
(2025) 2 ILRA 68
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.02.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Matters Under Article 227 No. 5780 of 2023

Mahendra Kumar Jain ...Petitioner
Versus
Mohammad Imran & Anr. ...Respondents

Counsel for the Petitioner:

Rama Goel Bansal, Shalini Goel

Counsel for the Respondents:

Ramesh Kumar Shukla, Smriti Gupta

Civil Law - U.P. Urban Building Control of Letting, Rent and Eviction Act, 1972 - Sections 20 (4) & 30 (1) - Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 - Section 4 - Against eviction order - Quantum of deposit - Tenant/petitioner upon suit being instituted for non-payment of rent, required to deposit rent and damages both for use and occupation of building and too in its entirety but damages to be calculated at same rate as rent together with their interest at rate of 9% per annum and cost of suit that may have accrued to landlord - In entire judgment of trial court, there is no determination of or reference to cost of suit and what damages tenant was liable to pay - Findings that demanded rate of rent and damages not paid - Merely because tenant could not exactly say what would be amount or rate of rent at current market value, trial court not justified in holding that deposit made fell short of requisite deposit - To deny statutory benefit to petitioner are unsustainable - The deposit could not rejected only on ground that challan form did not disclose under which head deposit had been made - Suit for

recovery of arrears of rent and damages by landlord is dismissed. (Para 19, 25, 26, 28)

Petition partly allowed. (E-13)

List of Cases cited:

1. Kashi Nath Vs Sushila Devi 2003 (2) ARC 347, (Paras 70 to 73, 76)
2. S.B.I. Vs Shankar Dayal Agarwal 2010 2 ARC 378
3. Ramesh Kumar Sachdeva Vs Rakesh Kumar Rastogi, Civil Revision No. 125 of 2013, decided on 21.3.2018
4. Mahendra Pratap Garg Vs Smt Vijay Lakshmi General 1983 (1) ARC 74, (Paras 12 to 20)
5. Gopal Yadav Vs Special Judge (Anti Corruption)/ Additional District and Sessions Judge, Varanasi & ors. 2002 (1) ARC 197, (Paras 8, 14, 16 to 18)
6. Sushil Sharma Vs VIII A.D.J., Ghaziabad 2001 ARC page 458, (Para 9) **(Relied on)**

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Ms. Shivangi Nanda, learned Advocate holding brief of Ms. Rama Goel Bansal, learned counsel appearing for petitioner and Ms. Smriti Gupta, learned Advocate appearing for landlord respondents.

2. The tenant petitioner is before this Court questioning the judgment and decree passed by the Judge Small Causes, Jhansi in SCC Suit No. 17 of 2015 decreeing the suit for eviction as well as the judgment and order dated 12.04.2025 passed by Additional District Judge Court No.4 Jhansi affirming the judgment of the trial court.

3. Ms. Nanda, learned Advocate appearing for petitioner assailing the

judgment and degree, submitted before the Court that tenant petitioner having made sufficient deposit of arrears of rent due to be paid as per notice coupled with interest, court fee and expenses, was entitled to statutory benefit provided for under Section 20 (4) of the U.P. Urban Building Control of Letting Rent and eviction Act 1972. She argued that the admitted rate of rent as per the plaint itself was Rs. 80 per month and the amount that was due to be as per claim in the notice was with effect from 01.04.2013 till 12.05.2015 with further two months of June and July, as the suit came to be instituted in August 2015. So according to Ms. Nanda the amount that was to be calculated towards the arrears should have been at the rate of Rs. 80 and further taxes and interest with Advocate fee and according to her the total amount that was deposited on the first date of hearing was Rs. 8,000/- which included rent, taxes, interest and Advocate fee. This deposit was made according to her on 13.09.2015 soon after filing of the suit vide challan 57-C and the rent subsequently came to be deposited continuously. However, trial court found the deposit to be not sufficient for want of requisite deposit towards damages and thus, it came to be held that, petitioner having not deposited the amount as per Section 20 (4), was not entitled to avail statutory benefit.

4. Ms. Nanda further argued that non compliance of Rule 21 (5) does not arise in the present case for the simple reason that no such claim was made by the petitioner qua deposit under Section 30 (1). She vehemently urged that never ever any such claim was set up, nor any such miscellaneous case was filed seeking deposit under Section 30 (1) of the Act No. 13 of 1972. Thus, according to Ms. Nanda the findings returned to the effect that

petitioner was not entitled to statutory benefit under Section 20 (4) of the Act No. 13 of 1972 is perverse and deserves to be set aside and hence, on that count the judgment and decree passed by the trial Judge is clearly unsustainable. She further argued that the same manifest error was committed by the appellate Court and, hence, the judgment of the appellate court affirming the order of the trial judge is equally bad and deserves to be set aside. In support of her submission, learned counsel appearing for petitioner has placed reliance upon the judgment of a Coordinate Bench of this Court in the case of **Kashi Nath v. Sushila Devi 2003 (2)ARC 347**.

5. Taking the argument further on the issue of quantum of deposit and the heads under which deposit is to be made under Section 20 (4) Ms. Nanda argued that the damages cannot be more than the agreed rent between the parties in respect of building covered under Act No. 13 of 1972. According to her, if the damages are taken to be at the rate of Rs. 80 per month as the rent was, even then the deposit was sufficient. She has placed reliance upon the two judgments of co-ordinate Bench of this Court in **State Bank of India v. Shankar Dayal Agarwal 2010 2 ARC 378** as well as judgment in the case of **Ramesh Kumar Sachdeva v. Rakesh Kumar Rastogi** decided on 21.3.2018 in **Civil Revision No. 125 of 2013**.

6. *Per contra*, defending the judgment and decree in question Ms. Smriti Gupta, learned counsel appearing for respondent has vehemently urged before the Court that while the law laid down by this Court is to the effect that damages cannot be more than rent but the damages as referred to under Section 20 (4) do not provide the specific period for which

damages are to be charged and the manner in which it is to be charged. According to her a tenant if is in default of payment of rent, he deserves eviction as he becomes a trespasser and, therefore, he is to pay damages on day to day basis for such unauthorized occupation of the building. She further defended the judgment and decree for the reasons assigned in the judgment and contended that the court of appeal while affirming the judgment had referred to this fact that even the challan form 18-C which had been filed, did not disclose as to under which head the payment had been made and how the amount had been quantified.

7. Having heard learned counsel for respective parties and having perused the records and the judgment cited before this Court, the point that arises for consideration is, whether the findings of the courts below on the point of sufficiency of deposit made under Section 20 (4) are liable to be upheld to sustain the decree or the findings are perverse for misinterpretation of the relevant provisions of law and so the judgment is liable to be rendered bad and, hence, the suit deserved dismissal.

8. It is admitted position of fact between the parties that with the service of notice dated 13.04.2015 and institution of suit for eviction by the respondent landlord, the tenant petitioner deposited a sum of Rs. 8,000/- vide challan on 30.09.2015 while in the notice/ summons issued, the date fixed for appearance of the parties was 12.10.2015. So on the very first date of his appearance the tenant-petitioner deposited an amount of Rs. 8,000/- which was claimed to be towards the rent damages, interest, Advocate fee etc. It is admitted to the parties that as per plaint allegations, to

be specific vide para 6 thereof, agreed monthly rent of the demised premises was Rs. 80.

9. It is also not disputed by the respondent that the arrears due to be paid were with effect from 1.04.2013 till the filing of the suit and the suit was instituted vide presentation of plaint in the month of August, 2015. So the amount that became due to be paid to the landlord at the instance of the tenant petitioner was with effect from 1.4.2013 till month of August 2015. Consequently period consisting 28 months and a few days approximately the monthly rent would have come to Rs. $28 \times 80 = 2240/-$.

10. Now arises the dispute. As per the plaint case the amount due with effect from 1.4.2013 towards the arrears of rent @ Rs. 80 per month but with the issuance of notice and for want of deposit under Section 30 (1) of Act No. 13 of 1972, the tenant petitioner became liable to pay damages @ of Rs. 200 as was claimed in the plaint and that was how the total arrears accrued to be paid accounted for Rs. 20,131/- and the relief was accordingly set in plaint.

11. In the written statement plaintiff's claim for damages at the rate of Rs. 200 per day was denied. So in the event damages are taken to be as per the claim, the deposit would certainly fall short of a huge amount but in the event damages are taken to be at par with rent on monthly basis, then the amount of Rs. 8,000 that was deposited would be more than the amount the landlord deserved. So the core issue that required determination by the Court was as to what should be the amount of damages that the tenant was liable to pay.

12. The law is well settled on the point that damages required to be paid under Section 20 (4) of Act No. 13 of 1972, should be at the rate of rent agreed between the parties. In the case of **Kashi Nath (supra)** it was held that rent and damages that are required to be deposited to avail statutory benefit under Section 20 (4) would be a factor dependent upon final verdict in a case as to the quantum of rent and the tenant cannot be denied benefit merely on the ground that the rent and damages as claimed by landlord were not paid. Thus, in the event landlord demands a larger amount in respect of arrears of rent and damages, it is court's final findings both as to rent and damages that would be a determining factor. In the case of **Mahendra Pratap Garg v. Smt Vijay Lakshmi General 1983 (1) ARC 74** vide paragraphs 12, 13, 14, 16, 17, 18, 19, 20 the court has extensively deliberated on this issue and laid down law accordingly. These very paragraphs are reproduced hereunder.

“12. Clause (a) of Section 3(1) of the Rent Control Act, 1947 was similar to clause (a) of Section 20 (2) of the present Rent Control Act, Interpreting this Clause in the 1947 Act, a Division Bench of this Court in Lal Manohar Lal's case held that the amount of arrears of rent mentioned in the notice of demand need not be exact amount found due on the date of the notice by the Court in case the amount is contested on behalf of the defendant. The tenant is called upon to pay the arrears of rent, which, in the first instance, means the amount mentioned in the notice. If the tenant does not admit the correctness of that amount and does not like to pay the full amount, there seems to be no reason why he should not pay at least such amount as he considers to be due. If he makes such a payment he safeguards his position and

the fault would be entirely the landlord's if he goes to Court seeking eviction of the tenant. He will fail in his suit if the tenant succeeds in satisfying the Court that he had paid up the arrears of rent due, even though the demand was for a larger amount. The plaintiff will succeed if the tenant fails to establish that and the plaintiff succeeds in establishing that in spite of what the tenant had paid some amount of arrears of rent still remained due after one month of the service of notice.

13. The legislature must be deemed to have accepted this interpretation because it has re-enacted clause (a) of Section 20 (2) of the present Act in the same terms.

14. In order to defeat a suit for ejectment, it is not necessary for the tenant to comply with the demand of the landlord as mentioned in the notice of demand. If he pays the correct amount which may be found due in case of a dispute, the suit for ejectment will fail.

15. Sub-section (4), Section 20 gives another occasion to the defendant to save his tenancy. It does not insist that the tenant should pay the amount demanded by the landlord in the suit. It asks the tenant to pay the amount due together with interest and costs. The payment, tender or deposit should be unconditional. An unconditional deposit made under sub-section (4) has to be paid out to the landlord forthwith. The payment of the unconditional deposit in under sub-section (6) without prejudice to the parties' pleadings and further is subject to the ultimate decision in the suit. The clear intent is that if the tenant pays or deposits the amount due a decree for ejectment should not be passed. Sub-section (6) makes it clear that irrespective of the tenant unconditionally depositing the amount due and the same being paid to the landlord the pleadings of the parties

remain operative. The suit is liable to go on if the pleadings raise triable issues. The payment has been made subject to the decision, namely, the findings. The payment of the unconditional deposit to the landlord is without prejudice to the parties' pleadings, i.e., the pleadings of both the parties are protected or safeguarded. By receiving payment of the unconditional deposit a landlord does not compromise his pleadings. The payment of the deposit does not imply any admission by the landlord of any part of the tenant's case. The same should be tenant's fate. The making of the payment, tender or deposit cannot have any impact or effect on the tenant's pleadings.

16. Under sub-section (6) the payment of the unconditional deposit is subject to the decision of the suit. The payment is thus tentative. The landlord cannot finally appropriate the amount paid to him in fulfilment of his claimed rights. The payment does not have the effect of admission of liability by the tenant. The rights and liabilities of the parties are to be determined by the Court. The payment of the unconditional deposit will be subject to the findings of the Court. The fate and the sufficiency of the payment of the unconditional deposit will depend on the decision of the suit. In case of dispute, the findings of the Court will determine the rights and liabilities of the parties.

17. If the landlord succeed in establishing his claim the Court will see whether the amount deposited by the tenant was in accordance with the landlord's claim. If the amount deposited was sufficient, the Court will not pass a decree for ejectment. But if it was insufficient sub-section (4) of Section 20 will be no avail to the tenant not because it was conditional but on the ground that the deposit was sufficient and not of the entire

amount due. On the other hand, if the tenant succeeds in establishing his case, the Court will equally see whether the deposit made by him at the first hearing was correct, in accordance with the findings. The fact that the landlord had made an exaggerated claim will not help in getting a decree for ejectment.

18. The submission that the deposit to be unconditional must be in acknowledgement of liability as claimed by the landlord will render sub-section (6) of superfluous and otiose

19. Under the law of contract, making payment or tender after stating the accounts or under protest is no more than saying that the payment is offered as believed to be due by the person making the payment or reserving the right of contesting the justice of the claim without prejudice to the making of the payment. In all such cases the person who makes the payment does not impose any condition on payment. The payment is unconditional. In such cases the creditor can taken the payment on that footing and say, "I take the money, protest as much as you please." "and neither party makes any admission of the claim in the other. *A. Acott v. Uxbridge and Rickmansworth R. Co.* A person making a tender has a right to exclude presumptions against himself by saying, "I pay it as a whole that is due." But if the requires the other party to accept it as all that is due, that is imposing a condition. (i) *Bowen v. Owan*, (ii) *Sati Prasad v. Monmothd Nath*, (iii) *Bank of Mysore v. B.D. Noidu*.

20 In our opinion, the term 'unconditional' has been used in Section 20 (4) in a similar sense. If a tenant makes a deposit but, at the same time, states that the amount is not to be paid out to the landlord unless he accepts it in full discharge of the liability, that would be imposing a

condition. Or, it the tenant says that the amount deposited by him should be kept in deposit and should not be paid out till the decision of the suit, that will make the deposit conditional. But taking divergent pleas in the written statement as to the extent or quantum of liability to pay rent does not make the deposit conditional. The purpose of the deposit is to pay it to the landlord 'forthwith' (See sub Section (6)). The deposit is to be unconditional in the sense that there be no impediment or condition to its immediate payment."

(emphasis added)

12. It is relying upon the said judgment of the Division bench that the Co-ordinate bench of this Court in the Case of **Kashi Nath (supra)** vide paragraphs 70, 71, 72, and 73 has held thus:

"70. In view of this decision, it is evident that even if the landlord claim a larger amount in respect of arrears of rent and damages while the tenant deposits such amount which amount is due according to the tenant, and the Court ultimately accepts the version of the tenant, then too the tenant would be entitled to the benefit of Section 20 (4) of the Act. In other words, the tenant is not required to deposit the arrears of rent and damages as claimed by the landlord in the suit, and the tenant may deposit such rent and damages as are in arrears according to the tenant and in case the Court ultimately accepts the version of the tenant then too the tenant would be entitled to the benefit of Section 20 (4) of the Act.

71. Hence, it follows that for getting benefit of Section 20 (4) of the Act, the amount in respect of rent and damages is required to deposited at the rate of rent which is ultimately determined by the Court

in its final decision, and not at the rate as claimed by the landlord in the suit.

72. The said decision of the Division bench in Mahendra Pratap Garg case (supra) was affirmed by their Lordships of the Supreme Court in Smt. Vijai Laxmi Gangal case (supra)

73. It is thus evident that the determination of the first item regarding "the entire amount of rent and damages for use and occupation" for the purpose of Section 20 (4) would be done on the basis of the findings ultimately recorded by the Court regarding the rate of rent and regarding the amount of arrears due from the tenant."

(emphasis added)

13. The said coordinate bench thereafter in the said very case of Kashi Nath proceeded to consider the required deposit under Section 20 (4) qua the interest and held that interest would be payable upon the entire arrears towards rent and damages. Vide paragraph 76 the court held thus:

"76. Coming now to the second item, which is required to be deposited under sub-section (4) of Section 20 of the Act, namely, interest at the rate of 9% per annum, it is evident from a perusal of Section 20 (4) of the Act that the interest at the rate of 9% per annum is to be deposited on the entire amount of rent and damages for use and occupation of the building due from the tenant (such damages for use and occupation being calculated at the same rate as rent). As noted above, for deciding whether the tenant is entitled to the benefit of Section 20 (4) of the Act, the amount of rent and damages as ultimately determined by the Court would be taken into consideration and not the amount claimed by the landlord in the suit in respect of rent

and damages. Therefore, for the purpose of deposit under Section 20 (4) of the Act, the amount of interest would also be calculated on the amount of rent and damages as ultimately determined by the Court, and not damages. The amount of rent/ damages required to be deposited by the petitioner (defendant) for getting the benefit of Section 20(4) of the Act, as noted above, would come to Rs. 250/- hence, interest at the rate of 9% per annum would be determined on the said amount of Rs. 250 (emphasis added)

15. The Court in the said case of Kahsi Nath further proceeded to examine the question of cost and referred to the judgment of another single judge in the case of **Gopal Yadav v. Special Judge (Anti Corruption)/ Additional District and Sessions Judge, Varanasi and others 2002 (1) ARC 197**, the Court held that tenant was required to deposit actual cost incurred by the plaintiff in the suit. The Court referred to the relevant paragraphs of the Gopal Yadav case which I consider to be necessary to reproduce here as well para 8, 14, 16, 17 and 18 are reproduced hereunder:

“8. The question for consideration of this Court is as to whether, the cost of suit, apart from other include (i) actual amount of Court fee paid by the plaintiff, and (ii) ½ Counsel fee on a contested suit (as submitted by learned Counsel for the landlord-respondent) or the amount of Court fee which would have been payable on the basis of the ‘rate of rent’ pleaded by the Defendant in the written statement (and, after parties have lead evidence, Court finally found to be correct).

14. The legislature has used the expression ..” Landlord’s costs of the suit...” and that if avoided to use expression “which would have been finally found payable’ or “

which should have been finally found to be payable on the reliefs granted by the Court.”

16. In my considered opinion aforesaid aimed to confer provision is not solely benefit upon ‘tenant’ only but to confer benefit upon both landlord and tenant. Secondly this Court cannot do violence with given statutory provision while interpreting it and particularly when there is no for ambiguity in the language requiring interpretation.

17. Perusal of the impugned judgment and order, with reference to the charts annexed with the writ petition as Annexures 6 and 7 to the writ petition, clearly shows that considerable amount of Court Fee as well as half lawyers on taxable side and clerkage have not been deposited by the tenant-Petitioner.

18. It is abundantly clear that tenant has not deposited the required amount towards “landlords”, costs of suit contemplated under Section 20 (4) of the Act and, therefore, he cannot claim benefit to Section 20 (4) of the Act and protect, himself from eviction from the accommodation in question.

15. I now proceed to refer the judgment in the case of **State Bank of India v. Shankar Dayal Agarwal (supra)** wherein I found that court very categorically held that damages were to be awarded at par with monthly rate of rent only in those cases where Act No. 13 of 1972 was applicable. The Court while holding so relied upon the judgment in the case of **Sushil Sharma Vs. VIII Additional District Judge, Ghaziabad 2001 ARC page 458**. Relevant paragraph of the said judgment is reproduced hereunder:

“ 9. The last submission of the learned Counsel for the petitioner is that he rate of rent was Rs. 1450/- and the Court

has awarded damages at the rate of Rs. 2000/- per month. The Courts below have recorded concurrent findings that the house in question is not governed by the provisions of U.P. Act No. 13 of 1972. In case the accommodation is governed by the Act, the damages was to be awarded at the rate of rent but if the Act is not applicable the damages can be awarded at the market rate. Learned Counsel for the petitioner has placed reliance on the decision *Union of India v. Smt. Urmila Rani Gaur and others*, 1983 (2) ARC 304, wherein it was held that the damages should be awarded at the rate of rent and not higher than that. This was a case where the accommodation was governed under the provisions of U.P. Act No. 13 of 1972”

17. In the case of **Ramesh Kumar Sachdeva (supra)** another coordinate bench has held that damages should be at par with the rate of rent.

18. Now applying the above legal position I proceed to examine as to whether deposit made by the tenant petitioner on or before the first date of hearing was sufficient to entitle him to statutory benefit of Section 20 (4) of Act No. 13 of 1972. In order to test the sufficiency of deposit made under Section 20 (4) of the Act No. 13 of 1972 by the petitioner, it becomes necessary to refer to Section 20 (4) of act No. 13 of 1972. The relevant provisions are reproduced hereunder:

“(4) *In any suit for eviction on the ground mentioned in Clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or [tenders to the landlord or deposits in Court] the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation*

being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord’s costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area

[Explanation- for the purposes of this sub-section-

(a) the expression ‘first hearing’ means the first date for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression ‘cost of the suit’ includes one-half of the amount of Counsel’s fee taxable for a contested suit.]

(emphasis added)

19. From a bare reading of the aforesaid provision, it is clear that the tenant upon suit being instituted for non payment of rent, is required to deposit rent and damages both for use and occupation of building and that too in its entirety but the damages are to be calculated at the same rate as rent together with their interest at the rate of 9% per annum and the cost of the suit that may have accrued to the landlord. This is rightly argued by Ms. Smriti Gupta, learned Advocate appearing for respondent that provision is silent about the period for which damages is to be charged and in what manner. But the words and expression ‘entire amount of rent and

damages' with further qualification that damages would be at the same rate as rent, per judgment in *Mahendra Pratap Garg (supra)*, a natural corollary would be that damages would be charged in the same manner as the rent. Rent is charged on monthly basis, therefore, in my considered view the damages should be charged on monthly basis unless and until the court holds it otherwise. From the view taken in the case of Kashi Nath (*supra*) it is now well settled that benefit under Section 20 (4) cannot be denied to the tenant merely for not depositing the amount of rent and damages at the rate claimed by landlord. It becomes clear that if the court holds that damages are payable on day to day basis in a particular case, the tenant cannot be denied benefit for having deposited the rent on monthly basis at par with the rent. As I have already discussed above that the total arrears that accrued on the date of institution of suit in the month of August 2015 was for a period 28 months and a few days and the agreed rent was Rs. 80. Thus, total arrears if calculated 28x80 comes to Rs. 2,240 Now the question arises what should be the damages.

20. The argument advanced by Ms. Smriti Gupta that a tenant would become trespassers does not appeal to reason for two counts: firstly, the Act No. 13 of 1972 aimed at protecting the tenant who is possession of the property for having been inducted as tenant in the premises on agreed rent so, just because he is in arrears of rent, he does not become unauthorized occupant, nor does act reduce him to such a status. This is for the reason that statutory benefit under Section 20 (4) of the Act No. 13 of 1972 gives an edge to the tenant over and above the pleadings of the landlord asking for eviction of the tenant. And secondly, the Act in the event of release

being allowed, still gives statutory protection to tenant under Section 20(4) of the Act No. 13 of 1972 to be reinducted as tenant in the eventuality of a third party rent agreement being entered in the same premises by the landlord.

21. The tenant, has been vested with the statutory right to move an application for entry as tenant in the premises for the conduct of the landlord in not using the released premises for personal need and letting it out to a third party or even in the event after reconstruction takes place upon building being released under Section 21 (1) (b), the same is ready for being let out again.

22. Thus, in view of the above, the cases of release and eviction under Act No. 13 of 1972 are to be taken differently from those cases where the leases expire and landlords became entitled to terminate tenancy with issuance of notice under Section 106 of the Transfer of Property Act 1872. Accordingly the argument advanced by Ms. Smriti Gupta, learned Advocate appearing for landlord to the effect that tenant would be in such a case a trespasser to hold him liable to pay damages on day to day basis for such unauthorized occupancy of the premises, is hereby rejected.

23. Now applying the above legal position as discussed and analysed and finally held, I proceed to examine and test the findings of the trial court as to sufficiency of deposit made by petitioner under Section 20 (4) of Act No. 13 of 1972.

24. Now the rate of damages if assessed as Rs. 80 per month as I find to be justified in view of the legal position as discussed above, the amount would come to the same as the arrears of rent so both if

added together it comes to Rs. 4480/-The interest is to be calculated at the rate of 9%. No taxes were liable to be paid as no pleading has been raised in the plaint therefore, rent would be taken to have included the taxes. The question now, therefore, remains to be answered as to what would be the amount of interest and then the cost . The interest is to be calculated at the rate of 9%pa upon Rs. 4480/- would come Rs. 403.20 plus cost for instituting the suit would be the court fee which plaintiff must have paid for the recovery of sum of Rs. 4883.20 and according to Court Fee Act that court fee, the landlord was liable to pay for recovery of said sum of amount would have been not more than a thousand rupees and if Rs. 1500 is also taken as charges of notice which the petitioner was not entitled to pay even then the total amount required to be deposited falls short of Rs. 8,000/-

25. In the entire judgemnt of the trial court, I do not find there to be any determination of or reference to the cost of the suit and exactly what damages tenant was liable to pay. Findings returned are that the demanded rate of rent and damages have not been paid. Merely because the tenant could not exactly say what would be the amount or rate of rent at current market value, the trial court was not justified in holding that the deposit made fell short of the requisite deposit. Since the findings are not there about the rate of damages which petitioner would have been liable to pay as per the legal position discussed and there being no determination as to costs etc., nor there being discussion to that effect, the findings by trial court to deny statutory benefit to the petitioner under Section 20 (4) of Act No. 13 of 1972 are clearly unsustainable.

26. The court of appeal has simply rejected the deposit made on the ground that form 18C did not disclose under which head the deposit had been made. Had the court correctly applied the law as discussed above, it would have easily calculated the amount and if the deposit made fell short of the requisite deposit, then the court could have calculated very easily how much it fell short. The deposit could not have been rejected only on the ground that the challan form did not disclose the various heads in which the deposits were made.

27. Thus, the judgment and decree passed by the Judge Small Causes in SCC Suit No. 17 of 2015 dated 29.09.2021 and the judgemnt and order passed by revisional court/ Additional District Judge, Court No. 4, Jhansi dated 12.04.2023 in SCC Revision No. 33 of 2021 are hereby set aside.

28. Petitioner is held entitled to the benefit under Section 20 (4) of Act No. 13 of 1972 for having made requisite deposit and, hence, the suit for recovery of arrears of rent and damages brought by landlord respondent is hereby dismissed.

29. Petitioner shall however continue to pay rent as agreed but liberty rests with the landlord respondent to apply for agreement in writing as per Section 4 of Act No. 16 of 2021.

30. There shall be no adjustment of the deposit already made by petitioner under the interim order of this Court as that was only a condition for stay and the said amount if not released, shall be released in favour of landlord.
