

(1968) 09 GAU CK 0004

Gauhati High Court

Case No: Second Appeal No. 44 of 1963

Kali Kumar Sen and
Another

APPELLANT

Vs

Makhan Lal Biswas
and Another

RESPONDENT

Date of Decision: Sept. 17, 1968

Acts Referred:

- Assam Urban Areas Rent Control Act, 1946 - Section 12(1), 12(3), 6, 6(1), 6(4)
- Defence of India Rules, 1962 - Rule 81(2)
- Transfer of Property Act, 1882 - Section 106, 108, 108(1)

Hon'ble Judges: S.K. Dutta, C.J; P.K. Goswami, J; M.C. Pathak, J

Bench: Full Bench

Advocate: N.M. Lahiri and B.K. Das, for the Appellant; S.K. Ghose, K.P. Bhattacharjee and K.P. Sen, for the Respondent

Final Decision: Allowed

Judgement

S.K. Dutta, C.J.

This is a second appeal. The Plaintiffs' case is as follows. The suit holding is a part of a two storied building at Tulapatty in Silchar town. The Plaintiffs are the owners of the building. Defendant No. 1 was a monthly tenant of the suit holding at Rs. 15/- per month according to the Bengali calendar. But subsequently he sub-let a part of the holding to Defendant No. 2 at a monthly rent of Bs. 15/-. He also defaulted payment of rent and failed to pay the rent for the months of Baisakh and Jaistha, 1366 B.S. to the Plaintiffs. Moreover, after obtaining Settlement of the suit holding he arranged another house in the town for the purpose of his residence and used to stay there. On the other hand, the suit holding was required for the Plaintiffs own use and occupation., The Plaintiffs, therefore, served a notice upon the Defendants terminating their tenancy and directing them to vacate the suit holding on the expiry of the month of Ashar 1366 B.S. But the Defendant did not comply and hence

the suit.

2. Defendant No. 1 along has contested the Suit. He denies almost all the allegations made by the Plaintiffs. The suit was dismissed by the trial Court as well as the first appellate Court, holding inter alia, that the suit notice was bad. Thereafter this Court on second appeal set aside the finding of the Courts below regarding the notice and sent back the suit for ascertaining whether the Defendant was a defaulter within (he meaning of the Assam Urban Areas Rent Control Act 1955 (hereinafter called the Act), and whether he was evict-able u/s 6(1) (f) of the Act and whether the landlords required the holding for their bona fide needs. The trial court answered, the questions in the negative and gave findings in favour of Defendant No. 1 and sent the case to this Court with the said findings. The appeal came Up, before Goswami, J. and at his request it was referred to a Full Bench.

3. The suit was instituted on among other grounds the ground of default, the allegation being that the rent due for Baisakh and Jaistha were deposited in Court in Ashar. The question whether the Defendants can be treated as defaulters is the only question that we have to consider, the other two findings being findings of facts.

4. Mr. Ghose, appearing on behalf of the Defendants, submits that under the Act the Defendants cannot be treated as defaulters. It is necessary to refer to the relevant provisions of the Act. The Assam Urban Areas Rent Control Act, 1955 was repealed by the Assam Urban Areas Rent Control Act of 1961. In the Act of 1955 the relevant Sub-sections of Section 6 read as follows:

6. Bar against passing and execution of decree and "orders for Section (1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy;

Provided that nothing in this Sub-section shall apply in a suit or proceedings for eviction of the tenant from the house:

(a) where the tenant has done any act contrary to the provisions of Clause (m), Clause (o) or Clause (p) of Section 108 of the Transfer of Property Act, 1882 (Act IV of 1882), or to the spirit of the aforesaid clauses in areas where the Act does not apply, or

(b) where the tenant has been guilty of conduct which is a nuisance or an annoyance to the occupiers of the adjoining or neighboring houses

(c) or where the house is bona fide required by the landlord either for purposes of repairs or re-building, or for his own occupation or for the occupation of any person for whose benefit the house is held, or where the landlord can show any other cause which may be deemed satisfactory by the Court, or

(d) where the tenant sub-lets the house or any part thereof or otherwise transfers his interests in the house or any part thereof without permission in writing from the landlord, or

(e) where the tenant has not paid the rent lawfully due from him in respect of the house; or

(f) where the tenant has built, acquired, or been allotted a suitable residence.

(2) The fact that the interest of the landlord in the house has been transferred shall not, of itself, be deemed to be a satisfactory cause within the meaning of the proviso to Sub-section (1), provided that the tenant is ready and willing to pay rent to the full extent allowable under this Act.

(3)....

(4) Where the landlord refuses to accept the lawful rent offered by besetment, the tenant may, within a fortnight of its becoming due, deposit in Court the amount of such, rent together with process-fees for service of notice upon the landlord, and on receiving such deposit, the Court shall cause a notice of the receipts of such deposit to be served on the landlord, and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as defaulter under Clause (e) of the proviso to Sub-section (1) of this Section.

5. In the Assam Urban Areas Rent Control Act 1961 (hereinafter called the Act of 1961) the above provision became Section 5. In the present case the finding of the trial Court is that Defendant No. 1 paid his rent regularly up to the month of Chaitra of 1365 B.S. The rent of every month was paid in the next month. The Defendant contends that he offered the rent for the month of Baisakh 1366 B.S. to the "Plaintiffs" employee Jatindra Chandra Deb in the following month of Jaistha. But the said employee refused to accept the rent and demanded higher rent. Thereafter the Defendant deposited the rent for Baisakh and Jaistha in the month of Asliar. The question is whether the Defendant can be treated as a defaulter or not. From Sub-section (1) of Section 6 of the Act, it will appear that no order or decree for the possession of any house can be made or executed so long as the tenant pays rent to the full extent allowable under the Act and performs the conditions of the tenancy. It will appear from this provision that a defaulter does not get any protection from eviction. A defaulter is a person who omits to make payment. There may be a case where the landlord may refuse to accept the rent. In that case what will be the position under Sub-section (4) of Section 6 of the Act of 1955, a tenant may deposit the amount in Court within a fortnight of its becoming due. In that case he will not be treated as a defaulter. In the present case, it is an admitted fact that the rent for the month of Baisakh was not deposited within a fortnight of its becoming due. Therefore, according to the Plaintiffs, their tenants became defaulters and thus evitable.

6. Mr. Ghose, however, contends that the offer of the amount to the landlord must be taken as payment and the tenant who makes an offer cannot be treated as a defaulter. The argument is that tender of the rent is payment and hence a tenant who tenders the rent which is refused by the landlord cannot be evicted. In the unreported case of Tobarak Hussain v. Santosh Chandra Pal, S.A. No. 93 of 1957 (Assam), reared by a Division Bench of this Court, reference was made to the case of Bird v. Hildage, (1947) 2 All ER 7, in which it was held that if in a contract, time was not made the essence of the contract, the payment might be made even after the expiry of the period and refusal by the creditor would be at his own peril. this Court differentiated the above English case from the case before it and held that so far as a case under our Act is concerned, a specific procedure has been laid down in the Act for depositing the rent in the event of refusal by the landlord, and if that special procedure had not been followed, a deposit made, or money order sent, could not be regarded as a valid tender. I respectfully agree with this view and want to add that the provision in the Act for deposit in Court becomes more or less meaningless if tender amounts to payment.

7. In the case of Amar Bahadur Thapa v. Abdul Hai, Second Appeal No. 34 of 1964 (Assam), a Division Bench of this Court consisting of four Judges held that the rent had to be deposited in Court within a fortnight of its Decoming due and that the benefit of Section 6 (4) of the Act of 1961 would not be available to a tenant who deposited the rent beyond the aforesaid period.

8. Reference is made to the case of Narsing Bigraha v. Pramatha Chandra Das, AIR 1958 Gau 29. It was held in that case that Section 6 (1) of the Assam Urban Areas Rent Control Act, 1949 (which is same as Section 6 (1) of the Act of 1955 and Section 5 (1) of the Act of 1961) places a bar on the Court's power to make an order or decree for the recovery of possession of any house so long as the tenant pays rent to the full extent allowable under the Act. The only condition for the application of that Sub-section is that the tenant must pay the rent to tho full extent This case is cited in support of the argument that if the rent is paid in full before the suit, no decree can be passed and if it is paid after the decree is passed, the decree cannot be executed. Sarjoo Prosad, C.J. in his judgment observed as follows:

The contention that even if the landlord has accepted payment of all the rent due up to the date of the suit, he will still be entitled to treat the tenant as a defaulter for the purposes of ejectment, if the rent had not been paid in due course according to the contract or deposited in Court as required by Section 6 (4) of the Act, is too extreme to merit acceptance and is not warranted by the true interpretation of Section 6 (1) of the Act.

9. It follows from the above decision that if deposit is made u/s 6 (4) of the Act beyond time, but the money is accepted by the landlord, he cannot there after treat the tenant as a defaulter.

10. I may refer to the decision of the Supreme Court in [Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another](#), The Bombay Rent Control Act of 1947 contains the following provisions.

Section 12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay .standard rent and permitted increases.-

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882 (IV of 1882).

(3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession.

11. In the above case the rent was in arrears for a period of more than six months. The tenant neglected to make payment of the arrears of rent within one month of the service of the notice by the landlord u/s 12(3). The rent was payable by the month and there was no dispute regarding the amount of the rent. The case was, therefore, precisely covered by Sub-section (3) (a) of Section 12. But the Appellant submitted that as she was ready and willing to pay the rent before the institution of the suit, she could claim protection under Sub-section (1) of Section 12. The argument was that Sub-section (1) of Section 12 imposed a general restriction on the landlord's right to recover possession. of the premises so long as the tenant was paying or was ready and willing to pay the rent and observed and performed the other conditions of the tenancy. But this argument was repelled by the Supremo Court Which held that if the conditions of Sub-section (3)(a) were satisfied, the tenant could not claim any protection from eviction under the Act.

12. I may summaries the position as to who is a defaulter under the Act as follows:-

(1) if a tenant pays his rent on the due to the full extent, no order for his " ition can be passed or executed as ho is it a defaulter.

(2) If the landlord refuses to accept the and the tenant deposits in Court with In the instant case the deposit of the rent of Baisakh was made beyond time and the

landlord has not withdrawn it. In the result the Defendants are defaulters.

(3) The eviction of the Defendants is decreed but the parties will bear their own costs throughout.

P.K. Goswami, J.

14. I agree with my Lord the Chief Justice that the appeal be allowed, and would like to give my own reasons for the same. I am, however, unable to agree with conclusion No. 3 of my Lord.

15. The questions of law involved in this appeal, which have been referred to the Full Bench, may be stated as follows

(i) Whether on the findings of the courts below that monthly rent for Baisakh and Jaistha of 1366 B.S. were deposited in Court before the institution of the suit, it would constitute bar to the passing of the decree for eviction of the tenant u/s 6 (1) of the Assam Urban Areas Rent Control Act, 1955 (Act III of 1956), (hereinafter referred to as the 1956 Act"), read with proviso (e) to that section ?

(ii). Whether the decision in AIR 1958 Assam 29 (Sri Narsing Bigrha V. Pramatha Chandra Das) (hereinafter referred to as "the Bigrha case") and the unreported decision in Second Appeal No. 93 of 1957 (Tobarak Hussain v. Santosh Chandra Pal) (hereinafter referred to as "Tobarak"s case,") decided on 19th September, 1958, are correct in law?

iii. Whether the landlord is entitled to evict the tenant in view of the provisions of Section 6 (1) (f) of the 1956 Act?

16. To take the last question first, the findings of the Court below on facts necessary for the purpose of deciding this question of law are as follows:

The tenant was already living in a residential house which he had constructed. He took the suit premises on rent for his business purpose some time later.

In view of these findings of facts, we have got to read proviso 6 (1)(f), which is as follows:

Provided that nothing in this Sub-section shall apply in a suit or proceedings for eviction of the tenant from the house:

(f) where the tenant has built, acquired, or been allotted a suitable residence.

This proviso will be applicable only when the tenant after having a rented residence, has built, acquired or been allotted other suitable residence for him. This would not apply to a case, as in the instant case, where the tenant has been living in a residential house of his own but rented a business premises later on. This provision is intended to safeguard the interest of the landlord when certain tenants after having a rented residential house intend to make a business of it by not occupying

his own residence which he has built, acquired or has been allotted for him. Building, acquisition or allotment contemplated u/s 6 (1) (f) must be posterior to the occupation of the house from which the tenant is sought to be ejected. This is not the case here on the finding of the Courts below, and hence Section 6 (1) (f) cannot be called in aid by the landlord. The answer to this question is in the negative.

17. Regarding the matter involved in questions (i) and (ii) above, the material findings of the Court below, which are necessary for the purpose of determining the legal questions referred, may be stated as follows:

The Defendant was a tenant under the Plaintiffs in respect of certain room in a two-storeyed building belonging to the Plaintiffs at a monthly rent of Rs. 15/- according to the Bengali Calendar month. The monthly rent due was payable within the 7th of the succeeding month. The Court below found that the rent for the month of Baisakh and Jaistha of 1366 B.S, was deposited in the Court in the month of Asarh, on the very day of the service of the notice of eviction. The suit was instituted in the month of Aswin alleging that the Defendant defaulted in respect of the months of Baisakh and Jaistha. The Court below held that the deposit of house rent for the month due was not made within the 7th day of the succeeding month and the deposit in the Court of rent for Baisakh was clearly after a fortnight of the rent becoming due. Even so, the Court below came to the conclusion that the Defendant was not a defaulter under the 1956 Act.

18. Regarding the first question whether the tenant could invoke the bar u/s 6 (1) of the 1956 Act, we may read the section:

6. Bar against passing the execution of decree and orders for Section.- (1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy;

Provided that nothing in this Sub-section shall apply in a suit or proceedings for eviction or the tenant from the house:

(e) where the tenant has not paid the rent lawfully due from him in respect of the house.

Section 6 (5) may also be set out:

6 (5) Where the landlord refuses to accept the lawful rent offered by his tenant the tenant may, within a fortnight of its becoming due, deposit in Court the amount of such rent together with process-fees for service of notice upon the landlord, and on receiving such deposit, the Court shall cause a notice of the receipt of such deposit to be served on the landlord, and the amount of the deposit may thereafter be Withdrawn by the landlord on application made by him to the Court in that behalf. A

tenant who has made such deposit shall not be treated as a defaulter under Clause (e) of the proviso to Sub-section (1) of this Section.

The history of house-rent legislation in the State of Assam may be traced back to the year 1944 when for the first time under Clause (bb) of Sub-rule (2) of Rule 81 of the Defence of India Rules, the Governor of Assam made the Assam Urban Areas Rent Control Order, 1943, on 8th February 1944 (published in the Assam Gazette on 9th February 1944). There was no provision for protection from eviction in this order as it is, but on 8th May 1944 (published in the Assam Gazette on 10th May 1944), the Governor of Assam passed another Order, which may be quoted:

No. RC. 2/43/45.- In exercise of the powers conferred by Sub-clause (ii) of Clause (bb) of Sub-rule (2) of Rule 81 of the Defence of India Rules, the Governor of Assam is pleased to order that no landlord shall unreasonably evict a tenant so long as the latter pays rent to the full extent allowable under the Assam Urban Areas Rent Control Order, 1944, and performs the conditions of the tenancy. If any dispute arises as to what constitutes unreasonable eviction the question will be decided by tie Deputy Commissioner of the district whose decision shall be final.

We have next the Assam Urban Areas Rent Control Order, 1945 (published in the Assam Gazette on 30th May, 1945), which was made in exercise of the same powers under the Defence of India Rules and in super session of the 1944 order. The relevant portion of Paragraph 6 of this order reads as follows:

6. Jurisdiction of Courts to be limited. (1) No order or decree for the recovery of possession of any house shall be made by any court so long as the tenant pays rent to the full extent allowable by this order and performs the conditions of the tenancy:

(5) No tenant shall be entitled to the benefit of this paragraph in respect of any house unless he pays the rent due by him in respect of such house to the full extent allowable by this order within the time fixed in the contract with his landlord or in the absence of any such contract, by the fifteenth day of the month next following that for which the rent is payable and, where any rent has accrued due before the commencement of this order, also unless he has paid within three months of the date of such commencement, all arrears of rent due by him in respect of such house to the full extent allowable by this order.

(6) Where a landlord refuses to accept rent referred to in sub-paragraph (1) offered by a tenant, the tenant may deposit it with the prescribed Officer within a fortnight of its becoming due; and on receiving such deposit the prescribed Officer shall cause a notice of the receipt of deposit to be served on the landlord and the amount of the deposit may be withdrawn by the landlord on application made by him to lie prescribed officer in that behalf.

We have then the Assam Urban Areas Rent Control Act, 1946 (Act I of 1946) (hereinafter referred to as "the 1946 Act") and the material portion of Section 6 whereof may be set out:

6. Bar against passing and execution of decree and orders. (1) No order or decree for the recovery of possession of any house shall be made or executed so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy:

(4) No tenant shall be entitled to any benefit under this section in respect of any house if he is a defaulter, that is, if he has not paid the rent due by him in respect of such house to the full extent allowable under this Act within the time fixed in the contract with his landlord or in the absence of any such contract, by the fifteenth day of the month next following that for which the rent is payable and, where any rent has accrued due before the commencement of this Act, if he has not also paid within three months of the date of such commencement all arrears of rent due by him in respect of such house to the full extent allowable by this Act.

(5) Where the landlord refuses to accept rent offered by his tenant, the tenant may, Within a fortnight of its becoming due, deposit in Court the amount of such rent together with process-fees for service of notice upon the landlord (or upon each of the landlords, where the landlords number more than one), and on receiving such do-posit, the Court shall cause a notice of the receipt of such deposit to be served on the landlord (or each of the landlords) and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as a defaulter under Sub-sec-(4) of this section.

for the first time in the 1946 Act, the namely that a tenant who has made such deposit shall not be treated as a defaulter has been introduced.

We have then the Assam Urban Areas Rent Control Act, 1949 .(Assam Act XIII of 1949) (hereinafter referred to as "the 1949 Act), and except for the words "by any Court Sub-section (1) of Section 6 of this Act is the same as that of the earlier 1946 Act. Sections 6 (4) and 6 (5) of this Act are in pari-materia with those of the earlier 1946 Act.

Then we come to the Assam Urban Areas Rent Control Act, 1955 (Assam Act III of 1956), where the provisions have undergone some changes. Provisos (e) and (f) to Sub-section (1) of Section 6 have been added and these have already been quoted earlier. Sub-section (4) of Section 6 of the 1949 Apt is completely omitted from this Act and Sub-section (5) is retained with some alterations, which may be noticed:

Where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may, within a fortnight of its becoming due, deposit in Court the amount of

such rent together with process-fees for service of notice upon the landlord, and on receiving such deposit, the Court shall cause a notice of the receipt of such deposit to be served on the landlord, and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as a defaulter "under Clause (e) of the proviso to Sub-section (1) of this section

The underlined (here in) words have been inserted in this section. We need not notice some other omissions in this section which are not relevant for our purpose.

To complete the history of the legislation in this behalf up to the present day, we may note that we have next the Assam Urban Areas Rent Control Act, 1961 (Assam Act II of 1962) and the Assam Urban Rent Control Act, 1966 (Assam Act II of 1987). There has been some changes and the material portion in the context of the present controversy may be noticed in proviso (e), which is the same in both the Acts and may be set out:

5. (1) proviso (o),- Where the tenant has not paid the rent lawfully due from him in respect of the house "within a fortnight of its falling due.

The underlined (here in) portion has been newly added.

19. In this appeal however, the case of both the parties is that on the facts of the present case, the 1956 Act is applicable. under the general law of the Transfer of Property Act, a tenancy determines u/s III and amongst other modes, it determines on the expiration of a notice to detenine the lease or to quit, as given in conformity with Section 106 of the Trans fer of Property Act. The Assam Act has, therefore, introduced a bar to eviction notwithstanding the landlord serves a valid notice u/s 106 of the Transfer of Property; Act - The plea of bar can be raised Dy the tenant provided his case comes u/s 6 (1) of the 1956 Act. Ho can ask the Court not to puss an order for his eviction when he satisfies the Court that he has paid the rent to the full extent allowable under the Act and performed the conditions of the tenancy. He has, therefore, to satisfy these two conditions before he can successfully resist the suit. The landlord, on the other hand, can resist this plea if he can show that the tenant has not paid the rent lawfully due from him in respect of the house.

20. The point, therefore, that arises for by the tenant in order to successfully consideration on the facts of the present case is whether it can be said that the tenant has not paid the rent lawfully due from him in order that he may be treated as a defaulter under Clause (e) of the proviso to Sub-section (1) of Section 6 of the Act. Sub-section (1) although in negative form, can be said to include a positive aspect. It may be interpreted to mean that an order or decree for the recovery of possession may be made or executed if the tenant has not paid the rent to the full extent allowable under the Act and performed the conditions of the tenancy. Even so, we have proviso (e) where this positive aspect has been incorporated in the form already quoted. This proviso cannot be read in isolation. It is a successor to

Sub-section (4) of the earlier Acts which have been omitted in this Act, but the essential content of the provision with the object and purpose for which this was there in the statute book has been retained by the insertion of proviso (e) and particularly inserting this proviso in Sub-section (5) of Section 6 of the Act. The scheme of Section 6 succeeds in balancing the interests of the landlord as well as of the tenant for whose benefit mainly this Act has been passed.

Reading, therefore, Section 6 (1) and 6(1) proviso (e) and Section 6 (5) together, it is absolutely clear that the tenant in order to successfully resist eviction under the law, must be required to prove that he has not only performed the conditions of the tenancy but has paid the rent that is lawfully due within the time limit agreed upon under the contract, if there be any, and in case of refusal, within a fortnight of its becoming due. In the instant case, the finding of the court below being that the tenant was under an obligation to pay the rent within 7th of the succeeding month, in order to have the benefit of Section 6 (1), he has to show that he has paid his rent within a fortnight of its becoming due after he has established that the landlord has refused to accept his rent which was offered within the time agreed upon. The finding of the courts below is that the rent for Baisakh was deposited in Court in Asarh, which is well beyond the fortnight of its becoming due. That being the position, he is a defaulter under Clause (e) of the proviso to Sub-section (1) of Section 6, as the only way he cannot be so treated is when he has deposited the rent after refusal by the landlord in conformity with Section 6 (5) within a fortnight of its becoming due.

21. Mr. Ghose, the learned Counsel for the Respondents, submits relying on a decision of this Court in the *Bighraha* case, AIR 1958 Gau 29 referred to earlier, that there is no time limit for payment of rent by the tenant in order to successfully raise a plea of bar to eviction. This decision is based on the interpretation of Section 6 (1) of the 1949 Act. It has been held in this decision that if a tenant pays the rent in full before the suit, an ejectment decree cannot be passed and the rent need not have been paid in the manner indicated in Sub-section (4) of Section 6. With respect, I am unable to agree with this decision. As stated above, it is difficult to consider the effect of Section 6 (1) without having regard to what is contained in the proviso (e) as also Sub-section (5). True, in the 1949 Act the proviso (e) was not there, but instead there was Sub-section (4) of Section 6, which has been quoted earlier. Sub-section (4) of 1949 Act and proviso (e) of the 1956 Act go to deprive the tenant of the benefit of protection given u/s 6 (1) in the presence of certain circumstances. There is, therefore, no violently drastic difference between these two Acts in this respect. The provision under Sub-section (5) of the 1949 Act clearly mentioning therein that a tenant who has made such deposit, that is to say, the deposit made in the manner laid down under this Sub-section, shall not be treated as a defaulter under Sub-section (4) of this section, goes to show that all these provisions, namely Section 6 (1), (4) and (5) of the 1949 Act have got to be harmonised and reconciled in a rational manner.

In this respect the legal position as to when a tenant would become a defaulter, was not different in the 1949 Act. I am clearly of the opinion that the default clause, which is inserted in order to do-"prive the tenant of the benefit of the protection against eviction, has been there since the introduction of the 1946 Act. If the time limit, which is provided for in Sub-section (5) of Section 6, is given a go-by, the provision which is made in this Sub-section not to treat a tenant who has made the required deposit in accordance with the provisions of this section a defaulter under Clause (e) of the proviso will be otiose and meaningless. The tenant would normally try to pay the rent in accordance with the contract, if any, or in its absence at the end of the month of the tenancy when rent would be normally due and if the landlord refuses the rent which is tendered, a mode is prescribed under the law to make the deposit in Court. When law provides for a particular mode that mode has to be followed. under the general law of the Transfer of Property Act, u/s 108 (1) a tenant is bound to pay or tender at the proper time and place the premium or rent to his lessor or his agent in this behalf. His obligation is only to pay or tender the amount. Once he has paid or tendered the amount and the landlord has refused, he has discharged his obligation under the general law. But a further obligation has been imposed by the Assam Act in order to invoke a bar against his eviction to deposit the refused rent in Court within the time prescribed therein. This is a salutary provision by which the law-abiding tenants are protected from eviction at the hands of the unscrupulous landlords who may intend to eject tenants with the ulterior motive of enhancing the rent.

At the same time, law has provided for some consideration for the landlords who should not be deprived of the use and occupation of the house without some return from the property in a regular way., An obligation is therefore imposed on the tenant to pay or tender the rent when due and in case of refusal to discharge the further obligation of depositing the same in Court within the time provided for under the law, in which case he will be able to claim the benefit u/s 6 (1). The 1949 Act, which was considered in the Bigrha case, AIR 1958 Gau 29 clearly provided that Sub-section (1) of Section 6 -shall not apply in a suit or proceeding under four heads (a), (b), (c) and (d). The fact that proviso (e) has not been inserted as one of the exceptional cases excluding the application of Sub-section (1) of Section 6, would not matter for the simple reason that Sub-section (4) of Section 6, has clearly provided for what the pro-viso (e) in the 1956 Act stands for. In the 1956 Act, Sub-section (4) of Section 6 of the 1949 Act has disappeared and has taken a rebirth in the shape of a proviso (e) to Sub-section (1) of Section 6 and this proviso, which more or less replaces Sub-section (4) of the 1949 Act, is also inserted in Sub-section (5) of Section 6, as Sub-section (4) had been earlier inserted in Sub-section (5) of the 1949 Act

That being the position time, which is essence of the matter in considering whether the default has been incurred or not cannot be given a go-by and the interpretation of the law in the Bigrha case, AIR 1958 Assam 29 treating Section 6(1) as a completely independent section without having any connection with the other

provisions under that section, is, according to my considered opinion, not correct and, with respect, I disagree with the decision given therein. In my judgment, there is no difference in law on this point both under the 1949 Act as well as under the 1956 Act.

22. The legislature having conferred benefits on the tenant could not have intended to make it a one-way traffic absolute. The quintessence of the proviso (e) to Sub-section (1) of Section 6 is to deny the benefit of protection conferred u/s 6 (1) of the Act where the conditions for the same are absent. The following passage from Maxwell on Interpretation of Statutes (11th Edition) at page 155 is apposite:

There is no rule that the first or enacting part is to be construed without reference to the proviso. The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest.

The true principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail.

Again, when some benefit is conferred under an Act subject to performance of certain conditions and the benefit to be enjoyed affects rights of others adversely, the conditions imposed by law must be strictly enforced. Another eloquent passage from Maxwell at page 364 is worth quoting:

Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred and it is therefore probable that such was the intention of the legislature.

The tenant is, therefore, under a legal obligation to deposit the rent in Court within the time prescribed u/s 6 (5) in case of refusal by the landlord. Any deposit of rent made outside the time limit prescribed under this Sub-section, makes the tenant a defaulter within the meaning of the proviso (e) to Sub-section (1) of Section 6 of the 1956 Act, and he will be necessarily deprived of the benefit of the protection from eviction u/s 6 (1) of the Act. A question of default has therefore, to be determined in accordance with the provisions of the Act, and once the tenant is held under the law to be a defaulter, as interpreted above, proviso (e) comes in aid of the landlord.

23. If the question of default under the law were immaterial and irrelevant while considering the protection clause u/s 6 (1) the legislature would not insert the last sentence in Sub-section (5) of Section 6, whereby it is implicit that whoever is "a defaulter by failing to comply with Sub-section (5) will not have the benefit of Section 6 (1). This conclusion necessarily and irresistibly follows from the provision of this Sub-section and setting of the different provisions in the entire section.

(24) It is, therefore, abundantly clear that the protection u/s 6 (1) cannot be "viewed in isolation and must be given a meaning rationally consistent with the proviso (e) as also Sub-section (5) of Section 6. The entire scheme of this Section 6 unfolds a balancing of consideration both in favour of the landlord as well as that of the tenant. The *raison d'être* of the proviso (e) and Sub-section (5) of Section 6 can only be explained by insistence on a time limit for payment of rent even u/s 6 (1).

25. It is noticed that the legislature in the Acts of 1962 and 1967 has again reverted to the 1946 position and has inserted a time limit in the proviso (e). But as found above, the protection clause and (sic) the totality of all the provisions in Section 6. In view of the finding of fact that the rent was not deposited within 22nd Taistha, that is to say, within a fortnight of 7th Jaistha, the date when the rent, in this case, became due, the tenant is not entitled to protection u/s 6 (1) and there can be no bar to the passing of a decree for eviction in this case.

26. Mr. Lahiri, the learned Counsel for the Appellants, has drawn our attention to an unreported decision in Tobarak's case, S.A. No. 93 of 1957 (Assam) referred to earlier, wherein a Division Bench of this Court has interpreted Section 6 (1) under both the Acts, namely 1949 and 1956 Acts. Their Lordships also noticed the decision in the Bigraha case, AIR 1958 Assam 29 and distinguished the same on facts without differing from the views expressed therein. The following observations would clearly show how the matter was dealt with in this unreported decision:

This case "(referred to the Bigraha case, AIR 1958 Assam 29)" to our mind is distinguishable from the facts of the present case. In the case referred to above, admittedly the rent due prior to the filing of the suit had been paid up-, on the date when the suit was filed therefore there was no rent due and the question of the payment did not arise. In the present case, it is disputed that the rent due prior to the filing of the suit had been paid "up. Unless, therefore, the contention of the Appellant is accepted that the payments already made should be adjusted towards the rent on the basis that the lawful rent due was Rs. 12 per month or it is accepted that the sending of the money order was a valid tender, the case referred to above will not apply. This decision, therefore, did not consider the question which I am now called upon to consider, namely whether, as in- the present appeal, deposit of the" rent in Court before the commencement of the suit without strictly complying with the procedure laid down under Sub-section (5) of Section 6, could give rise to a successful plea of bar to the passing of a decree for eviction. In Tobarak's case, S.A. No. 93 of 1957 (Assam) the payment was not made by any deposit in Court and therefore the mode of the payment and the time within which it was deposited had not to be gone into. This decision is therefore not of much assistance to the learned Counsel for the Appellants as an authority for the submissions which he is making. It can even be argued with some force that Tobarak's case, S. A. No. 93 of 1957 (Assam) has not departed from the principle of law laid down in the Bigraha case, AIR 1958 Gau 29. As discussed earlier, having regard to the scheme of Section 6 and

the relevant provision of Section 6(1) read with proviso (e) and Section 6 (5) of the 1956 Act I am clearly of opinion that the tenant will be able to successfully plead a bar to passing of any decree for eviction only when he satisfies the Court that he has paid the rent to the full extent allowable under the Act to the landlord and in case of the latter's refusal, he deposits the same in Court by following the mode prescribed u/s 6 (5), that is to say, depositing the rent lawfully due within a fortnight of its becoming due.

27. In the view I have taken of the law, the question of default could not be left to be decided on the volition of the landlord in a case where the tenant deposits rent in Court beyond the time prescribed u/s 6 (5). In my judgment, payment by deposit in Court beyond the time laid down u/s 6 (5) is no payment in the eye of law under this Sub-section. Hence the withdrawal of the deposited rent by the landlord in due course has no consequence in affecting the question whether the tenant has already incurred default or not. The question of default, in my opinion, has to be judged from the tenant's action and does not depend upon the landlord's exercise of his right to withdraw from Court the amount which he undoubtedly possesses even under Sub-section (5) of Section 6. The landlord, however, may waive his right to evict by acceptance of delayed payment or by withdrawal of the deposited amount. The tenant does not cease to be a defaulter under the law but the landlord's action may be barred by the principles of waiver. Here again, the following passage from Maxwell (11th Edition), page 376, may be Usefully quoted:

Everyone has a right to waive and to ree to waive the advantage of a 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 right or public policy." It is sufficient to state that no such waiver is pleaded in this case and the question of waiver has to be decided on the facts and circumstances of each case.

28. The first question referred to us must, therefore, be answered in the negative. The deposit of rent in tin's case beyond the time prescribed u/s 6 (5) does not constitute a bar to the passing of a decree for eviction.

29. As regards the second question, referred to us, the decision in the Bigraha case, AIR 1958 Gau 29 with respect is not correct for the reasons given above. It is not necessary to pass upon the unreported decision in Tobarak's case, Second" Appeal No. 93 of 1957 (Assam) as the first question of law raised in this appeal did not directly come up for decision in that case.

30. In the result, the appeal succeeds, the judgment and decree of the Court below are set aside and the plain tiffs" suit is decreed and the Plaintiffs will got khas of the suit promises by evicting the Defendants therefrom. In the entire circumstances of the case, I make no order as to costs.

M.C. Pathak, J.

31. I agree with my Lord the Chief Justice and my learned brother Goswami, J. that the appeal will be allowed and the Plaintiffs suit be decreed for ejectment and Plaintiffs do get khas possession of the suit premises by evicting the Defendants, and I would like to give my own reasons for the same.

32. The Plaintiffs brought Title Suit No. 125 of 1959 against the Defendants- adents for ejectment of the Defendants the suit premises and for obtaining has possession thereof. The Plaintiffs case is that Defendant No. 1 was a monthly nt at the rate of Rs. 15 p. m. accord-to the Bengali Calendar month in res- of certain rooms in a two-storeyed belonging to the Plaintiffs, de- "in the schedule to the plaint. That fendant No. 1 sublet a portion of theses to Defendant No. 2 without permission, that Defendant No. 1 was a defaulter and that the Defendant No. 1 has a separate residence in the town. On these grounds and also on the ground that the Plaintiffs bona fide require the suit premises for their own use, the Plaintiffs served the Defendants with a notice to quit the suit premises by the end of Ashar 1366 B.S. but the Defendants did not vacate.

33. Defendant No. 1 only contested the suit. His case is that the ejectment notice was illegal, that he was not a defaulter and that he did not sublet he suit premises; and he was not liable to be evicted according to law.

34. Several issues were framed in the suit and the learned Munsif who tried the suit dismissed it. The Plaintiffs preferred an appeal against the judgment and decree of the learned Munsif and it was numbered as Title Appeal No. 159/61. The learned Additional Subordinate Judge, Cachar at Silchar, dismissed the appeal and affirmed the judgment and decree of the learned Munsiff. The Plaintiffs, therefore, preferred an appeal to the High Court which was numbered as S.A. No. 44/63. This second appeal was heard by Mehrotra, C.J. who set aside the finding of the learned lower appellate Court that the notice was defective and remanded the case to the lower appellate Court for a decision on the following issues:-

(1) Whether the Defendant is a defaulter within the meaning of the Assam Urban Areas "Rent Control Act, 1955 (Assam Act HI of 1956);

(2) Whether the Plaintiffs are entitled to evict tho Defendant u/s 6 (1) (f) of the said Act; and

(3) Whether the landlords require the holding for their- bona fide needs.

Though tho case was remanded to the lower appellate Court for giving its findings on the issues so framed, due to some confusion the case was taken up by the learned Munsiff, Silchar, who after hearing the parties, submitted his findings on the issue to this Court. Thereafter the second appeal was heard by Goswami, J. at whose instance the case was referred to a Full Bench for decision of the points raised in the said appeal. The matter was thereafter heard by the Full Bench. At the time of hearing, it was noticed that though the case was sent back to the lower appellate

Court for giving its findings on the issues framed by Mehrotra, C.J., the decision on those issues was given by the learned Munsiff and therefore the learned advocates of both the parties were asked as to whether any of them had any objection in this regard. The learned advocates of both the parties stated that they had no objection to the findings of facts arrived at by the learned Munsiff and the case might be decided on the findings of facts arrived at by him,

35. The admitted facts in the case are that Defendant No. 1 was a monthly tenant of the suit premises at the rate of Rs. 15 p.m. under the Plaintiffs according to the Bengali Calendar month and the rent was payable by the 7th of the following month, that the Plaintiffs received the rent up to the month of Chaitra 1365 B.S. and thereafter the Defendant No. 1 deposited the rent in Court. The rent for the month of Baisakh of 1366 B.S. was deposited in Court in the month of Ashar though it was payable by the 7th of Jaistha. The suit was instituted in the month of Aswin and before that Defendant No. 1 deposited into Court the arrear rent for the previous months due. It has been also admitted that Defendant No. 1 had built a homestead at Bilpar in the town and has been residing there with his family but that homestead was built before obtaining the lease of the suit premises for the purposes of business.

36. It was found by the learned Court below that the deposits of rent in Court were not made within the time prescribed by Section 6 (4) of the Act. The findings of the Court below are that Defendant No. 1 is not a defaulter within the meaning of the Act, that the Plaintiffs are not entitled to evict Defendant No. 1 u/s 6 (1) proviso (f) of the Act, and that the Plaintiffs failed to prove that they required the suit premises bona fide for their own needs.

37. The points that fall for determination in this case are as follows:

(1) Whether on the facts admitted and proved in the instant case, the Court is debarred from passing a decree for ejectment u/s 6 (1) of the Act;

(2) Whether the landlords are entitled to evict the tenant in the instant case in view of the provisions of Section 6 (1) proviso (f) of the said Act; and "

(3) When does a tenant become defaulter?

38. The present case is governed by the Assam Urban Areas Rent Control Act, 1955. under the Act, "tenant" means any person by whom or on whose behalf rent payable for any house and includes every person who from time to time derives title under a tenant.

39. Regarding the first point, Mr. Ghose the learned Counsel for the Appellants, has submitted that it has been found that the rents due up to the date of filing of the suit were paid by the Defendant before the suit was filed. On the date of filing of the suit, no rent due remained unpaid and as such Section 6 (1) of the Act debars the Court from passing a decree for ejectment in the instant case. The relevant

Sub-sections of Section 6 of the Act have been quoted in the judgment of my Lord the Chief Justice. Sub-section (1) of Section 0 of the Act provides that no order or decree for recovery of possession of a house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under the Act. But under Cl. (e) to the proviso to Sub-section (1) it is provided that Sub-section (1) shall not apply in a suit proceeding for eviction of the tenant from the house where the tenant has not paid rent lawfully due from him in respect of the house. Sub-section (5) of Section 6 provides that If the landlord refuses to accept the lawful rent offered by- his tenant, the tenant may within a fortnight of its becoming due deposit in Court the amount of such rent to go therewith with process fees for service of notice upon the landlord and the tenant who has made such deposit shall not be treated as a defaulter under Clause (e) of the proviso to Sub-section (1) of Section 6 of the Act. The plain meaning of the language of Section 6 appears to be that where a tenant has paid the rent lawfully due from him in respect of the house, no decree for ejectment can be passed against him, or, in other words, no decree for ejectment can be passed against a tenant who is not a defaulter in respect of a house.

In the instant case, the Defendant is found to be a tenant and he is liable to pay rent at the rate of Rs. 15 p. m. and that rent has to be paid by 7th of the following month. When the law says that so long as a tenant pays rent to the full extent allowable under the Act it means that the tenant has to pay rent when it becomes due. To pay rent at a time subsequent to the date on which it has to be paid under the contract or under the provisions of the Act cannot be said to be lawful payment of rent under the Act. When Clause (e) of the proviso to Sub-section (1) of Section 6 lays down that a tenant who has not paid the rent lawfully due from him in respect of the house will not get the benefit of Sub-section (1) of Section 6, it is quite clear that a tenant who is a defaulter is not entitled to the benefit under Sub-section (1) of Section 6. As I have already stated, a tenant becomes defaulter when he fails to pay rent due within the stipulated period. The Act has laid stress on actual payment. It does not speak of any offer of payment as we find in some other Acts. In the matter of actual payment however a contingency may arise when the landlord, for some reason or other, refuses to accept the rent in which case it will not be possible to make payment of the rent due and consequently by the action of an unreasonable landlord the protection given to the tenant under Sub-section (1) may be frustrated.

In such a case the tenant will not have the opportunity to make payment of rent lawfully due within the stipulated period and get the benefit of the section though there may not be any fault on his part. In order to obviate this difficulty, the legislature has provided, Sub-section (5) which lays down the procedure for depositing the rent due in Court in case the landlord refuses to accept the same and by so depositing the tenant may avoid the disqualification of defaulter as provided in Clause (e) to the proviso to Sub-section (1) of Section 6 of the Act. Sub-section (5) thus provides that if the landlord refuses to accept the lawful rent offered by the tenant, the tenant may deposit the rent in court and if he so deposits the rent in

court, he shall not be treated as a defaulter under Clause (e) of proviso to Sub-section (1) of Section 6. But, in order to avoid the disqualification of defaulter by depositing the rent in court, the legislature has thought it fit to lay down a period within which a tenant must deposit the rent in court when it is refused to be accepted by the landlord and that period is a fortnight from the date when the rent becomes due. In the instant case the rent was payable admittedly by the 7th of the following month. But the rent of Baisakh 1366 B.S. was deposited in court only in Ashar," admittedly beyond a fortnight of the rent becoming due. So the tenant in the instant case has not paid the rent of Baisakh 1366 B.S. by the 7th of Jaistha next, nor has he deposited the same in court within a fortnight of 7th Jaistha as provided by Sub-section (5) and that being the case the tenant is not entitled to the benefit under Sub-section (1) of Section 6.

40. In this connection, Mr. Ghose, the learned Counsel for the Appellants, has relied on a decision of this Court in the case of AIR 1958 Assam 29. On the other hand, Mr. Lahiri, the learned Counsel for the Respondents, has relied on an unreported decision of this Court in the case of Second Appeal No. 93 of 1957 disposed of on 19-9-1958 (Assam). In the case of AIR 1958 Gau 29, a Division Bench of this Court held that u/s 6, Sub-section (1) of the Assam Urban Areas Rent Control Act, 1949, the Court has only to see if the tenant pays the rent to the full extent and if the tenant has so paid, the court will make no order for ejectment. The Division Bench in that case held that If the payment in Sub-section (1) of Section 6 is interpreted to mean only the payment made at the time and in the manner provided under Sub-section (4) of Section 6, it would be adding certain words to Sub-section (1) of Section 6.

41. Sub-sections (1), (4) and (5) of Section 6 of the Assam Urban Areas Rent Control Act, 1949, lays down as follows:-

6. Bar against passing and execution of decree and orders:

(1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy:

(4) No tenant shall be entitled to any benefit under this section in respect of any house if he is a defaulter, that is, if he has not paid the rent due by him in respect of such house to the full extent allowable under this Act within the time fixed in the contract, with his landlord or in the absence of any such contract, by the fifteenth day of the" month next following that for which the rent is payable and where any rent has accrued due before the commencement of this Act, if he has not also paid within three months of the date of such commencement all arrears of rent due by him in respect of such house to the full extent allowable by this Act.

(5) Where the landlord refuses to accept rent offered by his tenant, the tenant may, within a fortnight of its becoming due, deposit in Court the amount of such rent together with process-fees for service of notice upon the landlord (or upon each of

the landlords, where the landlords number more than one), and on receiving such deposit the Court shall cause a notice of the receipt of such deposit to be served on the landlord (or each of the landlords) and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as a defaulter under Sub-section (4) of this section.

On a careful consideration of the said provisions of law, I am of the opinion that Sub-sections (1), (4) and (5) of Section 6 of the Act of 1949 have to be read together in order to give a reasonable construction to those provisions. Sub-section (1) cannot be construed, detached from the provisions of Sub-sections (4) and (5). When Sub-section (1) says that no order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under the Act and performs the conditions of the tenancy and Sub-section (4) says that no tenant shall be entitled to any benefit under this section in respect of any house if he is a defaulter, it is, in my opinion, quite clear that a defaulter as contemplated under Sub-section (4) cannot get any benefit under Sub-section (1). Sub-section (4) laid down who is a defaulter and Sub-section (5) laid down the procedure how to avoid the bar of defaulter which an unscrupulous landlord might try to raise against a tenant. The language of Section 6 of the 1949 Act is substantially the same as the language of the 1955 Act. On this point there is no substantial departure. Only there is a rearrangement of some provisions in the Act of 1955. In this view I respectfully disagree with the view of a tenant. In other words, this building view expressed by this Court in the case of *acquiring or allotment of a suitable residency* AIR 1958 Gau 29

42. In Second Appeal No. 93 of 1957 case where this contingency is already in (Assam) this Court held that unless it is existence. In the instant case it has been established that the tenant had not paid found by the learned lower Court that the the rent lawfully due from him in respect Defendant built a homestead and has been of the house, he cannot be deprived of residing with his family before he obtained the benefit of Section 6 (1) and if he has the lease of the suit premises for the prepaid the rent lawfully due from him, he pose of business. Moreover the suit pre will be entitled to the protection under sec- raises is found to be a holding used for Section 6(1). Sub-section (5) (this should commercial purpose. If a tenant occupies have been Sub-section (4)) of Section 6 of a house for commercial purpose and of such a tenant during the continuance or the person of the word aid" will have to be given effect to.

It has been held in the latter case by this Court that the tenant in order to claim protection under Sub-section (1) must prove that he has paid rent lawfully due from him in respect of the house and the tender or deposit in Court can only be regarded as payment if it has been done under the provisions of Sub-section (5). It is, therefore, clear that the tenant in order to claim benefit under Sub-section (1) of

Section 6 of the Act must have paid the rent lawfully due from him in respect of the house. The rent lawfully due" means the rent that is to be paid under contract or the fair rent if fair rent has been determined: by the Court under the Act. The lawful rent has to be paid within the time stipulated by the contract and if the landlord refuses to accept the lawful rent offered by the tenant, the tenant may within a fortnight of the rent becoming due may deposit it in Court in accordance with Sub-section (5) of Section 6 and in that case the tenant will be deemed to have paid rent, lawfully due to the will not be considered as defaulter forfeiting the, benefit under Sub-section (1) of Section 6. Since in the instant case the tenant has been found to be a defaulter, on a proper consideration of Section 6 (1) of the Act the Plaintiffs are entitled to a decree for ejectment.

43. Clause (f) to proviso to Sub-section (1) of (Section 6 provides that the tenant will not get the benefit of Sub-section (1) if he has built, acquired, or had been allotted suitable residence. The plain meaning of (f) is that this building, acquiring allotment of a suitable residence on the part of a tenant has to take place when he is a tenant. In other words, this building acquiring or allotment of a suitable residency acquiring or allotment of a suitable residency of tenancy and it may not apply to a case where this contingency is already in existence. In the instant case it has been found by the learned lower Court that the Defendant built a homestead and has been residing with his family before he obtained the lease of the suit premises for the purpose of business. Moreover the suit pre- raises is found to be a holding used for commercial purpose. If a tenant occupies a house for commercial purpose and for such a tenant during the continuance or the tenancy has built or acquired or has been allotted a residential house, it is doubtful whether Clause (f) will be applicable to such a case. Whatever that may be, in the present case, the construction of the residential house was admittedly prior to the commencement of the tenancy and that view I hold that in the instant case the landlord is not entitled to evict the tenant on this ground.

44. I have already found that if a tenant does not pay the lawful rent due in time as stipulated in the contract or, if refused by the landlord, does not deposit in Court within a fortnight of its becoming due according to Sub-section (5) of Section 6, the tenant will be treated as a defaulter. But a question may arise whether a tenant who defaulted in payment of rent but subsequently paid the rent and the landlord accepted the same will be a defaulter or not. Or there may be a case where a tenant on refusal by the landlord deposited the rent beyond the period prescribed under Sub-section (5) of Section 6 and the landlord on getting notice from the Court withdraws the same, and whether in such a case the tenant will be a defaulter or not. Whether a tenant will be defaulter or not will depend upon the payment of the rent lawfully due within the stipulated period under the contract or on refusal by the landlord, on the deposit of rent made in Court as provided under Sub-section (5) of Section 0 of the Act. In my considered opinion, in-order to avoid the bar of Deland lord and he faulter as laid down in Clause (e) to the proviso, the rent must be paid to the landlord within the stipulated time and when the landlord refuses to accept, it

must be deposited in Court within the period prescribed in Sub-section (5).

If the tenant does not pay within the stipulated time or does not deposit in Court within the time prescribed under Sub-section (5), he does not cease to be defaulter in the eye of law, even though the landlord may have accepted or withdrawn the rent so paid or deposited beyond such period. Clause (f) is that this building, acquiring But if in a given case the landlord accepts allotment of a suitable residence on the or withdraws the rent paid to him beyond part of a tenant has to take place when he the stipulated time or deposited in court beyond the time prescribed by Sub-section (5) by the landlord may be due to various reasons, for example, the landlord may think that he is bound to accept, as notice has been issued upon him by the Court or he may think that if he does not accept the rent, the subsequent claim thereto may be barred by limitation and so on and so forth In the instant case, however, the landlord has not withdrawn the amount deposited by the tenant and as such there is no question of waiver or estoppel on the part of it the landlord.

45. In the result, the appeal is allowed and the Plaintiffs' suit for ejectment and khas possession is decreed. In the entire circumstances of the case, I make no order as to costs.

ORDER

46. The appeal is allowed. There will be no order as to costs.

47. Three months' time is granted to the Defendants for vacating the suit premises.