

CASE NO.:
Appeal (civil) 7253 of 2002

PETITIONER:
Manik Lal Mazumdar & Ors.

RESPONDENT:
Gouranga Chandra Dey & Ors.

DATE OF JUDGMENT: 26/02/2004

BENCH:
Shivaraj V. Patil

JUDGMENT:
J U D G M E N T

SHIVARAJ V. PATIL J.

Few facts, which are considered necessary and relevant for disposal of this appeal, in short and substance, are the following:

The respondent No. 1 filed a petition for eviction under Section 12 of The Tripura Buildings (Lease and Rent Control) Act, 1975 (for short 'the Act') on the grounds of bona fide requirement and default in payment of rent. The Rent Control Court held that the claim of bona fide requirement was not proved. However, it found that the appellants were defaulters in payment of rent and directed the appellants to hand over the possession of the building in question to the respondent No. 1. The appellants filed R.C.C. Appeal 4/1995 under Section 20 of the Act before the Civil Judge (Senior Division), West Tripura against the said order of the Rent Control Court. The learned Civil Judge, after hearing the parties, dismissed the appeal holding that the appellants failed to deposit the arrears of rent as directed by the Rent Control Court and the appeal filed by them without making deposit of arrears of rent was not maintainable in view of Section 13(1) of the Act. Thereafter, the appellants filed revision petition in the court of the District Judge, Tripura, assailing the order passed by the learned Civil Judge in appeal. The learned District Judge allowed the revision petition, set aside the order of the Civil Judge in appeal and remanded the case to the appellate court for considering the petition for adducing additional evidence and for deciding the appeal afresh. The respondent No. 1, aggrieved by this order passed in the revision petition, filed a petition as Civil Rule No. 466 of 1997 under Article 227 of the Constitution of India before the Gauhati High Court. A learned single Judge of the High Court, after hearing the parties, finding some conflict in the decisions of this Court in Chinnamma vs. Gopalan and others and of Division Bench of the High Court in Binapani Roy & two others vs. State of Tripura and two others, felt that the decision of the Division Bench of the High Court in Binapani Roy case required reconsideration by a larger bench to decide the following question: -
"Whether in view of Section 13 of the Act, 1975, the appellate Court is prohibited from entertaining an appeal

unless the tenant has paid or pays to the landlord or deposit with the Rent Control Court or the appellant authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment of deposit and continue to pay or deposit any rent which may subsequently become due in respect of the building until termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be?"

The Division Bench of the High Court, after hearing the parties, concluded that the judgment of the Division Bench in Binapani Roy case (aforementioned) did not require any reconsideration and no reference to a larger Bench was called for. It also held that no appeal against the order made under Section 12 of the Act is competent and maintainable under Section 20 of the Act unless provision of Section 13(1) of the Act is complied with; that fulfillment of the requirement of Section 13(1) is a sine qua non for preferring appeal under Section 20. Hence, aggrieved by the same, the appellant-tenants have assailed the impugned judgment of the Division Bench of the High Court in this appeal.

The learned Senior counsel for the appellants contended that the High Court was not right and justified in taking a technical view in the matter; as in the case of contesting the proceedings before the Rent Controller, opportunity could be given by the appellate court for making payment of admitted rent due or depositing before the appeal is heard; saying that appeal itself could not be preferred without paying or depositing admitted arrears of rent may not be correct in view of Section 13(3) of the Act; if Section 13 is read as a whole, it will be clear that appeal preferred without payment or depositing of admitted arrears of rent, it could not be dismissed. On the other hand, further proceedings in the appeal could be stopped in case admitted arrears of rent were not paid or deposited. He placed reliance on the judgment of this Court in Chinnamma case (supra).

Per contra, the learned counsel for the respondents-landlord made submissions supporting the impugned judgment. It was urged that Section 13(1) in clear and unambiguous terms states that no appeal can be preferred against any order of Rent Controller without paying or depositing of arrears of rent admitted.

Before proceeding to deal with the respective contentions urged on behalf of the parties it would be useful to reproduce the provisions of Sections 12, 13 and 20 of the Act to the extent they are relevant for the immediate purpose: -

"12. Eviction of tenants \026 (1) Notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted excepted in accordance with the provisions of this Act.

Provided that nothing contained in this section shall apply to a tenant whose landlord is the State Government

or the Central Government or any other public authority notified under this Act.

Provided further that where the tenant denies the title of the landlord or claims right of permanent-tenancy the Rent Control Court shall decide whether the denial or claim is bonafide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and such court may pass a decree for eviction on any of the grounds mentioned in this section, notwithstanding that such court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(2)(a) A landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction in that behalf.

(b) If the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement or tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable and such default has continued for three months within a period of twelve months, it shall make an order directing the tenant to put the landlord in possession of the building, and if it is not satisfied it shall make an order rejecting the application thereof by him.

Provided that an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the refusal thereof.

(c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as may be, it shall vacate that order."

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"13. Payment or deposit of rent during the pendency of proceedings for eviction. \026 No tenant against whom an application for eviction has been made by a landlord under section 12 shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposit with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building upto the date of payment of deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority as the case may be.

(2) The deposit under sub-section (1) shall be made within such time as the Rent Control Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in sub-section (4):

Provided that the time fixed by the Rent Control Court for the deposit of the arrears of rent shall not be less than forty-five days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent become due.

(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(4) When any deposit is made under sub-section (1), the Rent Control Court or the appellate authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the appellate authority in that behalf.

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"20. Appeal. \026 (1) (a) The State

Government may, by general or special order notified in the Official Gazette, confer on such officers and authorities not below the rank of a subordinate judge the powers of appellate authorities for the purposes of this Act in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction.

Note: - In computing the thirty days in this clause, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall call for the record of the case from the Rent Control Court and after giving the parties an opportunity of being heard, and if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation: - The appellate authority may, while confirming the order of eviction passed by the Rent Control Court grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in section 22."

(emphasis supplied)

The short question that arises for consideration in this appeal is whether an appeal can be preferred under Section 20 of the Act aggrieved by the order made under Section 12 of the Act without making the payment or depositing all arrears of rent admitted as required under Section 13(1) of the Act. A landlord can seek a direction to evict his tenant under Section 12 of the Act and the Rent Control Court on being satisfied that the tenant has not paid or tendered the rent due in respect of the building shall make an order directing the tenant to put the landlord in possession of the building and if it is not satisfied it shall make an order rejecting the application. The order of the Rent Control Court directing the tenant to put the landlord in possession shall not be executed before the expiry of one month from the date of such order or till such

further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of the proceedings within the said period, it shall vacate that order.

Section 13 makes provision for payment or deposit of rent during the pendency of the proceedings for eviction. In this Section it is clearly stated that no tenant against whom an application for eviction has been made by a landlord under Section 12 shall be entitled to contest the application before the Rent Control Court under that Section, or to prefer an appeal under Section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays the landlord or deposit with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or deposit any rent, which may subsequently become due before the Rent Control Court or the appellate authority, as the case may be. Under sub-Section (1) of Section 13 two situations are contemplated \026 one is contesting the application before the Rent Control Court and the other is preferring an appeal under Section 20 of the Act. An embargo is placed on the tenant expressly either to contest the application under Section 12 before the Rent Control Court or to prefer an appeal under Section 20 of the Act without payment or deposit of arrears of rent. The second part of the same sub-Section requires the tenant to continue to pay or deposit any subsequent rent before the Rent Control Court or the appellate authority, as the case may be. From this sub-Section it is clear that a tenant cannot prefer an appeal under Section 20 \026 (1) unless the tenant has paid or pays to the landlord or deposits the arrears of rent admitted by the tenant to be due in respect of the building and (2) after preferring an appeal he is required to continue to pay or deposit subsequent rent before the appellate authority to prosecute the appeal.

From the plain language and clear terms of Section 13(1) of the Act it follows that payment or deposit of all arrears of rent admitted by the tenant to be due in respect of the building up to the date of the payment or deposit is a mandatory requirement for preferring an appeal under Section 20 of the Act. The said sub-section declares that no tenant shall be entitled to contest or to prefer an appeal unless he has paid or pays to the landlord or deposits with the Rent Control Court or the appellate authority, as the case may be. The use of the words "no" and "unless" in sub-Section (1) of Section 13 in the context makes the position clear that the payment or deposit of all arrears of rent is a pre-requisite essential condition for preferring an appeal.

The contentions of the learned counsel for the appellants that sub-Section (3) of Section 13 provides opportunity to the tenant to show sufficient cause in regard to failure to pay or deposit the rent both before the Rent Control Court and the appellate authority and by combined reading of Section 13(1) and 13(3) it may be construed that there is no bar for preferring an appeal without depositing or paying the arrears of rent; the appeal could be preferred but the further proceedings could be stopped in the appeal in

case the tenant fails to pay or deposits arrears of rent without any sufficient cause and the appeal being in continuation of the original proceedings, the same powers could be exercised by the appellate authority in granting time to a tenant to pay or deposit arrears of rent even after preferring an appeal, cannot be accepted. In the same Section the Legislature consciously contemplated different situations and different stages in regard to contesting the application under Section 12 of the Act and preferring an appeal under Section 20 and continuing the proceedings in the appeal after preferring an appeal. Sub-Section (1) of Section 13 speaks of payment or deposit of arrears of rent before preferring an appeal and Sub-Section (3) of the same Section speaks of stopping all further proceedings by the appellate authority.

Under Section 13(1) a tenant is not entitled to contest the application unless he has paid or pays to the landlord or deposits with the Rent Control Court the arrears of rent. He cannot prefer an appeal without payment or deposit of arrears of rent admitted. Section 13(3) deals with stopping all further proceedings unless the tenant shows sufficient cause for his failure to pay or deposit the rent. Stopping of further proceedings would arise only if the proceedings are pending. Unless an appeal is preferred after complying the payment of arrears of rent or deposit of the admitted arrears of rent due, the question of either pendency of the appeal or stopping of further proceedings in such appeal does not arise. There are two separate aspects in regard to an appeal \026 one is compliance to be made before preferring an appeal and the other is the tenant has to continue to pay or deposit the rent, which may subsequently become due. Sub-section (3) of Section 13 will come into operation on the tenant failing to pay or deposit subsequent arrears of rent arising during the pendency of the appeal, so as to stop further proceedings in the appeal. But, it cannot relieve the statutory compulsion or the mandatory requirement of Section 13(1), viz., paying or depositing the arrears of admitted rent before preferring an appeal. Under Section 20(2) only after an appeal is preferred under Section 20 after complying with Section 13(1), the appellate authority may stay further proceedings. Under Sub-section (4) of Section 20, no doubt, the appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent. This sub-section cannot be read in isolation. It has to be read along with Sub-sections (1) and (3) of Section 13 and Sub-sections (1) and (2) of Section 20. Under Section 20(4) the appellate authority may have the power of fixing of arrears of rent but that is only in relation to arrears of rent that may become subsequently due during the pendency of the appeal.

Payment or deposit of arrears of admitted rent before preferring an appeal under Section 20 is a statutory requirement as expressly stated in compulsive language under Section 13(1) of the Act and no discretion is left to the appellate authority to say that an appeal could be preferred without satisfying pre-condition of deposit or payment of admitted arrears of rent. Under Section 20(1)(b) any person aggrieved by an order passed by the Rent Control Court may within

30 days prefer an appeal. Under Section 20(2) on such appeal being preferred, the appellate authority may order stay of further proceedings. The appeal could be preferred only on payment or deposit of arrears of admitted rent. It also follows that no effective order of stay of further proceedings can be passed by the appellate authority unless an appeal is preferred after such payment or deposit of admitted arrears of rent. This is also a factor to indicate that payment or deposit of arrears of admitted rent is essential before preferring an appeal. It is to command a tenant to pay or deposit arrears of admitted rent to protect the interest of the landlord as in other matters certain provisions are made to protect the interest of the tenant. Remedy of appeal is a creation of statute and it is open to the legislature to provide for an appeal subject to certain conditions. Insistence of payment or depositing of arrears of rent admitted as stated in Section 13(1) of the Act cannot be diluted or defeated merely on the ground of hardship to a tenant more so when tenant already had one opportunity before the Rent Control Court in regard to making payment or depositing arrears of rent. Perhaps it was considered unreasonable or unnecessary to provide again opportunity before Appellate Authority to a tenant that too to pay or deposit admitted arrears of rent. A Bench of three learned Judges of this Court in *Nasiruddin & Ors. vs. Sita Ram Agarwal* while dealing with the question of deposit of arrears of rent and default in depositing the rent within the given time, in para 35 has expressed thus:-

"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."

Sub-section (4) of Section 20 also does not help the appellants to say that the appellate authority shall have all powers of Rent Control Court and in that view an appeal could be preferred without payment or deposit of arrears of admitted rent. If it is so read or understood, it will dilute or defeat the clear, express and mandatory requirement of Section 13(1). As already noticed above, in view of the specific provision made in Section 13(1) as regards payment or deposit of arrears of admitted rent before preferring an appeal, the argument based on sub-Section (4) cannot be accepted. Under sub-section (4), the Appellate Authority may exercise powers of the Rent Controller as regards arrears of rent that may become due after preferring an appeal and during the pendency of it. But this sub-section cannot render mandatory requirement under sub-section (1) of Section 13 ineffective or otiose. It is well settled principle of interpretation that every part of the provision has to be given meaning and effect in the context of a statute. When there is express provision made in Section 13(1) in emphatic terms using negative words indicating mandatory requirements of payment or deposit of arrears of admitted rent before preferring an appeal under Section 20, neither sub-section (3) of Section 13 nor sub-Section (4) of Section 20 are of any avail to

the appellants. This view is supported by a decision of Bench of three learned Judges of this Court in Nasiruddin & Ors (supra), which after considering several decisions dealing with the provisions of Rent Control Acts of different States, expressed that where statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner only because of harsh consequences arising therefrom; the Rent Control Act is a welfare legislation not entirely beneficial enactment for the tenant but also for the benefit of the landlord; scope of legislation or its intention cannot be enlarged when the language of the provision is plain and unambiguous. In para 37 of the said judgment, it is stated thus:

"37. 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 the 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 rewrite 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 expression "shall or may" is not decisive for arriving at a finding as to whether the 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."

(emphasis supplied)

In the same decision, it is also held that where the statute does not provide either for extension of time or condone the default in depositing the rent within the stipulated period, the court does not have the power to do so.

In E.Palanisamy vs. Palanisamy (Dead) by Lrs. & Ors. , this Court has taken the view that benefits conferred by statutory provisions can be enjoyed only if such provisions are strictly complied with and procedure prescribed is followed step by step. Para 5 of the said judgment reads: -

"5. Mr. Sampath, the learned counsel for the appellant argued that since the appellant tenant had deposited the arrear of rent in court, it should be

taken as compliance with Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellant on that ground. According to the learned counsel, the court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the court for permission to deposit the arrears of rent. Since there is a substantial compliance with Section 8 inasmuch as the arrears of rent stand deposited in court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. 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. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh vs. Ganpat Lal* [(1996) 1 SCC 243] and *M. Bhaskar vs. J.Venkatarama Naidu* [(1996) 6 SCC 228]."

This Court in *Union of India & Ors. vs. Filip Tiago De Gama* of *Vedem Vasco De Gama* opined that the paramount object in statutory interpretation is to discover what the legislature intended. Such intention is primarily to be ascertained from the text of an enactment in question and if the strict grammatical interpretation gives rise to absurdity or inconsistency, the court could discard such interpretation and adopt an interpretation, which will give effect to the purpose of legislation. In the case on hand, no such anomaly, absurdity or inconsistency would arise even if plain and grammatical interpretation is given to Section 13(1) of the Act insisting to pay or deposit all the arrears of rent

admitted before preferring an appeal under Section 20 of the Act.

Yet again in Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors. , a bench of three learned Judges of this Court in para 25 has observed that "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 enactment 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."

Judged by what is stated above, it cannot be said that the provisions of Sections 13 and 20 of the Act are irreconcilable, unintelligible or absurd so as not to give effect to plain language of Section 13(1) requiring a tenant to pay or deposit arrears of admitted rent before preferring an appeal under Section 20 of the Act.

The decision of this Court in the case of Chinnamma (supra) does not advance the case of the appellants for the reasons more than one. That was a case wherein the question, which has arisen in this appeal neither arose nor decided. No doubt, the provisions 11 and 12 of Kerala Building (Lease and Rent Control) Act, 1965 and Sections 12 and 13 of the Act are similar but the question decided in that case is altogether different, as is evident from paragraph 4 of the said judgment, which reads: -

"4. We heard counsel. The short question that arises for our consideration is what is the amount that should be deposited by the tenant under Section 11(2)(c) of the Act to set aside the order passed under Section 11(2)(b) of the Act. Should the deposit be only of that amount which was specified as payable in the order of eviction passed under Section 11(2)(b) of the Act or will it take within its fold even the arrears of rent that accrued due subsequent to the said order of eviction and up to the date of deposit? The Rent Controller passed the order of eviction on 22-2-1980. He held that in case the tenant deposits a sum of Rs. 540 which is the arrears of rent due as on 1-2-1980 along with the advocate's fee Rs. 25 and interest at the rate of 6% per annum on arrears of Rs. 540, the tenant will be entitled to get the order of eviction vacated under Section 11(2)(c) of the Act. The learned District Judge has found that the amount of Rs. 750 will cover the amount quantified specifically by the Rent Controller in the order dated 22-2-1980. The deposit made along with the application filed under Section 11(2)(c) of the Act - complied with the order dated 22-2-1980. Really, no other point arose for

consideration on the facts of this case, at that stage. But the learned Single Judge of the High Court held that deposit to be made by the tenant should also include the arrears of rent that accrued due subsequent to the order of eviction dated 22-2-1980 and should include the dues till the date of deposit, i.e., 6-4-1982. The question is whether the view so expressed by the learned Single Judge is in accord with Section 11(2)(c) and the Scheme of the Act?"

In paragraph 7 of the same judgment, this Court has expressed that a mere look at Sections 11 and 12 of the Kerala Act would show that they operate in different situations. Under Section 11(2)(b) the court passes a final order of eviction directing the tenant to put the landlord in possession of the building, if there is a default as provided therein. The execution of such final order is statutorily suspended for a period of one month. Within that time or such further time, as the court may allow, the tenant is given an opportunity to pay or deposit the arrears of rent with interest and cost and, if payment or deposit is made, the court shall vacate the order. Whereas the provisions of Section 12 are applicable during the pendency of the proceedings for eviction. In the same paragraph it is made clear that for the applicability of Section 12 the proceedings for eviction should be pending.

Hence the said judgment, having regard to the facts of that case and the question that was decided, does not support the contention urged on behalf of the appellants in this appeal. Even the judgment of the Division Bench of Gauhati High Court in Binapani Roy case, aforementioned, in a way supports the case of the respondents.

The Division Bench of the High Court was right in holding that there was no conflict in the judgments in cases of Chinnamma and Binapani Roy.

In view of the discussion made and reasons stated, the question set out above is answered in the negative meaning thereby payment or deposit of all arrears of rent admitted is mandatory before preferring an appeal by a tenant under Section 20 of the Act. Hence, the appeal is dismissed finding no merit in it, with no order as to costs.