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NASIRUDDIN AND ORS.

v.

SITA RAM AGARWAL

JANUARY 28, 2003

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[V.N. KHARE, CJ., S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

Rent Control and Eviction:

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Rajasthan Premises (Control of Rent and Eviction) Act, 1950—Section 13(4)—Default in deposit of rent—Applicability of Section 5 of Limitation Act—Held: Not applicable since the Rent Act did not confer power on the court to extend the period for depositing the rent or to condone the default—Court can condone the default only when statute confers the power and not otherwise—Further since the deposit of rent does not require any application, provisions of Section 5 of Limitation Act cannot be extended where the default takes place in complying with an order under Section 13 (4)—Limitation Act, 1963, Section 5.

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Interpretation of statutes—Scope of—Held: Court cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous.

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The question which arose for consideration in this appeal was whether the delay in depositing the rent could be condoned under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and whether the provisions of Section 5 of the Limitation Act, 1963 is applicable where there is default in depositing the rent within the stipulated time by the tenant.

Allowing the appeal, the Court

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HELD: 1.1. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot

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re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

[648-B-D]

1.2. It is well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. [648-E-F]

1.3. Wherever the Special Act provides for extension of time or condonation of default, the Court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the Court does not have the power to do so. In the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 in the absence of such provisions, the Court does not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent. Therefore, Section 5 of the Limitation Act, 1963 is not applicable where there is a default in depositing the rent by the tenant under Section 13(4) of the Act. It is true that the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 does not expressly exclude the application of Limitation Act. But Section 5 in its terms is not applicable to wherever there is a default in depositing the rent by the tenant. [649-A-D]

1.4. On perusal of Section 5 of the Limitation Act it is evident that the question of its application would arise where any appeal or any application may be admitted after the prescribed period, if the appellants or the applicant satisfies the court that he had sufficient cause for not making the appeal or application within such period. Section 13(4) provides that in a suit for eviction on the ground set forth in clause (a) of sub-section (1), the tenant shall on the first date of hearing or on or before such date the Court may on the application fixed in this behalf or within

- A** such time the tenant shall deposit in court or pay to the landlord in court as determined under sub-section (3) from the date of such determination or within such further time not exceeding three months as may be extended by the Court. Thus, sub-section (4) itself provides for limitation of a specific period within which the deposit has to be made, which cannot be exceeding three months as extended by this Court. The deposit by the tenant within
- B** 15 days is not an application within the meaning of Section 5 of the Limitation Act, 1963. Since the deposit does not require any application, the provisions of Section 5 cannot be extended where the default takes place in complying with an order under Section 13(4) of the Act. The provisions of Section 5 of the Limitation Act must be construed having
- C** regard to section 3 thereof. For filing an application after the expiry of the period prescribed under the Limitation Act or any other special statute a cause of action must arise. Compliance of an order passed by a Court of Law in terms of a statutory provision does not give rise to a cause of action. Failure to comply with an order passed by a Court of Law instant consequences are provided for under the statute. [649-F-H; 650-A-D]

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Shantilal M. Bhayani v. Shanti Bai, [1995] Supp. 4 SCC 578 and *Ganesh Prasad Sah Kesri v. Lakshmi Narain Gupta*, [1985] 3 SCR 825, distinguished.

- E** *Gopal Dass and Ors. v. Nathulal Baraya*, AIR (1983) Raj. 222; *M/s. B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick and Anr.*, [1987] 2 SCC 407; *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama*, [1989] Suppl. 2 SCR 336; *Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors.*, (2002) 9 SCALE 102; *M/s. Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation and Ors.*, (2002) 9 SCALE
- F** 778; *Shyamacharan Sharma v. Dharamdas*, AIR (1980) SC 587; *Miss Santosh Mehta v. Om Prakash and Ors.*, [1980] 3 SCR 325; *Ram Murti v. Bholanath and Ors.*, AIR (1984) SC 1392; *V.K. Verma v. Radhey Shyam*, AIR [1964] SC 1317; *Shibu Chandra Dhar v. Pasupati Nath Auddya*, [2002] 3 SCC 617; *Ganpat Ladha v. Shashikant Vishnu Shinde*, [1978] 3 SCR 198; *Mrs. Manju Choudhary and Anr. v. Dulal Kumar Chandra*, AIR (1988) SC 602; *E. Palanisamy v. Palanisamy (Dead) by Lrs. and Ors.*, [2003] 1 SCC 122; *Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd. v. Syeda Vajhiunnissa Begum (Smt.) and Ors.*, [1994] 2 SCC 671; *M/s Jxyanta Cycle and Motor Mart, Kanpur v. Assistant Commissioner, Sales Tax*, AIR (1969) All 200; *Hukumdev Narain Yadav v. Lalit Narain Mishra*, [1974] 3 SCR 31; *Kulamani Kar and*
- H** *Ors. v. Orissa Land Reforms Tribunal-cum-Subordinate Judge, Cuttack and*

Ors., AIR (1983) Orissa 63; *The Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. M/s. Parson Tools and Plants, Kanpur*, AIR (1975) SC 1039; *State of West Bengal and Ors. v. Kartick Chandra Das and Ors.*, [1996] 5 SCC 342; *Prem Raj v. Ram Charan*, [1974] 3 SCR 494 and *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker*, [1995] 5 SCC 5, referred to. A

Sutherland, Statutory Construction 3rd edition. Vol.3, p.107, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5077 of 1998.

From the Judgment and Order dated 17.12.1997 in SBCRP 570/94 of the High Court of Rajasthan at Jaipur. C

Sushil Kumar Jain, for the Appellant.

Aruneshwar Gupta, for the Respondent.

The Judgment of the Court was delivered by D

As regards applicability of Section 5 of the Limitation Act, 1963 in the matter of default in deposit of rent as also interpretation of the word 'shall' occurring in the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter referred to 'the Act', for the sake of brevity), a Division Bench of this Court by an order dated 21.3.2002 referred the matter to a three Judge Bench observing : E

"Looking to the importance of the questions and the conflicting views taken in the judgments of this Court, we deem it proper that the case is heard by a Bench of three Judges." F

That is how the matter is before us.

Before advertng to the aforementioned questions, the factual matrix involved in the matter may be noticed. The appellant herein is the landlord in respect of the suit premises and the respondent is a tenant therein. Allegedly, the respondent did not pay rent for the period 1.8.1986 to 31.1.1987 wherefor upon service of the legal notice, a suit for possession and arrears of rent was filed which was marked as Civil Suit No.824 of 1993. G

The learned Trial Judge in terms of the provisions contained in Section 13(3) of the Act determined the provisional rent @ Rs. 80 per month and by H

A an order dated 9.9.1991 directed the respondent to deposit the arrears as also current rent in court. Admittedly, the respondent did not deposit the same within the period specified therein. The appellant herein filed an application purported to be under Section 13(5) of the Act; whereafter on or about 9.11.1993 the respondent filed an application for condonation of delay. By reason of an order dated 20.1.1994, the said application for condonation of delay was dismissed, *inter alia*, on the ground that the same was not filed within time. A revision application was thereafter filed by the respondent questioning the legality or validity of the said order, *inter alia*, on the ground that there is no law barring filing of an application for condonation of delay after expiry of the period specified for deposit of rent.

C It appears that a Full Bench of the Rajasthan High Court in *Gopal Dass and Ors. v. Nathulal Baraya*, AIR (1983) Raj. 222 had held that an application under Section 5 of the Limitation Act in the matter of deposit of rent in terms of Section 13(4) of the Act was maintainable. The said decision was rendered having regard to Rajasthan Premises (Control of Rent & Eviction) (Amendment) Act, 1975, in terms whereof Section 13-A was inserted whereby and whereunder the court was obligated to determine the amount of arrears of rent up to the date of the order as also the amount of interest thereon at the rate of 6% per annum and cost of the suit allowable to the landlord and direct the tenant to pay the amount so determined within such time, not exceeding ninety days as may be fixed by the court and on such payment being made within the time fixed as aforesaid, the proceedings were to be disposed of as if the tenant has not committed any default.

F A learned Single Judge of the High Court at the hearing of the revision application filed by the respondent was, however, of the view that as the Full Bench in *Gopal Dass's* case (*supra*) was concerned with interpretation of Section 13-A(b) of the Act; the question as regards applicability of Section 5 of the Limitation Act in the matter arising under Section 13(4) of the said Act requires consideration by a larger Bench. The learned Single Judge was further of the view that the decision of the Full Bench in *Gopal Dass's* case (*supra*) required reconsideration also on the question as to whether the court has any power to extend the time beyond the period prescribed under Section 13(4) of the Act having regard to the fact that the said decision based on various judgments of this Court relating to different Rent Control statutes of various States which were not in *pari materia* with the provisions of the Act.

H Pursuant to or in furtherance of the said observations of the learned

single Judge, a Full Bench of five Judges was constituted. By reason of the impugned judgment dated 17.12.1997, three Hon'ble Judges of the High Court held that Section 5 of the Limitation Act is applicable where there is default in deposit of arrears of rent within specified period whereas two other members of the Bench held to the contrary. A

The Full Bench was further of the view that since the applicability of the Indian Limitation Act, 1963 is not expressly excluded by reason of the provisions of the Act, Section 5 of the Limitation Act, 1963 would be applicable in a case where the tenant could not deposit the rent within the time pursuant to the order passed under Section 13(3) of the Act. The Full Bench also held that the word "shall" has to be interpreted as "may" and it is in the discretion of the Court to condone the delay in default of payment/ deposit of rent within specified period. B C

In that view of the matter, the order rejecting the application under Section 5 of the Limitation Act was set aside and the revision petition filed by the respondent was allowed. It is against the said judgment, the appellants have preferred this appeal. D

Two questions which arise for our consideration are, firstly, that whether the matter stands covered by the decision of this Court in *M/s. B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick and Anr.*, [1987] 2 SCC 407; and, secondly, whether the provisions of Section 5 of the Limitation Act, 1963 is applicable where there is a default in depositing the rent within stipulated time by the tenant. E

Section 13(1)(a) of the Act enables a landlord to sue for a decree of eviction in the event a tenant has neither paid nor tendered the amount of rent due from him for six months. In terms of sub-section (3) of Section 13 which was substituted by Section 8(i) of the Rajasthan Act No.14 of 1976 it is obligatory on the court to provisionally determine the amount of rent wherefor no application is required to be filed. Sub-sections (4) and (5) of the said Act which are relevant for this appeal read thus :- F

"(4) The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, 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 subsequent to the period up to H

A which 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).

B (5). 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.”

C A bare perusal of the aforementioned provisions would show that in terms of sub-section (4) of Section 13, a tenant is required to deposit the amount of rent determined by the Court under sub-section (3) within fifteen days of the date of determination or within such further time not exceeding three months, as may be extended by the court.

D It is not in dispute that by reason of 1976 Amendment, the following was specifically inserted :-

“Within such further time not exceeding 3 months as may be extended by the Court or the words” 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)”

E The word ‘shall’, which is ordinarily imperative in nature, has been used in sub-section (4) of Section 13. The power of the court has also been limited to the extent that it can extend time for such deposit not exceeding three months and so far as the deposit of monthly rent is concerned, by fifteen days. The court’s power, therefore, is restricted. In case tenant deposits the provisional rent as determined by the Court within stipulated period the tenant is relieved by the eviction decree.

In the aforementioned backdrop, the decision of this Court in *M/s. B.P. Khemka’s case* (supra) may be noticed.

G *M/s. B.P. Khemka* (supra) arose out of the West Bengal Premises Tenancy Act, 1956 (in short ‘the West Bengal Act’). In the said case the tenant committed default in payment of arrears of rent and the landlord brought a suit for eviction on the ground of default. While the suit was pending, the West Bengal Premises Tenancy (Amendment) Ordinance No. 6 of 1967, which was replaced by the West Bengal Premises Tenancy H (Amendment) Act 30 of 1969 came to be promulgated with effect from

August 26, 1967. The Act gave a retrospective effect to the amendments by providing that the amendments made by Section 2 of the Ordinance shall have effect in respect of all suits including appeals which were pending at the date of commencement of the Ordinance. The amendments *inter alia* enabled tenants who were in default to apply to the court and pay the arrears of rent in instalments and thereby avert their eviction. In pursuance thereof, the tenant deposited the rent. However, he subsequently committed default in paying monthly rent. Consequently, the defence was struck off on the ground that in paying the rent for the months of September, 1968 and March 1969, there had been a delay of 44 days and 6 days respectively, which was in contravention of Section 17(1) of the West Bengal Act.

In this context sub-sections (2A), (2B), (3) and (4) of Section 17 of the West Bengal Act may be noticed which read as under:

“(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2) on the application of the tenant the court, may, by order:

- (a) extend the time specified in sub-section (1) or sub-section (2) for the deposit or payment of any amount referred to therein.
- (b) xxx xxx xxx xxx

(2B) No application for extension of time for the deposit or payment of any amount under clause (a) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified therefor in sub-section (1) or sub-section (2);”

“(3) If a tenant fails to deposit, or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2-A), or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2-A) within the time fixed therefor, the court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If a tenant makes deposit or payment as required by sub-section (1), sub-section (2), or sub-section (2-A) no decree or order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant shall be made by the court but the court may allow such costs as it may deem fit to the landlord.”

This Court in *M/s. B.P. Khemka's* case (*supra*) while interpreting the

A provisions of sub-section (4) held that the proviso makes it clear that if the subsequent default is for a period of 4 months within a period of 12 months, the tenant can claim relief under the sub-section once again. Since the default was less than 40 days, this Court held that under the said proviso, the delay could be condoned.

B In terms of clause (a) of sub-section (2A) of Section 17 of the West Bengal Premises Tenancy Act, 1956 requisite power to extend the time for deposit of rent on an application made by the tenant is conferred in the court in relation whereto there does not exist any restriction.

C It is beyond any cavil that the question as to whether the provision is directory or mandatory would depend upon the language employed therein. [See *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama*, AIR (1990) SC 981 = [1989] Suppl. 2 SCR 336].

D This Court in *Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors.*, (2002) 9 SCALE 102], has observed :-

E “Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute”

F [See also *M/s Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation and Ors.*, (2002) 9 SCALE 778.

G It is also a well-settled principle of law that the decision on an interpretation of one statute can be followed while interpreting another provided both the statutes are in *pari materia* and they deal with identical scheme.

H The High Court relied upon the following decisions dealing with respectively with the Rent Control Acts of the different States:

- (i) AIR (1980) SC 587 : [1980] 2 SCC 151 *Shyamacharan Sharma v. Dharamdas—dealing with the M.P. Accommodation Control Act.*

- (ii) AIR 1980 SC 1664 : [1980] 3 SCC 610 *Miss Santosh Mehta v. Om Prakash and Ors.*, dealing with the Delhi Rent Control Act. A
- (iii) AIR (1984) SC 1932 : [1984] 3 SCC 111 *Ram Murti v. Bholanath and Ors.*, dealing with the Delhi Rent Control Act.
- (iv) AIR (1985) SC 964 : [1985] 3 SCC 53 *Ganesh Prasad Sah Kesri v. Lakshmi Narain Gupta* dealing with the Bihar Building. B
- (v) AIR (1987) SC 1010 : [1987] 2 SCC 407 B.P. *Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick and Ors.*, dealing with West Bengal Premises Tenancy Act.

The question, therefore, which would arise for our consideration is as to whether the respective State Acts on the basis whereupon the impugned judgments of this Court had been rendered are analogous to the provisions of the Act or not. C

In *Shyama Charan Sharma v. Dharmdas*, AIR (1980) SC 587 : [1980] 2 SCC 151, the provisions of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as "the M.P. Act") was in question. Sub-sections (1) and (6) of Section 13 thereof are as follows : D

"(1) On a suit or proceeding being instituted the landlord on any of the ground referred to in section 12, the tenant shall, within one month of the service of summons on him or *within such further time as the court may, on an application made to it, allow in this behalf,* deposit in the court to pay to the landlord an amount calculated at the rate of rent at which it was paid for which the rent may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall 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. E

(6) If the tenant fails to deposit or pay any amount as required by this section the court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit." F G

(Emphasis mine)

A bare perusal of the said provisions would clearly go to show that by reason of the provisions of Section 13(1) of the M.P. Act, the Court has been conferred power to extend the time for deposit of rent to any such further H

A time, as it may, on an application made to it, allow in this behalf. The power of the court under the M.P. Act is not restricted. However, discretion available to the court under the Rajasthan Act, as noticed hereinbefore is limited. Furthermore, in sub-section (6) of Section 13 of the M.P. Act, the word 'may' has been used which is directory; in contra-distinction with the word 'shall' employed in the Rajasthan Act.

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The M.P. Act provides for the power of the court to extend the time in the event sufficient cause therefor is shown which is absent in the Rajasthan Act. Furthermore, in terms thereof once the rent has been determined, the same has to be deposited within the prescribed period wherefor there exists no provision for filing an application.

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In *Miss Santosh Mehta v. Om Prakash and Ors.*, [1980] 3 SCR 325 : [1980] 3 SCC 610 and *Ram Murti v. Bholanath and Ors.*, AIR (1984) SC 1392 : [1984] 3 SCC 111], this Court was concerned with the provision of Section 15 of the Delhi Rent Control Act, 1958 which is in the following term :

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(1) In any proceeding for the recovery of possession of any premises on the ground specified in clause (a) of the proviso to sub-section (1) of section 14, the controller shall after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month by the 15th of each succeeding month a sum equivalent to the rate of rent.

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(3) If in any proceedings referred to in subsection (1) or subsection (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of first hearing of the proceedings fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of subsection (1) or subsection (2), as the case may be, until the standard rent in relation thereto is fixed having regard to the provisions of this act, and the amount of arrears, if any, calculated on the basis of standard rent shall be paid or deposited by the tenant within one month of the

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date on *such further time* is the Controller may allow in this behalf. A

(7) If the tenant fails to deposit or pay any amount as required by this section the *court may* order the defence against eviction to be struck out and shall proceed with the hearing of the application."

(Emphasis mine) B

Yet again Section 15 of the Delhi Rent Control Act confers power upon the court to extend the time for deposit of rent to any such period, as it may in this behalf deem fit. Furthermore, even in sub-section (7) of Section 15 the word 'may' has been used. We may notice that under sub-section (5) of Section 13 of the old Act the word 'shall' has been used and construing the said provision, this Court in *V.K. Verma v. Radhey Shyam*, AIR (1964) SC 1317], noticed : C

".....the change of words from "the court shall order the defence against ejection to be struck out" to the words "the controller may order the defence against eviction to be struck out" is clearly deliberate modification in law in favour of the tenant. Under the old act the court had no option but to strike out the defence if failure to pay or deposit the rent is proved; under the new act the controller who takes the place of the court has a discretion in the matter; so that in proper cases he may refuse to strike out the defence." D

(Emphasis mine) E

In *Ganesh Prasad Sah Kesri v. Lakshmi Narain Gupta*, [1985] 3 SCR 825 : [1985] 3 SCC 53, this Court was concerned with interpretation of Section 11-A of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1947 (hereinafter referred to 'Bihar Act of 1947') which was in the following term : F

"11-A. Deposit of rent by tenants in suits for ejection If in a suit for recovery of possession the tenant contests the suit, as regards claim for ejection, the landlord may make an application at any stage of the suit for order on the tenant to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any; and the court, after giving an opportunity to the parties to be heard, may make an order for deposit of rent at such rate as may be determined month by month and the arrears of rent, if any, and on failure of the tenant to deposit the arrears of rent within fifteen days of the date of H

A the order or the rent at such rate for any month by the fifteenth day of the next following month, the court shall order the defence against ejection to be struck out and the tenant to be placed in the same position as if he had not defended the claim to ejection. The landlord may also apply for permission to withdraw the deposited rent without prejudice to his right to claim decree for ejection and the court may permit him to do so. The court may further order the recovery of cost of suit and such other compensation as may be determined by it from the tenant.”

C The said provision of the Bihar Act of 1947 did not contain any negative provision as is there in the present Act. Furthermore, even under the said provision an application was required to be filed which is not the case in this appeal. For that reasons the decision in *Ganesh Prasad Sah Kesri* (supra) is distinguishable and has no application to the present case.

D We may further notice that in *Shibu Chandra Dhar v. Pasupati Nath Auddya*, [2002] 3 SCC 617, which also arose out of the West Bengal Premises Tenancy Act, it was held that under sub-section (2A) of Section 17 of the Act, the Court has a power to extend the period for depositing the rent in the event of default by the tenant to deposit the rent within a stipulated time. *This Court further held that if a Court has no power to extend the time, then in cases of small default beyond the reason of the tenant, the time cannot be extended.*

(Emphasis mine)

F It is interesting to note that in *Ganpat Ladha v. Shashikant Vishnu Shinde*, [1978] 3 SCR 198 : [1978] 2 SCC 573, this Court while interpreting similar provisions occurring in Section 12(3)(a) of the Bombay Rent, Hotel, Lodging Houses Rates Control Act, 1947 (hereinafter referred to as “the Bombay Rent Act”) held :

G “Section 12(3)(b) does not create any discretionary jurisdiction in the Court, it provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature, it is not in the hands of the Court.”

H Thus under the Bombay Rent Act only on certain grounds the Court can exercise its discretionary power and not on other grounds.

Yet again in *Mrs. Manju Choudhary and Anr. v. Dulal Kumar Chandra*, AIR (1988) SC 602, this Court interpreting the provision of Section 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Ordinance 1982 being Ordinance No.63 of 1982 (hereinafter referred to as 'the Bihar Rent Ordinance, 1982'), held :

"Section 13 of the Act stipulates that if in a suit for recovery of possession of any building the tenant contests the suit as regards the claim for ejection, the landlord may move an application at any stage of the suit for an order on the tenant to deposit rent month by month at the rate at which it was last paid and also subject to the law of limitation, the arrears of rent, if any, and the court after giving an opportunity to the parties to be heard may make an order to deposit the rent month by month at such rates as to be determined and the arrears, both before and after the institution of the suit, if any, and thereafter provides "on failure of the tenant to deposit the arrears of rent within 15 days of the next following month the court shall order the defence against the ejection to be struck off". Therefore, there is a duty cast on the court to strike out the defence if there is a failure of the tenant to deposit arrears of rent within 15 days. In this case, both the trial court as well as the High Court have found that there was, in fact, a delay to pay the arrears of rent within 15 days. In that view of the matter it is not possible to interfere with the order of the High Court."

In the said case there was delay of about four to five days in depositing the rent allegedly on the ground of bank strike but the defence against the eviction was struck off.

In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. In *E. Palanisamy v. Palanisamy (Dead) by Lrs. and Ors.*, [2003] 1 SCC 122, a Division Bench of this Court observed:

".....The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters"

It is also pertinent to note that the Rent Control Act is a welfare

A legislation not entirely beneficial enactment for the tenant but also for the benefit of landlord. See: *Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd. v. Syeda Vajhiunnissa Begum (Smt.) and Ors.*, [1994] 2 SCC 671. In that view of the matter, balance has to be struck while interpreting the provisions of the Rent Act.

B The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In *Sutherland, Statutory Construction, 3rd edition, Vol.3 at p.107* it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision.

G At p.111 it is stated as follows :

H "As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means

conclusive.”

Thus, on analysis of the aforesaid two decisions we find that wherever the special Act provides for extension of time or condonation of default, the Court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the Court does not have the power to do so.

In that view of the matter it must be held that in absence of such provisions in the present Act the Court did not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent.

Coming to the second question, we are of the view that Section 5 of the Limitation Act, 1963 is not applicable where there is a default in depositing the rent by the tenant under Section 13(4) of the Act.

It is true that Rajasthan Act does not expressly exclude the application of Limitation Act. But Section 5 in its terms is not applicable to wherever there is a default in depositing the rent by the tenant.

Section 5 of the Limitation Act reads thus:

“5. Extension of prescribed period in certain cases. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfied the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

On perusal of the said Section it is evident that the question of application of Section 5 would arise where any appeal or any application may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not making the appeal or application within such period. Section 13(4) provides that in a suit for eviction on the ground set forth in clause (a) of sub-section (1), the tenant shall on the first date of hearing or on or before such date, the Court may on the application fixed in this behalf or within such time the tenant shall deposit in court or pay to the landlord in court as determined under sub-section (3) from the date of such determination or within such further time not exceeding three months as may be extended by the Court. Thus, sub-section (4) itself provides for limitation

A of a specific period within which the deposit has to be made, which cannot be exceeding three months as extended by this Court.

B The matter may be examined from another angle. The deposit by the tenant within 15 days is not an application within the meaning of Section 5 of the Limitation Act, 1963. Since the deposit does not require any application, therefore, the provisions of Section 5 cannot be extended where the default takes place in complying with an order under sub-section (4) of Section 13 of the Act.

C The provisions of Section 5 of the Limitation Act must be construed having regard to Section 3 thereof. For filing an application after the expiry of the period prescribed under the Limitation Act or any other special statute a cause of action must arise. Compliance of an order passed by a Court of Law in terms of a statutory provision does not give rise to a cause of action. Failure to comply with an order passed by a Court of Law instant consequences are provided for under the statute. The court can condone the default only when the statute confers such a power on the Court and not otherwise. In that view of the matter we have no other option but to hold that Section 5 of the Limitation Act, 1963 has no application in the instant case.

E In *M/s. Jayanta Cycle and Motor Mart, Kanpur v. Assistant Commissioner, Sales Tax*, AIR (1969) All. 200, V.G. Oak, CJ observed :

F “Delay may be condoned if a party makes delay in filing an appeal or moving an application, but no such situation arose in the present case. The petitioner made delay in depositing the admitted tax. The appeal itself was filed within time. The Assistant Commissioner rightly held that there was no room to give the appellant the benefit of Section 5 of Indian Limitation Act.”

Pathak, J., (as he then was) observed :

G “Section 5 is not attracted when the question arises whether the delay in depositing the admitted tax should be condoned. It seems to me that the application made by the Petitioner for condonation of delay in depositing the entire amount of admitted tax is not maintainable under Section 5 of Limitation Act.”

H In *Hukumdev Narain Yadav v. Lalit Narain Mishra*, [1974] 3 SCR 31, P. Jaganmohan Reddy, J. held that Section 5 of the Limitation Act does not

govern an election petition. The said decision has been followed in *Kulamani Kar and Ors. v. Orissa Land Reforms Tribunal-cum-Subordinate Judge, Cuttack and Ors.*, AIR (1983) Orissa 63. A

In *The Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. M/s Parson Tools and Plants, Kanpur*, AIR (1975) SC 1039 = [1975] 4 SCC 22, this Court upon referring to various decisions observed : B

“Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceedings on the analogy of Section 14(2) of the Limitation Act.” C D

In *State of West Bengal and Ors. v. Kartick Chandra Das and Ors.*, [1996] 5 SCC 342, this Court observed :

“In consequence, by operation of Section 29(2) read with Section 3 of the Limitation Act, limitation stands prescribed as a special law under Section 19 of the Contempt of Courts Act and limitation in filing Letters Patent appeal stands attracted. In consequence, Sections 4 to 24 of the Limitation Act stands attracted to Letters Patent appeal insofar as and to the extent to which they are not expressly excluded either by special or local law. Since the rules made on the appellate side, either for entertaining the appeals under clause 15 of the Letters Patent or appeals arising under the contempt of courts, had not expressly excluded, Section 5 of the Limitation Act becomes applicable. We hold that Section 5 to the Limitation Act does apply to the appeals filed against the order of the learned Single Judge for the enforcement by way of a contempt. The High Court, therefore, was not right in holding that Section 5 of the Limitation Act does not apply. The delay stands condoned. Since the High Court had not dealt with the matter on merits, we decline to express any opinion on merits. The case stands remitted to the Division Bench for decision on merits.” E F G H

A Furthermore, for constituting an application within the meaning of the said provision, there should be some request. [See *Prem Raj v. Ram Charan*, [1974] 3 SCR 494 : AIR 1974 SC 968.

B Mr. Gupta, appearing on behalf of the respondent, however, placed reliance upon a decision of this Court in *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker*, [1995] 5 SCC 5. Therein this Court was concerned with extension of period of limitation in a case wherein an appeal was to be preferred before an appellate authority under the Kerala Buildings (Lease and Rent Control) Act, 1965. As for preferring an appeal a period of limitation is prescribed, it was held that Section 5 of the Act was applicable and, therefore, the said decision is of no help to the respondent.

C Similarly in *Shantilal M. Bhayani v. Shanti Bai*, [1995] Supp. 4 SCC 578], this Court was concerned with the question as to whether the provision of Section 5 of the Act would be applicable to an appeal filed before the appellate authority functioning under the T.N. Buildings (Lease and Rent Control) Act, 1960.

D The question which arose for consideration therein was whether the appellate authority was a court or a persona designata. Having regard to the provisions of contained in sub-section (2) of Section 29, it was held that the Limitation Act, 1963 applies. Such is not the case here and, therefore, the said decision is distinguishable.

E For the aforesaid reasons, we are of the view that the judgment of the High Court cannot be sustained. We, accordingly, set aside the judgment under challenge.

F The appeal is allowed. There shall be no order as to costs.

N.J.

Appeal allowed.