Disposition : Revision allowed

Judgement :

B.S. Chauhan, J.

1. This revision has been filed against the impugned order dated 16.12.1993 passed by the First Appellate Court dismissing the appeal filed by the defendant-petitioner against the order dated 24.4.1992 passed by the trial Court striking out the defence of the defendant-petitioner for default in payment of rent within the period prescribed by the law.

2. The facts and circumstances giving rise to this case are that Suit No. 7/81 was filed in 1981 by the plaintiff/non-petitioner for eviction of the defendant-petitioner on various grounds under the provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short, 'the Act'). Vide order dated 9.5.1981, the trial Court determined the interim rent in view of the provisions of Section 13(3) of the Act. The trial proceeded and both the parties led evidence. When the matter came up for final arguments on 23.1.1992, plaintiff/ non petitioner filed an application under Section 13(5) of the Act contending that defendant-petitioner committed default in depositing the rent, as mandatorily required under Section 13(4) of the Act and deposited the same at a belated stage on several occasions, his defence was liable to be struck off. Defendant-petitioner took the plea that as the incident related to a remote period; delay caused in depositing the money was hardly of a few days and that was not intentional. Moreover, as the rental amount so lately deposited by him had been withdrawn by the plaintiff/non-petitioner, he waived the right to raise the issue of striking out the defence and, therefore, the application was liable to be rejected. The trial court, after hearing both the parties, allowed the application and struck off the defence vide order dated 24.4.1992. Being aggrieved and dissatisfied, the defendant-petitioner filed an appeal which has been dismissed vide order dated 16.12.1993. Hence this revision.

3. Mr. Lalit Kawadia, learned Counsel for the petitioner, has submitted that the delay, if any, in depositing the rent in time occurred from 1988 to 1990, i.e. in remote past. Subsequent thereto, the defendant-petitioner had been allowed to lead evidence and when the matter was fixed, after expiry of two years, for final hearing, the application under Section 13(5) of the Act to strike off the defence was not maintainable. Once the landlord had withdrawn the amount deposited by the defendant-petitioner, he had waived the right to raise the issue and, thus, there was no cause of action surviving on that date. Even if there was any delay, as the defendant-petitioner had moved an application under Section 5 of the Limitation Act, 1963 (for short, 'the Act, 1963') on 10.4.1992 and the Court had the power to condone the delay and the delay crept therein was not intentional, the Courts below have committed material irregularity in exercise of jurisdiction and allowed the application under Section 13(5) of the Act.

4. On the other hand, Mr. D.R. Bhandari, learned Counsel appearing for the plaintiff/non-petitioner, has vehemently submitted that the provisions of Section 13(4) of the Act are mandatory in nature and require strict adherence and non-observance of the same, even once, is enough to struck off the defence. As it is the statutory requirement, the question of acquiescence, estoppel or waiver by the plaintiff/non-petitioner did not arise and the case does not present special features to warrant exercise of revisional jurisdiction by this Court.

5. I have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Section 13(4) of the Act provides that after determination of interim rent, the arrears shall be deposited within the stipulated period and further the tenant shall also continue to deposit in Court or pay to the landlord month by month the monthly rent and subsequent to the period upto which determination has been made, by 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). Sub-section (5) of Section 13 further reads as under--

if a tenant fails to deposit or pay any amount referred to in Sub. Section (4) 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.

7. The premises, on which the Courts below proceeded with the requirement of depositing the interim rent every month, as provided under Sub-section (4) of Section 13 of the Act, was mandatory and if tenant fails to deposit, striking out of the defence was a natural consequence. The first issue, which arises in this case is as to whether the provisions of Sub-Sections (4) & (5) of Section 13 of the Act are mandatory in nature and even if 'yes', whether the requirement of Sub-section (5) can be waived by the landlord

8. A Constitution Bench of the Hon'ble Supreme Court, in *State of U.P. and Ors. v. Babu Ram Upadhyaya*, : 1961 CriLJ773 , considered the issue and placed reliance upon a large number of earlier judgments and held as under:

When a statute uses the word 'shall', prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

9. While deciding the said case, the Hon'ble Supreme Court also placed reliance upon the Maxwell on 'interpretation of Statutes', 10th Edn. p. 381, wherein it has been observed as under:

On the other hand, where the prescription of a statute relates to the performance of a public duty and where the invalidation of the act done in neglect of them would work serious general inconvenience or injustice to persons who have no control over who have been entrusted with the duty without promoting the social aim of the legislation, such prescription seems to be generally understood as mere instruction for the guidance and governance of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, in deed, but it does not affect the validity of the act done in disregard of them.

10. In *Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur*, : [1965]1SCR970, the Hon'ble Supreme Court held that whether the provision is mandatory or directory, depends upon the facts of each case and no general principle of universal application can be laid down. The relevant factors to determine the issue are the purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to the persons resulting from whether the provision is read one way or the other, in relation to the particular provision to other provisions dealing with the same has been and other considerations which

may arise on the facts of a particular case including the nature of the provision.

11. In *State of Mysore v. V.K. Kangan*, : [1976]1SCR369 , the Hon'ble Supreme Court considered the statutory provisions of the Madras Land Acquisition Rules with the provisions of the Land Acquisition Act, wherein the issue arose as to whether giving notice to the person interested was mandatory. The Court held that 'whether a provision is mandatory or directory, would, in the ultimate analysis, depends upon the intent of the law maker and that has to be gathered not only from the phrasology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other.'

12. In *Sharif-Ud-Din v. Abdul Gani Lone*, : [1980]1SCR1177 , the Hon'ble Supreme Court considered the provisions of Sub-section (3) of Section 89 of the J&K; Representation of People Act, 1957 as to whether the requirement that a copy of the election petition for respondent should be attested by the election petitioners, was mandatory or directory. In the said case, the copy had been attested by the counsel for the petitioner and not by the election petitioner. The Hon'ble Apex Court held that the object requiring the election petitioner to attest the copy was that the petitioner was exclusively and fully responsible for its contents and the respondent in the election petition should have a copy duly attested under the signatures of the election petitioner to prevent any unauthorised alteration or tempering with the contents of the original petition after it is filed in the Court. The Court held that the difference between a mandatory and directory rule is that the former requires strict observance while in the case of latter, substantial compliance of the rule may be enough and where the statute provides that failure to make observance of a particular rule would lead to a specific consequence, the provision has to be construed as mandatory. The Apex Court held as under:

In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to Sub-serve and its design and the context in which it is enacted. If the object of the law is required to be defeated by non-compliance with it, it has to be regarded as mandatory.....Whenever the statute provides that a particular act is to be done in a particular manner and also

lays down that the failure to compliance with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.

13. The Apex Court held that attestation of the election petition by the counsel for the election petitioner did not meet the requirement of law as it was a mandatory provision and non-observance thereof must follow the necessary consequence provided under the statute.

14. In *Ganesh Prasad Sah Kesari and Anr. v. Lakshmi Narayan Gupta*, : [1985]3SCR825 , the Hon'ble Supreme Court, while considering the provisions of Bihar Building (Lease, Rent & Eviction) Control Act, 1947, which empowered the Court to struck off the defence for not depositing the rent under Section 11-A of the Act, held the provision to be directory after ascertaining the intentment of the legislature and the purpose for which the provision was enacted and held that as the statute was of the beneficial nature and the said provision was enacted to protect the tenant, the expression 'shall' had to be read as 'may'.

15. In *B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick and Anr.*, : [1987]2SCR559 , the Hon'ble Supreme Court, while considering the similar provisions in West Bengal Premises (Tenancy) Act, 1956 had taken the same view and held that the words 'shall order the defence against delivery of possession to be struck out', occurring in Section 17(3) have to be construed as directory provision and not a mandatory provision as the word 'shall' has to be read as 'may'. Such a canon of construction is warranted because otherwise the intentment of the legislature will be defeated and the class of the tenants, for whom the beneficial provisions were made by the Ordinance and the Amending Act will stand deprived of them.

16. In *Owners and Parties Interested in M.V. 'Vali Pero' v. Fernando Lapez and Ors.*, : AIR 1989 SC2206 , the Hon'ble Apex Court considered the provisions of Rule 4 of the Calcutta High Court Rules, 1914 in the context that in a case where the witness was examined through commission and there has been an omission to take his signatures on his deposition, observing that the requirement of law was that the deposition of a witness examined by the commission shall be taken down

in writing, read over and where necessary, translated to the witness in order that the mistake or omission, if any, may be rectified or supplied. The mandate in Rule 4 to this extent must be strictly observed in order to ensure a correct record of the deposition. The further requirement of signature of commissioner with the date of the examination and deposition being left with the commission to enable its production in the Court is to ensure its authenticity. The signature of the witness was not a part of the deposition and the same was not essential for any other purpose in this context and, thus, the requirement of witness's signature on the deposition in Rule 4 was held to be directory even though the requirement of deposition being recorded, read over to him and corrected whenever necessary, was held to be mandatory. In that context, the provisions of Order 18 Rule 16 of the Code were also considered holding that it was the only provision which required the signature of the witness on his deposition and being the provision directory, substantial compliance was held to be enough.

17. In *Rubber House v. Excellsior Needle Industries Pvt. Ltd.*, : [1989]1SCR986 , the Hon'ble Supreme Court considered the provisions of the Haryana (Control of Rent & Eviction) Rules, 1976, which provided for mentioning the amount of arrears of rent in the application and after placing reliance upon large number of judgments, including *Bhikraj Jaipuria v. Union of India*, : [1962]2SCR880 ; *Raza Buland Sugar Co. Ltd.*, (Supra) *K. Kamaraja Nadar v. Kunju Thevar*, : [1959]1SCR583 ; *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, : [1955]1SCR1104 ; *State of U.P. v. Babu Ram Upadhyaya*, (supra) and *Ajit Singh v. State of Punjab*, : (1983)ILLJ410SC the provision was held to be directory though the word 'shall' has been used in the statutory provision for the reason that non-compliance of the rule, i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty.

18. Similar view has been reiterated in *Lakshmanasami Gounder v. C.I.T.*, *Selvamani and Ors.*, : (1992)1SCC91 , *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, : 1997 CriLJ4059 and *Collector of Customs, Calcutta v. Tin Plate Co. of India Ltd.*, : 1996(87)ELT589(SC) .

19. In *Dinkar Anna Patil Anr. v. State of Maharashtra and Ors.*, : AIR 1999 SC152 , the Hon'ble Supreme Court considered the provisions of the Maharashtra Sales Tax Officers Class I (Recruitment) Rules, 1982. Rule 4-A thereof provided that the State Government 'may', in consultation with the Public Service Commission wherever necessary, make appointment in relaxation of prescribed quota. The word 'may' used therein was interpreted as 'shall' on the ground that construing the said provision directory would confer an arbitrary power upon the Government to make the Rules by providing relaxation. The Apex Court held that when reading the provision as directory, would give unbridled power resulting in arbitrary exercise of power which should be read a mandatory for the reason that such a provision provides for purposive construction and the expression 'may' used in the statutory provision may be required to be read as usual.

20. In *B.S. Khurana and Ors. v. Municipal Corporation of Delhi and Ors.*, : AIR 2000 SC3131 , the Hon'ble Supreme Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

21. In *Shashikant Singh v. Tarkeshwar Singh and Anr.*, : 2002 CriLJ2806 , the Hon'ble Supreme Court considered the provisions of Section 319 of the Code of Criminal Procedure and held as under:

Where a statute does not consist merely of one enactment, but contains number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only, while others are to be considered absolute and essential; that is to say, some of the provisions may be disregarded without rendering invalid the things to be done but others not.....The mandate of the law of fresh trial is mandatory

whereas the mandate that newly added accused could be tried together with the accused is directory.

22. In *State of Haryana and Anr. v. Raghubir Dayal*, : (1995)1SCC133 , the Supreme Court has observed as under:

The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word 'shall'; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.

23. The real test to determine whether the provision is mandatory or directory is, if non-compliance with the provisions renders the proceeding invalid, it would be mandatory. However, the intent of the Legislature is a most relevant factor to determine the issue and not the language used therein.

24. Be that as it may, a Full Bench of this Court, in *Vishandas v. Savitri Devi*, 0043/1988 , has held that as the Court is vested with the discretion to order striking out of the defence, depending upon the circumstances of the case, in the interest of justice and the Court has been clothed with the power to extend the time for payment or depositing the rent in the Court, being the beneficial legislation, the provisions cannot be held to be mandatory. The use of word 'shall'

will not make these provisions mandatory. The provisions involved in the instant case are directory.

25. The second question requiring consideration is; whether non-observance of a statutory requirement of law can be waived by the other party in whose favour the right has been created? Waiver is distinguishable from estoppel to the extent that estoppel does not operate against statute while in a case of waiver, unless it involves the public at large or the statutory requirement is in public interest a private person can waive it. Waiver is an agreement to release or not to assert a legal right while estoppel is a rule of evidence. It has consistently been held that no person can claim estoppel against the statutory requirement.

26. It is settled proposition of law that estoppel does not lie against the Statute. (Vide Delhi Development Authority v. Ravindra Mohan Aggarwal and Ors., : AIR 1999 SC1256 and M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Ors., : [1999]3SCR1066 . Nor the Court has a power to issue any direction contrary to law. (Vide Union of India and Ors. v. Kirloskar Pneumatic Co. Ltd., : 1996(84)ELT401(SC) ; State of U.P. and Ors. v. Harish Chandra and Ors., : (1996)11LLJ627SC ; Vice Chancellor, University of Allahabad and Ors. v. Dr. Anand Prakash Mishra and Ors., : (1997)10SCC264 and Shish Ram and Ors. v. State of Haryana and Ors., : (2000)6SCC84 .

27. A Constitution Bench of the Hon'ble Supreme Court, in Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee, : [1962]3SCR604 , has categorically held that question of estoppel does not arise against statute, and the Court placed reliance upon paragraph 427 of Volume XV, 3rd Edition of the Halsbury's Law of England, wherein it has been observed as under:

Results must not ultra vires.--A party cannot, by representation, any more than by other means, raise against himself an estoppel so as to create a state of things which he is legally disabled from creating. Thus, a corporate or statutory body cannot be estopped from denying that it has entered into a contract which it was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do....

28. Similar view has been reiterated by the Apex Court in *Bengal Iron Corporation v. Commercial Taxes Officer and Ors.*, : 1993(66)ELT13(SC) . Thus, in view of the above, the question of application of estoppel against statute/public policy does not arise.

29. Even in a mandatory provision, under specific circumstances, a party can waive its right. Waiver means relinquishment of one's own right. It is referable to a conduct signifying intentional abandonment of right. It may be express or may even be implied but should be manifest from some overt-act. Waiver involves a conscious, voluntary and intentional relinquishment or abandonment of a known existing legal right. Thus, benefit, claim or privilege, which, except for such a waiver, the party would enjoy. Even in a case if a plea is taken and evidence is not led, it would amount to be a waiver. (Vide *Basheshernath v. C.I.T., Delhi*, : [1959]35ITR190(SC) ; *Mademsetty Satyanarayan v. G. Yelioji Rao*, : [1965]2SCR221 ; *Associates Hotels of India Ltd. v. Sardar Ranjit Singh*, : [1968]2SCR548 and *Sikkim Subba Associates v. State of Sikkim*, : [2001]3SCR261 .

30. In *Lachoomal v. Radhey Shyam*, : [1971]3SCR693 , the Hon'ble Supreme Court held that 'every one has a right to waive and to agree to waive the advantage of law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public policy.'

31. this Court, in *Ratan Lal v. Ramlal*, 1981 RLW 469 considered the aspect of same provisions which are involved in this case and held that the right so accruing to the landlord is the benefit or advantage to him personally, therefore, it cannot be said to be against or opposite to public policy and, therefore, the landlord can always waive the right to ask the Court to struck off the defence for depositing the rent at the belated stage. While deciding the said case, the Court placed reliance upon and followed the law laid down by this Court in *Bundu v. Smt. Hasmat*, and *Kewal v. Sesmal*, 1981 RLW 77, wherein it has categorically been held that if the rent has been deposited at a belated stage, the landlord has a right to waive the right to ask for striking out the defence under Sub-section (5) of Section 13 of the

Act. A similar view has been reiterated in *Jaggannath v. Jani Ram*, ; *Ratan Lal & Jethmal v. Ram Lal*, 1981 WLN 442; *Madan Mohan v. Madhu Sudan*, 1983 RLW 585 *Sri Ram v. Huabai*, AIR 1984 NOC 24 and *Hukam Chand v. Madan Lal*, .

32. In *Rajendra Singh v. State of Madhya Pradesh and Ors.*, : AIR 1996 SC2736 the Hon'ble Supreme Court held as under:

It must, however, be remembered that we are dealing with parties to a contract, which is a business transaction, no doubt governed by statutory provisions. While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground for the Court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulting in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of mandatory provisions, interference does not follow as a matter of course. A mandatory provision conceived in the interest of public cannot be waived by him. In other words, wherever a complaint of violation of a mandatory provision is made, the Court should enquire in whose interest is the provision conceived. If it is not conceived in the interest of public, question of waiver and/or acquiescence may arise subject, of course, to the pleadings of the parties.

In view of the above, one may reach the inescapable conclusion that even if a statutory provision is mandatory and in case of non-observance thereof a right stands created in favour of a party, the said party may waive it unless it infringes the public policy or persons at large, if the right so created affects the said party individually.

33. The instant case requires consideration in view of the aforesaid settled legal proposition. The suit was filed in January, 1981. Interim rent was determined on 8.5.1981. The evidence was lad by the parties upto 6.1.1992. When the matter came up for final hearing on 23.1.1992, plaintiff/non-petitioner moved an application under Section 13(5) of the Act. To meet the application, an application under Section 5 of the Limitation Act was filed by the defendant-petitioner on 10.4.1992 and the order of striking off the defence was passed on 24.4.1992. The

application dated 23.1.1992 gives the particulars relating to payment of rent as under:

- (i) Rent for March 1988 was paid on 18.4.1988, i.e. three days delay.
- (ii) Rent for Sept. 1988 was deposited on 27.10.1988, i.e. 12 day's delay.
- (iii) Rent for Dec. 1988 was deposited on 16.1.1989, i.e. one day's delay.
- (iv) Rent for Jan. 1989 was deposited on 18.7.1989, i.e. three days' delay.
- (v) Rent for March, 1989 was deposited on 17.4.1989, i.e. two days' delay.
- (vi) Rent for Sept 1989 was deposited on 16.10.1989, i.e. one day's delay.
- (vii) Rent for Dec. 1989 was deposited on 14.2.1990, i.e. 29 days' delay.
- (viii) Rent for March, 1990 was deposited on 17.4.1990, i.e. two days' delay.

To the said application, reply was filed that delay in all the cases was unintentional and could be condoned by the Court and the application was not maintainable at such a belated stage. Moreso, if there was any delay, the application under Section 5 of the Limitation Act was filed to condone the same on the ground that the delay had occurred unintentionally sometimes the requirement in the bank etc. could not be complied with or on the last date there was a vacation in the bank. So far as the delay in depositing the rent for December, 1989 is concerned, the delay occurred because of misunderstanding and forgetfulness as the defendant-petitioner remained under the impression that the rent upto December 1989 had already been paid for the reason that the rent of three months was being deposited simultaneously in advance, therefore, it is a calculation error. The learned trial Court proceeded on the premises that the requirement was mandatory and as the defendant-petitioner had committed default as many as eight times, the delay could not be condoned and the explanation furnished by the defendant-petitioner in his application under Section 5 of the Limitation Act were held to be unsatisfactory. The Appellate Court also adopted the same course. Both the Courts below failed to consider the most relevant factor and it appears from the record that the same might not have been addressed to the Courts below and that is the

question of waiver and survival of cause of action.

34. Admittedly, the delay occurred on certain occasions from 1988 to 1990. Whenever the money was deposited at a belated stage, there was no denial by the landlord (plaintiff/non-petitioner) that he had not withdrawn the same and once he had withdrawn it, he had waived the right to raise the issue of striking off the defence and once he waived it, the cause of action lapsed. Even otherwise, this Court, in *Laxmi Tara Calendar v. Smt. Shanti Devi Borana and Ors.*, 1999 WLC (UC) 175, after placing reliance upon large number of judgments, held that if there has been a delay in depositing the rent on the ground of forgetfulness/ negligence, unless it is established before the Court that it is contumacious, the defence cannot be struck off because the default was merely of a technical nature and once the application under Section 5 of the Limitation Act had been filed, the Court must consider the case sympathetically for the reason that the default was not wilful.

35. Even otherwise, after the right to raise the issue had been waived, the question of surviving the cause of action does not arise. This issue was considered by this Court in *Chetan Das v. Annusuiya*, 1995 DNJ 686 and it was held as under:

It is true that when the tenant-revisionist fails to deposit after provisional determination of the rent under Section 13(3) of the Act No. 17 of 1950, as contemplated under Section 13(4) of the said Act, the cause of action accrues in favour of the landlord/non-petitioner to move an application under Section 13(5) of the aforesaid Act. The landlord non-petitioner has every right to move an application under Section 13(5) of the Act No. 17 of 1950. On ... as that day there was a cause of action in his favour to get the defence of the revisionist in an eviction suit to be struck off but since he has voluntarily and intentionally withdrawn the monthly rent of default on ... and, therefore, the cause of action which has accrued in his favour earlier ceases to exist after ... Since on the date of order passed by the learned trial Court on ... the cause of action for striking off the defence of the tenant revisionist was not in existence, the learned trial Court has no jurisdiction to strike off the defence of the tenant revisionist. The learned lower

Appellate Court has failed to exercise its jurisdiction in up-holding the illegal order passed by the learned trial Court.

Thus, in view of the above, as the payment made by the tenant at a belated stage had been withdrawn by the landlord and the plea has been raised at a much belated stage when the cause of action was no more surviving, the application itself was misconceived, not maintainable and had been filed to achieve an ulterior goal, i.e. eviction of the tenant without raising his defence after permitting him to lead the evidence. This was a case of acquiescence and the conduct of the plaintiff/non-petitioner debars him to raise the issue when the cause of action was no more surviving.

36. Thus, in view of the above, the revision succeeds and is allowed. The orders passed by the Courts below, i.e. 24.4.1992 and 16.12.1993, are hereby set-aside as the Courts below have committed material irregularity in exercise of their jurisdiction. As the matter is very old one and remained pending before this Court for a long time and the suit is pending for last twenty-two years, the learned trial Court is requested to hear the final arguments on the basis of the evidence led by the defendant-petitioner and conclude the trial expeditiously, preferably within the period of three months from today. The parties are directed to place the certified copy of this order before the learned trial Court within the period of two weeks from today. There shall be no order as to costs.