

## Madan Lal Vs Smt. Rama Devi

**Court:** Rajasthan High Court (Jaipur Bench)

**Date of Decision:** Nov. 22, 1985

**Acts Referred:** Limitation Act, 1963 " Section 5  
Rajasthan Premises (Control of Rent and Eviction) Act, 1950 " Section 13(3), 13(4)

**Citation:** (1986) RLW 541 : (1986) 2 WLN 352

**Hon'ble Judges:** Dwarka Prasad Gupta, Acting C.J.

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Dwarka Prasad Gupta, Actg. C.J.

1. In a suit for ejectment by a landlord on the ground inter-alia of defaults in the payment of rent, the trial court passed an order under Sub-section

(2) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (here in after referred to as "the Act") on April 26, 1977

determining the amount to be deposited by the tenant under the provisions of Section 13(3) of the Act. The trial court had determined the rent upto

March 31, 1977. The rent for the month of April, 1977 was to be paid by the tenant under the provisions of Sub-section (4) of Section 13 of the

Act upto May 15, 1977, but the same was deposited in court on June 28, 1977. The landlord plaintiff, therefore, applied to the trial court for

striking off the defence of the tenant against eviction, The trial court dismissed the application, while the first appellate court allowed the plaintiff's

appeal vide its order dated November 29, 1982 and directed that the defence of the defendant-tenant against eviction be struck off.

2. In this revision petition two arguments have been advanced by learned Counsel for the petitioner. His first submission is that after the order u/s

13(3) of the Act was passed, by the trial court on April 26, 1977, the tenant filed an appeal on the ground that rent for the month of January, 1972

should also have been included in the determination made u/s 13(3) of the Act while determination had been made in respect of rent from January

1, 1972 upto March 31, 1977 by the trial court. The appeal filed by the tenant Was allowed on October 28, 1978 and he was allowed to deposit

rent for the month of January, 1972 together with interest thereon. The argument of the learned Counsel for the petitioner is that the order passed

by the trial court u/s 13(3) of the Act stood modified by the order passed by the appellate court on October 28, 1978 and as such even if a default

was made in depositing the rent for the month of April, 1977, the same could have been deposited by the tenant upto November 13, 1978 when

the period of 15 days from the date of the appellate order expired. This argument prevailed with the trial court, but the appellate court did not

accept the same. The second contention of the learned Counsel for the petitioner is that the court could extend the period of payment of rent for

the month of April, 1977 by such further time not exceeding 15 days as provided in Sub-section (4) of Section 13 of the Act and as the trial court

was closed for summer vacation from May 29, 1977 to June 26, 1977 and the tenant had submitted the tender for payment of rent on the opening

day in the trial court i.e. on June 27, 1977, the rent was actually deposited on June 28, 1977 on the basis of the tender filed on June 27, 1977. The

contention of the learned Counsel for the petitioner is that if the trial court would have exercised discretion vested in it under Sub-section (4) of

Section 13 of the Act in a judicious manner, the rent for the month of April, 1977 should be deemed to have been deposited within time, if the

period of payment for making requisite deposit be extended by a period of 15 days, which was permissible under Sub-section (4) of Section 13 of

the Act.

3. As regards the first contention learned Counsel for the petitioner relied upon the decision of their lordships of the Supreme Court in

Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., . It was held in that case that if an appeal is provided against an order

passed by the tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the

decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. It was also observed that as a result of the

confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the

appellate decision alone which subsists and is operative and capable of enforcement.

4. However, the aforesaid decision was explained by their Lordships of the Supreme Court in their subsequent decision in State of Madras Vs.

Madurai Mills Co., Ltd., wherein it was observed as under:

But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that where ever there are two orders, one by the

inferior Tribunal and the other by a superior Tribunal, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the

subject matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. In our opinion, the

application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions

conferring the appellate or revisional jurisdiction.

In the present case the appeal was filed by the tenant-defendant and the appellate order only modified the order passed by the trial court date

April 26, 1977 in respect of rent for the month of January, 1972 and interest thereon. As such looking to the nature of the appellate order dated

October 28, 1978 and the subject-matter thereof, it cannot be said that the order of the trial court dated April 26, 1977 was not operative during

the period subsequent thereto, merely because an appeal has been preferred by the defendant-tenant. The appellate court had modified the order

passed by the trial court only in respect of the rent for the month of January, 1972 and in other respects the order passed by the trial court was not

disturbed nor it was sought to be disturbed. In this view of the matter, the first contention advanced by the learned Counsel cannot be accepted

and the defendant-tenant was bound to deposit rent for the month of April, 1977 in accordance with the provisions of Section 13(4) of the Act by

the 15th of the next succeeding month or within such time not exceeding 15th days, as may be extended by the Court.

5. As regards the other submission advanced by the learned Counsel the two courts below have decided the question of extension of time for

depositing the rent for the month of April, 1977 on the ground that existence of sufficient cause was necessary to be proved by the tenant before

the court could exercise its discretion in favour of the tenant for extending the period prescribed in Sub-section (4) of Section 13 of the Act, it may

be pointed out that undoubtedly the Court has a discretion in the matter of extension of time and the discretion has to be exercised judiciously. But

the provisions of Section 13(4) of the Act are not pari-materia with the provisions of Section 5 of the Limitation Act and the existence of sufficient

cause need not be proved to the hilt. Sub-section (4) of Section 13 of the Act reads as under:

13. Eviction of tenants--

(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 upto 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).

6. In *Dwarka Das v. Smt. Dropadi* 1983 RLR 323 the learned Judge of this court pointed out that the omission of the expression "sufficient cause"

in Sub-section (4) of Section 13 of the Act is significant, as the legislative intent was that the power of extension vested in the court u/s 13(4) of the

Act should be exercised liberally, if the tenant on account of forgetfulness or for any other reason was unable to make payment of rent or make a

deposit thereof by the 15th of the next succeeding month.

7. In *Lalchand v. Santaram* RLW 1970 119 it was held that the court has complete discretion in the matter of extension of time for depositing or

making payment of monthly rent during the pendency of the suit.

8. Similarly in *Jagannath v. Jodharam* RLW 1980 42 the learned Judge of this court observed that while exercising discretion u/s 13(4) of the Act

the court should not be conservative and strict and unless exceptional reasons warranted, generally the court should allow maximum time by

extending it on the lightest bonafide ground.

9. Similar observations were made in *Ramkishore v. Roopesh Kumar* RLW 1982 176, wherein it was held that beneficial provisions contained in

Section 13(4) of the Act should be construed in favour of the tenant as that provision is beneficial legislation for a tenant.

10. I am inclined to agree with the aforesaid decisions and I am of the view that the Court should normally lean in favour of extending the time upto

maximum limit of fifteen days. Unless the circumstances of the case or the conduct of the tenant warrant otherwise. In the case of a tenant, who has

committed continuous defaults, the Court may consider it proper not to extend the period allowed to the tenant for depositing the rent under Sub-

section (4) of Section 13 of the Act, but normally the provision should be liberally construed in favour of the tenant. This aspect of the matter was

totally lost sight of by the two courts below while deciding the question of extension of time u/s 13(4) of the Act. In the facts of the present case,

the rent for the month of April, 1977 should ordinarily have been paid to the landlord or deposited in court upto May 15, 1977. The court had

discretion to extend the time by a period 15 of days i.e. upto May 30, 1977. It is not disputed that the only default which the tenant has committed

during last eight years is in respect of payment of rent for the month of April, 1977, otherwise the tenant has been depositing rent during the

pendency of the suit after the determination was made under Sub-section (3) of Section 13 of the Act within the time stipulated by Section 13(4)

of the Act. As such the single default by the tenant ought to have been condoned and the time for making the deposit should have been extended. I

have no doubt that if the courts below would have noticed the difference in the language employed in Section 5 of the Limitation Act and Section

13(4) of the Act, they would have leaned in favour of extending the period of limitation in the present case, looking to the circumstances of the case

and the conduct of the defendant-tenant. As the summer vacations intervened, the tenant filed the tender along with an application for extension of

time on June 27, 1977 and after the tender was passed, the amount was deposited in the Bank on June 28, 1977. Thus, the deposit of rent for the

month of April, 1977 should be considered to have been made within the extended period which is permissible u/s 13(4) of the Act. As I have

observed above, this was a fit case in which the time should have been extended looking to the circumstances of the case and the conduct of the

defendant-tenant. I am, therefore, inclined to accept the second contention of the learned Counsel for the petitioner.

11. In the result the revision petition is allowed. The order passed by the Additional District Judge No. 6 Jaipur City, Jaipur dated November 29,

1982 is set aside. The application of the plaintiff dated August 22, 1979 for striking off the defence of the defendant is dismissed. The trial court

should now proceed to expeditiously dispose of this suit, which has already become more than ten years old. Parties are left to bear their own

costs.