

the petitioner would suffer not only reduction of pay but also denial of promotion.

(12) In view of the foregoing position, I allow this petition, quash the impugned action including the order rejecting the petitioner's representation at Annexure P-6 and declare that the petitioner shall be deemed to have been promoted to Middle Management Grade Scale-II with effect from August 1, 1984. The petitioner shall be entitled to all consequential reliefs in the nature of arrears of salary. He will also be entitled to his costs which are assessed at Rs. 3,000.

J.S.T.

Before : M. S. Liberhan, J.

DR. N. K. SOOD,—Petitioner.

versus

SMT. TARA WATI AND ANOTHER,—Respondents.

Civil Revision No. 1237 of 1981.

September 6, 1991.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13 (2) (i)—Ejection sought for non payment of rent—Copy of plaint bearing date of drafting of petition i.e. 31st May, 1983—Petition filed much later i.e. 16th September, 1993—No notice to tenant regarding date of filing of petition—Tender of rent made till the date of drafting as given in plaint—Held that tender is valid—Reasonable to infer that landlord claimed ejection on the ground of non-payment from the date claimed till 31st May, 1983 and not for any unspecified date.

(Paras 24, 28 and 31)

Held, that it may be observed that facts in existence can only be verified and not the future happening which may happen or may not. The reading of the verification and the facts averred in the ejection petition and its bearing the date of drafting and non-intimation of the date of filing to the tenant, it would be reasonable to infer that the landlord claimed the ejection on the ground of non-payment of rent from 1st January, 1983 to 31st May, 1983 and not for upto some unspecified future date. I have not been able to persuade myself to accept the contention of the learned counsel for respondents that the landlord is not required to disclose the definite rent due and can take freak chances of ejection.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (i)—Landlord to state in his petition what amount of rent was due from which date to which date—These facts constitute cause of action.

Held, that it is requirement of law of pleadings and fair play that the petitioner should have stated in his petition what amount of rent was due from which date upto which date as these facts constitute his cause of action. It is not sufficient to allege what may be the ground of action. Material facts constituting the grounds of action must be stated.

Pleadings—Objects—Pleadings to bring further point of controversy—Facts disclosed to be intelligible stated with clarity and expressly.

Held, that further object of pleadings is to bring forth to the forefront the points of controversy between the parties to the lis. The parties cannot be permitted in Courts to secure or achieve their ends by dubious methods. One cannot be permitted to articulate the pleading in such a manner so as to put a veil over the pleadings. Court proceedings cannot be converted into the game of dice. Pleadings being foundation of the enquiry before a Tribunal it is normally expected that facts disclosed would be intelligible and stated with clarity and expressly. One cannot be permitted to veil the pleadings in order to have a freak chance of success.

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act 1949 against the revision of the order of the Court Shri H. L. Randev, Appellate Authority, Chandigarh dated 3rd March, 1987 affirming that of Shri B. C. Gupta, PCS, Rent Controller, Chandigarh dated 23rd November, 1984 ordering the eviction of the respondent in respect of ground floor of SCO No. 172/A, Grain Market, Sector 26, Chandigarh with cost and giving respondent three months time to vacate the possession of the premises.

Claim : Application under section 13 of the East Punjab Urban Rent Restriction Act, 1949 for the ejection of the respondents from a portion of the ground floor of SCO No. 172/A Grain Market, Sector 26, Chandigarh.

Claim in Appeal : For reversal of the order of the both the Courts below.

H. L. Sibal and S. C. Sibal, Sr. Advocate with Karen Randhawa, Advocate, for the petitioner.

M/s J. N. Kanwhal and O. P. Goyal, Sr. Advocates with Mr. S. S. Salar, Advocate, for the Respondent.

JUDGMENT

M. S. Liberhan, J.

(1). This revision petition has arisen from the order of ejection by the Rent Controller, Chandigarh, dated 23rd November, 1984 and affirmed by the Appellate Authority.

The ejectment was sought on the ground of non-payment of rent since 1st January, 1983 at the rate of Rs. 1,000 per month.

The tenant rebutted the grounds of ejectment. It was averred that the rent has been tendered as claimed in the petition along with interest and costs.

It would be expedient to reproduce the only surviving plea as taken in the ejectment application and the sequences of subsequent events which followed the filing of the ejectment application, in order to answer the questions raised by the parties :--

“3. The respondents are liable for ejectment from the demised premises on the following grounds —

(1) that respondent No. 1 has not paid or tendered the rent in respect of the demised premises since first of January, 1983, at the rate of Rs. 1,000 to the applicant”.

The ejectment application bears the date ‘30th May, 1983’. Similarly the facts averred are verified to be true and correct on 30th May, 1983 at Chandigarh. So far sequel of events subsequent to the filing of the application are concerned, they are to the effect that the application was presented before the Rent Controller on 17th September, 1983 who after perusal of the office report ordered that the petition be registered and summons be issued to the respondent for 28th October, 1983. In compliance with the said order, notice was issued to the respondents. It runs as under :—

“You are hereby directed to appear before me this Court on 28th October, 1983 at 10.00 A.M. in the above noted case as.....otherwise proceedings will be taken (not legible) according to law. Given under my hand and seal of the this 17th September, 1983”.

Alongwith the notice a copy of the ejectment petition was served on the tenant.

(2) On 28th October, 1983. Counsel for the parties appeared before the Rent Controller who assessed the costs at Rs. 30. Counsel for the respondents tendered Rs. 5,000 on account of rent with effect from 1st January, 1983 to 31st May, 1983; Rs. 245 as interest and Rs. 30 as costs, which was accepted by the counsel for the landlady under protest being insufficient, short and invalid. The case was adjourned to 9th November, 1983 for filing of written statement.

(3) The Rent Controller found, that since it was the duty of the tenant to pay rent upto date of filing the ejectment application, the tender made was short hence he was liable for ejectment. It was observed by the Rent Controller that it was the duty of the tenant to make the tender upto the date of filing the petition in the Court i.e. 16th September, 1983 though the original as well as copy of the ejectment petition served on the tenant bore the date as '30th May, 1983'. If the tenant wanted to take benefit of the proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the 'Act'), then the tenant should have been vigilant and tendered the rent upto the date of filing the petition. It was further observed that as no plea was taken by the respondent in the written statement that he was misled on account of any fraud played by the landlady upon him, the same cannot be gone into. No evidence beyond the pleadings can be looked into. It was further observed that the tenant should have inspected the file and taken a plea in the written statement with regard to fraud etc.

(4) The Appellate Authority addressed himself to the validity of the tender made and observed that it was the duty of the tenant to ascertain the arrears of rent due from him when the ejectment application was filed against the tenant. It was observed that it was desirable on the part of the landlady to have mentioned the date of filing the petition i.e. 16th September, 1983 under the date 30th May, 1983. Still if the landlady has failed to do so, the tenant cannot take advantage from it. He was under legal obligation to tender the rent due upto the date of filing the ejectment application along with interest and costs assessed, to avail the benefit of the proviso to the Act in order to escape his eviction. The tenant was required to be vigilant while making the tender on the first date of hearing. It was his duty to ascertain the date on which the ejectment application was filed for the purpose of tendering the rent. He cannot be permitted to take shelter behind the omission of the landlady, to disclose the date of filing the application to him, for his default of tendering less rent. With respect to the application for amendment of the written statement on the plea of fraud and mis-representatoin on the part of the landlady, the same was declined solely on the ground that the proposed amendment was not necessary for determining the real question i.e. the question with respect to the validity of the tender made.

(5) The thrust of the arguments of the learned counsel for the petitioner-tenant was that the tenant cannot be taken by surprise.

The cause of action is what the facts stated in the ejectment petition. Tenant is required to answer the facts averred. The decision of a case cannot be based on the grounds outside the pleadings of the parties. The only requirement of fair play is that the tenant is to be told that he is required to defend, before he can be called upon to enter his defence. A tenant can be ejected only, if he is in arrears of rent due from him and he does not tender, the rent as claimed by the landlord, interest thereon and costs assessed by the Rent Controller, on the first date of hearing. The rules of procedure are meant to do justice and not to lay wooby (Sic) traps for a party to the lis.

(6) The learned counsel for the tenant justified the tender of the rent upto 31st May, 1983. It was contended that the tenant just read the ejectment petition and satisfied the claim made in the petition. The tenant ought not ascertain the date on which the ejectment application was filed. Courts are not meant for laying wooby (Sic) traps to deprive the tenant of the statutory protection granted to him. The learned counsel, after referring to the ejectment application bearing the date and verification, contended that the petition is to be read in its entirety. It was further argued that the only inference which can be drawn is, that the rent was claimed from 1st January, 1983 to 31st May, 1983.

(7) The learned counsel for the tenant further urged that the Appellate Authority has erroneously declined the proposed amendment, particularly when the entire evidence with respect to fraud has already been led without any objection. The amendment could not be declined solely on the ground that it was not necessary. It could have been declined only if the authority had found the amendment to be *mala fide* or barred by any law. Whether the plea of fraud was necessary or not, could have been determined after the amendment had been allowed.

(8) The learned counsel for the tenant, in order to support his submission, relied upon *Isher Dass Tara Chand v. Harcharan Dass* (1), *Basant Ram v. Gurcharan Singh and others* (2), *Walaiti Ram v. Amar Nath* (3), *Puran Chand v. Mangal* (4) and *State of Orissa v. Sudhansu Sekhar Misra and others* (5).

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- (1) I.L.R. 1961(1) Punjab 315.
 - (2) 1959 P.L.R. 591.
 - (3) 1988 (2) R.C.J. 416.
 - (4) 1969 P.L.R. 571.
 - (5) A.I.R. 1968 S.C. 647.

The learned counsel for the respondent urged that though the object of the Act is to protect the tenant yet it ensures the regular payment of rent to the landlord without any harassment. The Act is an attempt on the part of the Legislature to balance the rights of the landlord as well as the tenant. It was urged that cause of action is not the amount of rent due but is tenant's being in arrears of rent due since a particular date.

(9) It was also submitted that the law does not require the ejectment petition to bear any date either of filing or drafting, or for calculation of the rent upto the date on which ejectment application was filed. Where the law requires the date to be given, it has specifically provided as in the case of verification. It was urged, that the cause of action for ejectment was tenant being in arrears of rent and not the amount of rent due. Material facts that the rent was due, since a particular date i.e. 1st January, 1983 was pleaded and in order to disclose cause of action, no further material facts were required to be disclosed. It was argued that in order to avail the benefit of proviso by tenant, rent due upto the date filing ejectment petition along with interest upto the date tender along with cost assessed by Rent Controller has to be tendered on the first date of hearing.

(10) It was incumbent on the part of the tenant to find out the date of filing the ejectment petition and tender the amount as required by law, in order to save himself from ejectment. Putting a date on the ejectment application as well as the date of verification are not the relevant facts to find out the cause of action pleaded.

(11) It was submitted that the question which requires determination is what is the date of filing the petition, is it the one typed on the ejectment application or the date when it is actually filed in Court.

(12) It was argued that the question of *mala fide* etc. could not be gone into in the absence of the pleadings. Ulterior motives or *mala fides* cannot be assumed. Mere giving wrong date on the application cannot lead to an inference of *mala fide*. It was urged that the tenant did not tender the rent even after he came to know of the date of filing the petition. Plea of fraud cannot be permitted to be raised at this belated stage. Mischief and fraud are to be shown by the tenant. In case of the plea of fraud and mischief the tenant was required to give particulars like date etc., which is mandatory.

(13) I have gone through the judgments of the Courts below, pleadings of the parties, the evidence led and considered the arguments addressed at the Bar.

(14) In *Ishar Dass Tara Chand's* case (supra) while answering the question whether the rent should be computed upto the date of first hearing or upto the date of filing the application, it was observed, "the law requires the tenant not to pay all the rent which is claimed by the landlord but only the rent which is due upto the date on which the application for ejection was made."

(15) It was further observed that "if the tenant chooses to pay the arrears of rent due as soon as he comes to know of it, before the first hearing is either fixed, there can be no question of his computing the arrears upto the date of hearing and the tenant would be entitled to the protection of the proviso." It was further observed that the landlord can only seek ejection if it is pleaded and proved that on the date of application, the tenant was in arrears of rent, it was due from the tenant's. Ejection could be ordered only, if the arrears of rent due were either not paid before first date of hearing to the landlord or not/tendered along with interest upto the date of tender with cost assessed by Rent Controller. Rent in arrears cannot be treated equivalent to the rent claimed. With respect to the object of the Act, it was observed that the enactment is made to save the tenant from the consequences of non-payment which may at times be, due to the misconduct of the landlord himself.

(16) In *Basant Ram's* case (supra), one of the question considered was whether the arrears of rent are to be ascertained merely by reference to the amount alleged in the landlord's petition to be due from the tenant and unpaid, which is the basis for the cause of action.

(17) After holding the object of the Act, for the protection of the tenant, the observation with respect to the effect of the proviso, runs as under, "The effect of the proviso would thus, seem to have been intended to be confined only to the case dealt with in the main clause, so as merely to afford a further opportunity for *locus penitentiae* to the tenant and if he complies with the demand of the landlord with respect to the arrears of rent due from his constituting cause of action for petition for eviction, he should be deemed to have satisfied his landlord's claim." With respect to the scope of enquiry by the judicial and quasi judicial tribunal, it was observed that "the scope of enquiry by the judicial and quasi judicial Tribunal is normally confined to the disputes set out by the contesting parties in their respective pleadings; In other words the rights and liabilities of the parties, as they exist on the date of the

initiation of the proceedings alone, fall within the scope of investigation of which the Tribunal is properly seized and is generally incompetent for a Tribunal to adjudicate upon a controversial matter which does not find place in the pleadings of the parties."

(18) The nearest judgment to answer the proposition in hand, is *Walaiti Ram's* case (surpa), wherein the Hon'ble Judge, while dealing with the question to the effect, "whether the tenant when he had to make the tender in Court was justified in merely reading the copy of the application supplied to him and the date of landlord's claim ? or whether he ought in the circumstances to have ascertained the date on which the petition was actually filed in Court ?" observed that "in case in which the application of the landlord left some doubt regarding the amount of rent which the tenant had to pay, the landlord must state his case with definite clarity so that the advantage which the statute gives to a tenant to escape eviction by making statutory payment of rent should be available to the tenant and that by making vague and indefinite allegations of landlord cannot be permitted to deprive a tenant of such statutory protection."

(19) The above observations were made in view of the fact that the landlord had claimed rent due for four months on the date of application which was tendered though more rent was due if the rent was to be calculated and paid upto the date of filing the ejection application.

(20) In *Puran Chand's* case (supra), after noticing various judgments, while dealing with the question whether the arrears of rent had to be deposited upto the end of the month, before filing the application for ejection, or upto the date of first hearing ?, it was observed that "the interest on the rent due is to be calculated upto the date of payment. No claim could be made for something for which liability has not been incurred before making the claim". With regard to the object of the Act, the Hon'ble Court, while taking into consideration the scheme of the Act, observed that "the object of the Act is a compromise between the rights of the landlord and the difficulties of the tenant. The intention behind is to ensure that the landlord is not harassed by the tenant and deprived of his lawful dues. The tenant must pay the arrears of rent due at the time of filing the eviction application by the landlord".

(21) It was further observed in the following terms :—

"The landlord had himself claimed expressly and specifically in paragraph 2 of his application that the amount of

interest payable by the tenant upto the date of the first hearing in order to exonerate himself from liability, to eviction was Rs. 10 and the tenant did in fact, acting on the said representation, deposit nothing less than Rs. 10 as interest in the Court on the first date of hearing. The landlord cannot be allowed to approbate and reprobate even if on the basis of some calculation it can be found that the sum of Rs. 10 deposited by the tenant on account of interest in the abovesaid circumstances was deficient by some Paisas from the exact amount of interest which was payable”.

(22) The learned counsel for the petitioner further placed reliance upon *Sudhansu Sekhar Misra's* case to emphasise that “decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it”.

(23) In my considered view, the compendium of the law laid down is :—(i) Fair trial is one of the objects of judicial proceedings. Fairness and reasonableness in every proceedings is the basic principle of justice. Proceedings before a Tribunal should be just and fair to all the parties to it as the constant and perpetual purpose of all legal proceedings is doing justice and to render each man of his due. The defendants being told or informed of the allegations against him is one of steps in the process. One has a right to know what he is required to meet or defend; for what purpose he is being brought before the Court or the Tribunal. After being informed of the allegations and charges against a person or defendant granting of an opportunity to file his reply in conformity with the established law and exigency of the situation is an inseparable part of principle of fairness. (ii) The ejection petition must disclose material facts disclosing cause of action. The parties must plead the facts satisfying the ingredients of the law on which and in proof of which he may produce evidence, upon which necessary relief can be granted to the party. Material facts must disclose the grounds envisaged by the Act before a relief sought under it can be granted. There is no gainsaying that demand of the landlord with respect to arrears of rent due from the tenant constitutes a cause of action for eviction and it should be disclosed. (iii) Pleadings is one of the steps in the proceedings before a judicial Tribunal, for fair trial. Objects of pleadings is to avoid surprises to parties. Defendant must be told or informed of the allegations against him it acquires more significance particularly in rent proceedings where

in the Act itself provides for an opportunity to tenant to protect his tenancy by tendering the rent due from the rent claimed, with interest till the date of payment and the cost assessed on the first date of hearing. The very purpose of serving a copy of the petition with notice on the defendant is to apprise him for what purpose he is being brought before the Tribunal i.e. to answer the claim of the petitioner-landlord put forth in the ejection application.

(24) Further object of pleadings is to bring forth to the forefront the points of controversy between the parties to the lis. The parties cannot be permitted in Courts to secure or achieve their ends by dubious methods. One cannot be permitted to articulate the pleading in such a manner so as to put a veil over the pleadings. Court proceedings cannot be converted into the game of dice. Pleadings being foundation of the enquiry before a Tribunal, it is normally expected that facts disclosed would be intelligible and stated with clarity, specifically and expressly. One can not be permitted to veil the pleadings in order to have a freak chance of success.

As human motives are often mixed up and the language is not being an instrument of mathematical precision. A person cannot be permitted to cause prejudice to the defendant by articulating or veiling the pleadings.

(25) Pleadings cannot be treated as abstract process equally valid for every composition whose meaning must be judicially ascertained. It involves certain amount of awareness or certain presumptions. Pleadings have to be read as a whole and as an ordinary prudent man would understand them. Pleadings have to be read by looking at the pith and substance of the facts averred. It is the substance of the case pleaded which is material.

(26) Sufficiency of pleadings have to be looked from the moral information, It provides to the respective parties and what it would mean to the parties and not what it would mean to a stranger, particularly keeping in view the facts and circumstances known to the parties.

(27) Purpose of the verification of the pleadings is to fix responsibility for the statement made in pleadings. The law enjoins a duty to a person to verify every essential fact constituting the ground of ejection disclosing a cause of action.

(28) Reverting to the facts of the present case, the reading of the ejection petition in totality, in substance and looking at

intrinsic meaning, it would be discernible that the landlord sought the ejectment of the tenant on the ground of the tenant being in arrears of rent from 1st January, 1983 to 31st May, 1983. Reading the pleadings in any other way would amount to permitting the draconian rule to prevail and to produce unjust results. Keeping in view that human motives and often mixed up, the landlord cannot be permitted to deprive the tenant of his statutory right to protect his tenancy by tendering the rent due from the rent claimed. The landlord cannot adopt dubious methods and cannot take freak chances to eject a tenant by putting forth vague and nebulous pleas and leaving it to the imagination of the tenant to interpret the ejectment petition. It may be observed that facts in existence can only be verified and not the future happening which may happen or may not. The reading of the verification and the facts averred in the ejectment petition and its bearing the date of drafting and non-intimation of the date of filing to the tenant, it would be reasonable to infer that the landlord claimed the ejectment on the ground of non-payment of rent from 1st January, 1983 to 31st May, 1983 and not for upto some unspecified future date. I have not been able to persuade myself to accept the contention of the learned counsel for respondents that the landlord is not required to disclose the definite rent due and can take freak chances of ejectment. The act on the part of the landlord may or may not be a conscious act, nor there is any clinching evidence that the landlord intended any fraud on the tenant but he cannot take advantage of the mere negligence of the tenant in having not inspected the file.

(29) From reading of the petition and the subsequent events as stated above, it would be reasonable to infer that the tenant knew only the claim of non-payment of rent from 1st January, 1983 to 31st May, 1983 which was brought to his notice. Here we are not concerned what the tenant knew and what he ought to have known. A brief reference to the ejectment petition and the claim of the landlord, would show that even if some claim existed on the date of filing the ejectment application, the landlord did not rely thereon. The tenant cannot be expected to take odium upon himself on the receipt of the notice to find out what has been done by the landlord. I have come to the conclusion, by carefully and assiduously reading the pleadings that the landlord has claimed rent only upto 31st May, 1983. This was the only morsel of information provided to the tenant by the Rent Controller as well as the landlord by serving a copy of the ejectment petition on the tenant.

(30) It was not only desirable for the landlord to have mentioned the date '16th September, 1983' of filing the petition instead of

'31st May, 1983' as observed by the Appellate Authority rather it was the incumbent duty of the landlord who sought the relief from the Court to do so. Further observation made, that the tenant cannot take advantage of vague averments cannot be sustained. The observations made by the Appellate Authority that the tenant cannot take shelter under the omissions of the landlord to disclose the rent due, cannot be accepted in view of the observations made above.

(31) While determining the question involved, the only workable solution and the interpretation given to the pleadings, is to the effect that the rent was claimed only upto 31st May, 1983, which was tendered. It would be a valid tender, if in the ejection petition claim of rent is taken to be upto 31st May, 1983. It is requirement of law of pleadings and fair play that the petitioner should have stated in his petition what amount of rent was due from which date upto which date as these facts constitute his cause of action. It is not sufficient to allege what may be the ground of action. Material facts constituting the grounds of action must be stated. It is no body's case that the tenant did not have the means to pay the rent and he wanted to take advantage of short tender on excusals. Even the amount of rent for three months comes only to Rs. 3,000 which cannot be termed as substantial amount.

(32) As observed above by reading the ejection application as well as the statement of oral witnesses as a whole, it emerges that the claim of the landlord was restricted to the arrears of rent upto 31st May, 1983. The tender of rent, with interest and costs, fully satisfied the claim put forth by the landlord. It cannot be said that the tender was short in any manner whatsoever nor it can be sustained that the tenant is bound to inspect the file or knowledge would be taken against him. Since the landlord's claim in the ejection petition has been satisfied, the tenant is fully entitled to take advantage of the proviso. The scope of enquiry by the Tribunal is only confined to the dispute set up by the contesting parties in their respective pleadings. The rights and liabilities of the parties are what existed on the date of initiating the proceedings and are put forth in the pleadings as only the pleadings can be investigated.

(33) So far amendment is concerned, the reasoning given by the Appellate Authority, as noticed above, cannot be sustained. Typing of the date '31st May, 1983' and filing the petition in September, 1983 *prima facie* appears to be with an ulterior motive to seek ejection of the tenant on one pretext or the other. Rather

it is a crude attempt to lay down a wobby (sic) trap to catch the tenant unawares and try to deprive him of his right of saving his tenancy by tendering rent on the first date of hearing. There is no second opinion to the proposition of law that the rent is to be tendered upto the date of filing, but in the ejectment proceedings on the ground of arrears of rent, the tenant on payment/tender of either the rent claimed or rent due out of the rent claimed with interest upto the date of tender with costs assessed by Rent Controller can avail of the benefit conferred by the proviso of the Act.

(34) A party cannot be refused a just relief on account of some mistake, negligence, in-advertance or infraction of rules or procedural difficulties. The judgments of the authorities below cannot be sustained for the reasons stated above. The conduct of the tenant of non-payment of rents subsequent to the tender is again irrelevant and cannot be taken notice of for depriving him of the benefit of the proviso, though otherwise later on the rent has been paid.

(35) I am not prepared to deprive the tenant of his legitimate right to take protection of the proviso, on the ground that rent was not tendered upto the date of filing the application as in the present proceedings no notice either with respect to the date of filing was issued or served upon him. Without expressing any opinion on the plea of fraud, it would be sufficient to say that because of the nabulous pleadings of the landlord the tenant has suffered adversely and was prejudiced in his right of tendering the rent upto the date of filing the ejectment petition because of the conduct of the landlord of which the landlord cannot take advantage.

(36) The tenant cannot be expected to make a tender of an amount though fallen due, if not claimed. The claim which conceivably would have been made but has not been alleged, cannot be met nor it can be read into pleadings as unpleaded cause of action cannot be taken notice of.

(37) I would conclude that except the meaning that the rent was claimed upto 31st May, 1983, any different meaning cannot be given to the pleadings or any other meaning was intended in the present case. The above observations of mine as well as the finding, find support from the reasons recorded in *Walaiti Ram's* case (supra). The respondent has failed to successfully countenance the arguments made by learned counsel for the tenant. The means adopted to secure the ejectment of the tenant amounts to the abuse of the process of the Court. I cannot add better reasons in the facts and circumstances of the case.

For the reasons recorded above, the revision petition is accepted and the ejection application filed by the landlady is dismissed. There will be no order as to costs.

J.S.T.

Before : M. R. Agnihotri & V. K. Bali, J.J.

MANAGING SOCIETY, GOSWAMI GANESH DUTT SANATAN
DHARAM COLLEGE, SECTOR 32-C, CHANDIGARH THROUGH
ITS PRESIDENT PANDIT MOHAN LAL,—*Petitioner.*

versus

UNION TERRITORY, CHANDIGARH ADMINISTRATION, CHANDI-
GARH THROUGH ITS ADMINISTRATOR, AND OTHERS,
—*Respondent.*

C.W.P. 6149 of 1991

22nd October, 1991.

Constitution of India, 1950—Art. 226—Land allotted on lease to educational Society in 1975 at concessional rates—Retrospective increase in ground rent ordered in 1991 in accordance with 1973 Rules—Demand of arrears of difference—In absence of provision for review the decision taken 16 years back in the face of 1973 rules fixing ground rent is final—Ground rent cannot be increased by successor-in-office.

Held, that it is true that the Rules of 1973 changed the erstwhile policy of allotting land on free hold basis to lease hold basis but looking at the back-ground of the events, the concessional rates i.e. rates less than mentioned in the Rules of 1973 were fixed obviously in concession or relaxation of Rules of 1973. We cannot possibly accept the plea of the Administration that far from being concession or relaxation of Rules, it has was on account of mistake made by the Administration. The fact as to whether the earlier decision taken 16 years back was by relaxing the Rules or by mistake, however, need not detain us any further, for the reason that there is no provision in the Rules for review and on this count alone, this petition deserves to succeed.

Petition under Art. 226 of the Constitution of India praying that an appropriate writ, order or direction especially in the nature of Certiorari be issued directing the respondents :—

(i) *to produce the complete record of the case;*