

(1953) 08 CAL CK 0006
In the Calcutta High Court

Case No : A.F.A.D. No. 85 of 1953 with Application and Civil Revn. Case No. 2153 of 1952

Deoki Prosad Khaitan

APPELLANT

Vs

Dulichand Asopa and Others
 Dulichand Asopa and
Others Vs Deoki Prosad Khaitan

RESPONDENT

Date of Decision : 26-08-1953

Acts Referred:

Limitation Act, 1908 — Section 5

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 14(5), 2(1), 32(6), 9

Citation : AIR 1954 Cal 532 : (1955) 2 ILR (Cal) 67

Hon'ble Judges : P.N. Mookerjee, J; Guha Ray, J

Bench : Division Bench

Advocate : A.K. Sen, Pritis Ch. Roy, S.C. Janah, Sudhansu S. Mukherji and Bankim Ch. Roy, for the Appellant;

Judgement

1. The appellant Deoki Prosad Khaitan alias Deoki Nandan Khaitan, was a tenant in respect of a portion of premises No. 2, Shib Thakur Lane, Calcutta. The contractual rent was Rs. 370/- per month but a proceeding for standardisation of rent is pending in this Court in Civil Revision Case No. 2153 of 1952.

2. On 24-2-1951, the Respondent No. 1, Dulichand Asopa and his brother Inderdiand Asopa, the predecessor of the other respondents claiming to be the landlords of the appellant instituted Ejectment Suit No. 456 of 1951 in the Court of Small Causes, Calcutta, for eviction of the appellant from the disputed premises and for recovery of arrears of rent and mesne profits.

The main allegation in the plaint was that the appellant was a habitual defaulter and was not entitled to any protection under the Rent Control Act on account of his systematic defaults in the payment of rent.

3. The defence inter alia was denial of the said allegation and a denial further that there was any relationship of landlord and tenant between the parties, the

specific plea of the defendant in that behalf being that the Firm Dulichand Inderchand Asofa, and not the plaintiffs above named, were the appellant's landlords.

4. In the trial Court an application was made by the plaintiffs u/s 14(4), Rent Control Act of 1950 and, in pursuance of the order of the Court, passed upon that application, the appellant duly deposited arrears of rent.

Eventually, however, on 24-7-1951, the suit was decreed by the learned trial Judge, overruling the defence contentions, and, from the said decree, an appeal, being Special Appeal No. 1939 of 1951, was taken by the defendant appellant to the Appellate Bench of the Court of Small Causes, Calcutta, constituted as the Appellate authority under the Rent Control Act of 1950.

5. The defendant's appeal, to which, reference has been made above, was filed on 25-8-1951 and the memorandum of appeal was accompanied by a certified copy of the trial Court's judgment but no copy of the post-judgment or after-judgment record of the trial Court which is called the decree there was filed along with it.

On 9-7-1952, the appellant tendered to the Court a certified copy of the post-judgment or after-judgment record which, according to the practice which had grown up in the Court of Small Causes Calcutta, was to be treated as the decree in ejectment suits. A prayer was also made in the appellant's behalf for acceptance of the said certified copy after condoning, if necessary, the delay, if any, in the matter of filing of the same.

6. In the above appeal the plaintiffs respondents filed an application u/s 14(5), Rent Control Act of 1950 and, upon the said application, the Court ordered certain deposits to be made (Vide order dated 29-2-1952). Those deposits appear to have been duly made (Vide order dated 25-4-1952).

7. The appeal was then eventually taken up for hearing on 28-11-1952, and, at the hearing, two preliminary objections appear to have been urged by the respondents, namely, (1) that no certified copy of the trial court's decree having been filed in time and there being no case for extension of time or condonation of delay, the appeal was time-barred and must fail on that ground, and (2) that, in any event the appellant had not duly complied with the order of the appellate court, passed u/s 14(5), Rent Control Act of 1950, and as such the appeal was liable to be dismissed.

8. Both these objections were accepted by the lower appellate court and the appellant's appeal was dismissed on 5-11-1952. Hence the present second appeal by the appellant who has also filed a revisional application in the alternative u/s 115, Civil P. C., and Article 227 of the Constitution.

9. Before us, both the above findings of the lower appellate court, on which the appellant's appeal was dismissed, have been challenged by his Counsel, Mr. Ashoke Kumar Sen.

Mr. Sen has urged first that, in the circumstances of this case, the certified copy of the so-called decree or after-judgment record should have been accepted and the delay condoned, if necessary. He has urged further that his client fully complied with the order u/s 14(5), Rent Control Act of 1950 and, as such, the court's adverse finding against him on this point was plainly unjustifiable.

In our opinion, Mr. Sen's arguments ought to succeed in the facts and circumstances of this case and the dismissal of the appellant's appeal by the lower appellate court on the preliminary grounds, mentioned above, ought to be set aside and that appeal should be ordered to be re-heard by it on the merits in accordance with law subject to the directions which we consider necessary to give below.

10. We have referred above to the two relevant orders of the lower appellate court on the question u/s 14(5), Rent Control Act of 1950. Those orders clearly show that there was due compliance by the appellant with the Court's order, passed under that section. The appellate court was under a misapprehension in thinking that on the plaintiffs-respondents' application u/s 14(5) there was any order except with regard to arrears of rent. It was also in error in thinking that that order had not been duly complied with.

A perusal of the appellate court's order dated 29-2-1952 and 25-4-1952, to which reference has been made above, confirms this and fully establishes that the learned Judges in the Court of appeal below were labouring under a mistake in giving effect to the respondents' objection, based on Section 14(5), Rent Control Act.

The learned Advocate for the respondents before us has not been able to find out any other order, relevant on this part of the case, and nothing could be placed before us from the records to justify the finding of the lower appellate court that the appellant had failed to comply with the Court's order, passed u/s 14(5), Rent Control Act.

On the other hand, as we have already said, the records show full compliance with the said order. The deposit was directed on 29-2-1952 and the matter was to be put up on 21-3-1952 for further orders. On that date, the matter was adjourned to 25-4-1952 for orders and, on this latter date, the court recorded inter alia the following order in the presence of both the parties:

"Money having been deposited no further order is necessary on the application."

It thus appears that the order, made u/s 14(5), was duly complied with. The second ground given by the lower appellate court for dismissing the appellant's appeal before it must, therefore, be rejected.

11. As to the other ground, on which the decision under appeal is based, it is enough to refer to the two decisions of this Court, reported in -- Bibhuti Bhusan and Others Vs. Shib Krishna and Another, (A) and -- Surendra Nath Vs. Tarasashi, (B). The circumstances in the present case are similar and we would,

therefore, hold that, even assuming -- and we are expressing no opinion on this question -- that the after-judgment record corresponded in law with the decree, it was eminently proper in this case to have condoned the delay in the filing thereof and to have accepted it and proceeded with the hearing of the appeal on the merits in accordance with law. In our opinion, the discretion of the lower appellate court was not properly exercised in the matter, now before us, and its decision on this point cannot be supported.

12. In the above view of the matter, we would set aside the dismissal of the appellant's appeal before the lower appellate court and send the case back to that Court for a re-hearing of that appeal on the merits in accordance with law in the light of the observations, contained in this judgment and subject, to the condition which we shall presently state below.

13. In the events which have happened in this case, it seems to us that the re-hearing of the appellant's appeal before the lower appellate Court must be, as we have already indicated, subject to one condition. We find from the record before us that in this Court too an application was filed by the plaintiffs-respondents u/s 14(5) of Rent Control Act 1950 and, on 3-3-1953, their Lordships Lahiri and Guha JJ. directed the appellant to deposit in the trial court, month by month, by the 15th of the next following month, according to the Sambat calendar, a sum of Rs. 390/- (inclusive of electric charges) to the credit of the plaintiffs respondents, the first of such deposits to be made for the month of Falgun 2009 Sambat year by the 15th of the following month.

We are told that the deposits, so directed to be made, have been and are being duly made, We have not the materials before us to verify the said statement. We would, accordingly, direct the lower appellate court to take up this matter first and if it finds that there has been due compliance with this Court's above order, dated 3-3-1953, it will proceed with the hearing of the appellant's appeal before it on the merits in accordance with law. Otherwise, that is, if it is found that the appellant has not duly complied with the said order of this Court dated 3-3-1953, the lower appellate Court will dismiss the appellant's appeal forthwith with costs and the re-hearing, as ordered above, will not be necessary and the appellant will not be entitled to it.

14. We have already said that there is before us a second appeal and also a revisional application in the alternative. It is unnecessary, therefore, to consider whether against the decision, now under challenge before us, an appeal or an application for revision is the proper remedy. On our findings, made above, the lower appellate court clearly committed an error sufficient to attract in law the powers of this Court either in appeal or in revision in dismissing the appellant's appeal on the preliminary grounds and in refusing to hear it on the merits. That dismissal, therefore, is set aside and the case is sent back for re-hearing, as stated above.

15. The appeal and the alternative application are disposed of accordingly. There

will be no order for costs in this Court.

16. Civil Revision Case No. 2153 of 1952: This revision case arises out of a proceeding for standardisation of rent. The tenant Deoki Prasad Agarwalla alias Deoki Prasad Khaitan, who is the petitioner before us applied in Case No. 2808A of 1950 before the Kent Controller, Calcutta, for standardisation of rent of the disputed premises comprising a part of premises No. 2, Shib Thakur Lane, Calcutta.

The application was made on or about 27-12-1950 and it was eventually dismissed by the Rent Controller on 30-7-1951 on the finding that the applicant had no locus stand in the matter, his tenancy having terminated by reason of the decree for ejectment passed against him in Ejectment Suit No. 465 of the Court of Small Causes, Calcutta, on 24-7-1951 and he having thus ceased to be a tenant as a result thereof. The said dismissal was affirmed on appeal on 1-5-1952 and against this appellate decision the present Rule has been obtained by the tenant petitioner.

In the Rule the opposite party on record is a firm Messrs. Dulichand Inderchand Asofa but permission has been given to the several persons Dulichand Asofa and Sm. Gita Devi for self and as natural guardian of her minor son Sushil Kumar Asofa, whom we shall refer to hereinafter as the "appearing opposite parties," "to appear and contest the Rule" "without prejudice."

17. It appears from the materials before us that there was an ejectment suit No. 465 of 1951 in the Court of Small Causes, Calcutta, on the footing that the petitioner's tenancy had been duly determined by a proper notice to quit and that he was not entitled to protection under the Rent Control Act by reason of his habitual and systematic defaults in the payment of rent.

That suit was brought by two persons, Dulichand Asofa and Inderchand Asofa, claiming to be the petitioner's landlords and the main ground for the prayer of ejectment against the petitioner, so far as the Rent Control Act was concerned, was, as we have already stated, habitual and systematic default in the payment of rent. The suit was contested by the petitioner who denied that the plaintiffs in the suit were his landlords, his plea being that the Firm Dulichand Inder Chand Asofa, against which the present proceedings for standardisation of rent had been started by him, were his landlords and, further, that there was no default in the payment of rent and, in any event, no sufficient default to disentitle him to the protection of the Rent Control Act.

18. Before the rent standardisation proceedings actually came up for hearing, the ejectment suit had been decreed by the trial court, overruling the defence case, but it appears that, at the date of the said hearing, the time for appeal from this ejectment decree had not passed and the said decree for ejectment was in due course challenged by the petitioner by way of an appeal, filed before the Small Causes Court, Calcutta, u/s 32(6), Rent Control Act of 1950.

Eventually, no doubt, that appeal was dismissed by the lower appellate court on 5-12-1952 but the matter was not allowed to rest there by the tenant defendant who filed a second appeal in this Court and also applied, alternatively, in revision against the said dismissal of his appeal by the lower appellate court. By our judgment, just delivered, we have set aside the said dismissal and remanded the case to the lower appellate court for a re-hearing of the petitioner's appeal before it on the merits in accordance with law in the light of the observations, contained in that judgment.

19. From what we have stated above, it is quite clear that the question whether the petitioner's tenancy has been determined is now sub-judice & it appears to have been so all along. Plainly, therefore, both the Rent Controller and the Appellate Authority were wrong in throwing out the petitioner's application for standardisation of rent on the ground that he had ceased to be a tenant by reason of the decision in the ejectment suit. In any event, their said decision cannot be supported now, when the decree in the ejectment suit has been set aside and that case remitted to the Lower Appellate Court for re-hearing.

20. We feel, further, that, even if the ejectment suit had finally terminated in a decree, the petitioner would still have continued to be a "tenant" under the Rent Control Act of 1950 for the purpose of maintaining the application for standardisation of rent and continuing the proceedings in that behalf.

21. The definition, of "tenant" in the Rent Control Act of 1950, as we shall presently see, contains nothing to the contrary and nowhere in this Act is there any indication that the considerations which weighed with Rankin J., as he then was, in the case of -- Bithaldas Chandak Vs. Lalbehari Dutt and Sons, (C) and with their Lordships of the Judicial Committee in the well known case of -- AIR 1928 227 (Privy Council) (D), under the earlier Rent Control Act of 1920, to give an extended meaning to the word "tenant" in Rent Control Legislations so as to include "ex-tenant" were discarded by the Legislature in passing the Act of 1950, and that those considerations would not apply to cases under this latter Act.

The position was already well known in law, and, in the definition of "tenant" in the Act of 1950, the Legislature used language which does not necessarily suggest any intention to curtail the prevalent wider meaning of the said word in relation to Rent Control legislations. On the other hand, the anxiety and intention of the Legislature to give the extended meaning to the said term clearly appears from its substantial reproduction, almost in the same language, of the provisions (Sections 4, 14 and 15) of the Act of 1920, on which the Judicial Committee mainly relied in -- AIR 1928 227 (Privy Council) (D)", in the Act of 1950 (Vide Sections 3, 7 and 9) and the recent amendment, made by it, in the definition of "tenant" by including within that term persons whose tenancies have been "ipso facto" determined under the 1943 Act (Vide section 2 of the amending Act--West Bengal Act (LXII of 1950) also points to the same conclusion.

22. Since at least the Privy Council decision in -- "AIR 1923 PC 227 (D)",

referred to above, the wider connotation of the word "tenant" has almost always, been accepted by the Courts in this country while interpreting Rent Control legislations except where the subject or context or the particular law under consideration was found to contain sufficient indication to the contrary.

The two Special Bench cases of this Court, reported in --"Sm. Nandorani Dassi v. Satya Narain" AIR 1951 Cal 215 (E), and -- "S. B. Trading Co. Ltd. v. Satyendra Ch. Sen" 54 Cal WN 758 (F), serve only to illustrate and confirm the above proposition. A similar view also prevails in England & the leading English authority, namely, -- "Remon v. City of London Real Property Co." (1921)) 1 KB 49 (G), which was cited with approval by the Judicial Committee in -- "AIR 1923 PC 227 (D)", has, almost without exception, been followed on the point in that country and the principle of that decision has seldom been departed from.

23. It is true that in all the above cases except -- AIR 1928 227 (Privy Council) (D)", the question was one of ejectment and the protection, contained in that behalf in the relevant Rent Control law, was the determining factor in the Court's interpretation of the word "tenant" to include "ex-tenant", or, more accurately, "ex-tenant in possession". It seems to us, however, that the principle, underlying those decisions, equally applies where the benefit in question is still one under the Rent Control Act, though not necessarily of protection against ejectment, and, as a matter of fact in -- AIR 1928 227 (Privy Council) (D)" which was concerned only with the question of standardisation of rent the Privy Council extended the above principle and applied it even to the case of an "ex-tenant out of possession" and it is this last quoted decision which, in our opinion, ought to govern the present case, and the authority and principle thereof conclude the question of locus standi in the petitioner's favour.

24. A point was sought to be made that whatever might have been the position under the earlier rent control laws or the earlier judicial decisions, the Legislature in enacting Section 2(11) of the 1950 Act to define "tenant" plainly excluded "ex-tenants" from the category.

Pointed reference was made in this connection to the definition of "tenant" in the two Acts of 1948 and 1950 and our attention was particularly drawn to the altered phraseology, adopted in this latter Act in that behalf. It was strongly urged that, under the definition, as appearing in the 1950 Act, the liability to pay rent is the "sine qua non" of a tenant, and that, accordingly, an ex-tenant would not properly come within it.

The omission in the later statute of the last part of the definition in the 1948 Act which expressly provided that "tenant includes a person continuing in possession after the termination of the tenancy in his favour" was put forward as a sufficient confirmation of this point of view. In our opinion, this argument is not sound and it cannot be accepted.

25. The definition in the Act--Section 2(11) of the Act 1950, is subject to the opening words of the section, namely, Section 2, of which it forms a part, and,

those words being "unless there is anything repugnant in the subject or context", the definition is sufficiently wide and elastic to include an "ex-tenant" for the purpose of Section 9 of the Act on considerations similar to those which lay at the bottom of the decisions, cited above in support of the wider connotation.

The case of "ex-tenants in possession" like the present petitioner presents no difficulty whatsoever in this respect. In such cases the liability to pay rent also would not necessarily stand in the way, as "rent" in the definition may well include, in appropriate context or in relation to appropriate subject, a periodical payment by a person, claiming to be in possession after the termination of his tenancy (Vide in this connection sections 12, 14, 18, 21 of the Act; vide also -- " (C)", at pp. 392-393 and -- Bithaldas chandak Vs. Lalbehari dutt and Sons, , Sm. Nandarani Dassi Vs. Satyanarayan Harit,) and need not bear its technical meaning as implying a subsisting tenancy.

It may be pointed out further that the definition of "tenant" in the 1950 Act is substantially similar to that, contained in the Rent Control Act of 1920, which was held to include an "ex-tenant" in -- AIR 1928 227 (Privy Council) (D).

26. On the above considerations it seems to us that the last part of the definition of "tenant" in the Act of 1948 to which reference has been made above, was really redundant in law and its omission in the 1950 Act has not affected the legal position and that a tenant whose tenancy has been determined and against whom a decree for ejectments had been made is not necessarily disentitled to make &/or continue a proceeding in that behalf under the Rent Control Act of 1950.

The decision of P. B. Mukherji J. in the case of -- "Manicklal Dutt v. Wahiruddin Ahmed" AIR 1951 Cal 233 (I), relied on by the learned Rent Controller and the learned Appellate Officer, was one u/s 18(5) of the Act of 1950 which involved different considerations, as pointed out by this Court in the Special Bench case of --"AIR 1951 Cal 215 (E)", and would not, therefore, be strictly relevant for our present purpose. That decision is certainly no authority for holding that, under the 1950 Act, a tenant whose tenancy has been determined or against whom a decree for ejectment has been made is necessarily disentitled to apply for standardisation of rent and/or to maintenance or continue a proceeding in that behalf under the said statute.

We may point out further that the view of P. B. Mukherji J. on the interpretation of the definition of "tenant" in the 1950 Act was not accepted by the Special Bench (Vide -- "AIR 1951 Cal 215 (E)", at pp. 220-221) and the contrary view of Bachawat J. in -- Sm. Nandarani Dassi Vs. Satyanarayan Harit, (H)", on this point was found preferable (Vide pp. 220-221 of the above Report), although the ultimate decision in this last mentioned case was reversed by the Special Bench on another consideration. The other Special Bench case, reported in -- " 54 Cal WN 756 (P)", merely follows the earlier one, though, paradoxically enough, some tentative observations, apparently conflicting with the view, expressed on this

(Joint in the earlier case by the presiding Judge (Harries C. J.), were made by the learned Judge Banerji J., when delivering the judgment of the Court on the later occasion, at pp. 759 and 7 of the Report.

27. We have said above in an earlier part of this judgment that -- AIR 1928 227 (Privy Council) (D)" is sufficient authority to conclude the question of locus standi in the petitioner's favour. In view, however, of the importance and far reaching effect of that decision we deem it necessary to deal with it in some greater detail and would also add a few more observations on the legal position, with which we are here concerned, in the light of some of the other relevant authorities.

28. It seems to us that the petitioner's position in the present case is in no way worse than that of the "tenant" called "the bank" in the Privy Council Judgment, and to be so referred to hereinafter also, in -- "Karnani's case (D)", whose proceedings for standardisation of rent were revived by the Judicial Committee after setting aside the adverse order of this Court against that "person".

In the case cited -- AIR 1928 227 (Privy Council) (D)", the tenancy commenced under a lease, dated 7-10-1920, at a rental of Rs. 5400/- per quarter. "In the lease there were stringent repairing covenants" with "the usual forfeiture clause" in case of breach or default. "On 15-8-1923, the landlords served the bank with notice to determine the lease, for breach of the repairing covenant. On 10-9-1923, they instituted proceedings in ejectment claiming possession, arrears of rent up to 15-8-1923, mesne profits and damages of breaches of covenant. On 1-12-1923, the bank made application u/s 15 of the Rent Act of 1920 to the Controller appointed under the Act to fix the standard rent of the premises and to grant a certificate of the standard rent. On 13-12-1923, the landlords filed a counter statement. On 11-3-1924, the Controller fixed the standard rent at Rs. 1420/- per mensem and granted his certificate accordingly,"

From this decision of the Rent Controller both parties appealed and, upon the dismissal of these appeals on a technical ground, which was admittedly wrong in law, the landlords applied to this Court on 23-2-1925, u/s 115, Civil P. C. their principal contention being that "the whole of the proceedings before the Controller were ultra vires and, void by reason of the tenancy having determined before the application to him," and, that "accordingly, the Controller's order fixing the standard rent and granting the certificate should be set aside."

A rule nisi was granted and the hearing stood over until the hearing of the ejectment suit. That suit was heard by Ghose J., on 24-4-1925. He held that the lease was determined on 15-8-1923, and that the bank had given up possession on 24-1-1924. He gave judgment for mesne profits from 15-8-1923, to 24-1-1924, measured by the standard rent, fixed by the Controller, of Rs. 1420/- per mensem... As to the claim for arrears of rent the bank had, since the action was brought, paid to the landlords the sum of Rs. 9770/- being the amount which, added to the rent in fact paid up to 1-8-1922, at the contractual rate,

satisfied the rent due up to 15-8-1923, on the footing that the standard rent, Rs. 1420/-per mensem, had been payable by. the bank from, the commencement of the term.

The learned Judge thought this sufficient and made no order for payment of arrears of rent. On 19-0-1925, the High Court (Greaves and Ghose JJ.) heard the argument on the rule nisi and gave judgment setting aside the order of the Controller on the ground that he had no jurisdiction as at the time of the application the applicants (the bank) had ceased to be tenants.

On 4-7-1925, the bank appealed to the Appellate Court from the judgment in the ejectment suit and on 3-8-1925, the landlords cross-appealed. On 27-4-1926, the Chief Justice and Rankin J. heard the appeal. They dismissed the Bank's appeal and allowed the cross-appeal by giving judgment for arrears of rent on the footing of the contractual rent, and directing that mesne profits should be calculated at the same "rate". Against the High Court's above decisions in the rule and in the appeal the bank went up to the Judicial Committee but, in the appeal, arising out of the ejectment suit, there was no complaint "except that if the bank succeed in restoring the Controller's certificate the figures as to rent and mesne profits must necessarily be adjusted", and the Judicial Committee summed up the resultant position as follows:

"In the result, therefore, the appeals depend upon the question whether the High Court were right in deciding that the Controller had no jurisdiction to make the order in question certifying the standard rent at Rs. 1420/- per mensem."

29. Clearly, therefore, the bank had accepted the termination of their tenancy on and from 15-8-1923 and they had definitely ceased to be tenants on and from that date and this position had also been affirmed by this Court in the ejectment suit and the judicial Committee also considered the matter on that footing.

30. We have set out above the relevant facts of the case cited, as they appear in the judgment of the Judicial Committee. From them it is quite clear that on the day, namely, 1-12-1923, when the application for standardisation of rent was made, the contractual tenancy had already ceased and the suit for ejectment was pending. That suit was decided on 24-4-1923, upon the finding that the lease had been determined on 15-8-1923, and the bank had given up possession on 24-1-1924 and a decree for mesne profits was passed on that footing.

On that date, the proceedings for standardisation of rent were pending, though in this Court and at the instance of the landlords u/s 115, Civil P. C. This latter fact, however, hardly makes any difference, in the rule obtained by the landlords from this Court, the entire proceedings for standardisation of rent before the Controller had been challenged and the pendency of the rule meant the pendency of the said proceedings. So the material position in -- "Karnani's case (D)", was that when the application for standardisation of rent was made before the Rent Controller the contractual tenancy had terminated by forfeiture and the suit for ejectment was pending and, during the pendency of the standardisation

proceedings, the termination of the tenancy by forfeiture was affirmed by this Court which passed its decree for mesne profits on that footing.

In substance, therefore, the applicant for standardisation of rent in -- "Karnani's case (D)", was in no way better placed than the present petitioner and the only other factual difference besides what has been explained above noticeable between the two cases, namely, Karnani's case and the present case, is that the petitioner before us has still possession of the rented premises while the "tenant" in the other case had parted with possession in the landlords' favour long before the question finally came up for consideration that is, before the Privy Council.

That, however, was certainly of no advantage to the applicant bank and the Judicial Committee did not treat it as of any material consequence so far as the proceedings for standardisation of rent were concerned, and their Lordships discharged the decree of this Court (whereby the Rent Controller's order fixing the standard rent and granting the certificate had been set aside on the ground that it was without jurisdiction as, at the time the relevant application was made, the bank had ceased to be tenants) and remitted the standardisation proceedings for disposal according to law, holding expressly that the same were maintainable and had been duly initiated by the bank notwithstanding the forfeiture or cessation of their tenancy and were not in any way defective by reason of such forfeiture or cessation, and holding further by necessary implication that the proceedings had not ceased to be maintainable and had not become defective by the affirmance of the forfeiture or termination of the tenancy by this Court by its decision or, rather, its decree for mesne profits and the basic finding, made in that connection, in the ejectment suit.

31. In reaching the above conclusion and extending to the applicant bank the benefit of Section 15, Rent Control Act of 1920, which authorised the making of the application for standardisation of rent, the Judicial Committee relied mainly upon the general scheme, and purpose of rent control legislations and upon Sections 4 and 14 of the said Act of 1920. None of these elements is wanting in the present case. Sections 3, 7 and 9 of the Rent Control Act of 1950 correspond to and substantially rephrase and contain the provisions of Ss. 4, 14 and 15 of the old Act of 1920 and the general scheme and purpose of rent control legislations, examined and relied upon by the Judicial Committee in "Karnani's case (D)" is also to be found in this Act of 1950.

"Karnani's case, (D)" therefore, appears to be a clear authority in the petitioner's favour on the question of his locus standi to start, maintain and continue the proceedings for standardisation of rent, and, in this view too, we answer that question namely, whether the petitioner has such locus standi, in the affirmative.

32. The view, we have taken above, is also clearly supported by the decision of this Court, reported in-- F.D. Bellew Vs. T. Elke, , where, in the plainest possible

terms, the proposition is laid down that an application for standardisation of rent, validly made by a tenant, does not cease to be maintainable, merely because, during the pendency of the said proceedings, a decree for ejectment is passed against the tenant and he is also actually ejected in pursuance thereof. That proposition which has since been definitely affirmed also by the Judicial Committee in "Karnani's case (D)" is enough for our present purpose as, admittedly, the petitioner was a tenant on 27-12-1950 when he applied for the standardisation of rent, his tenancy not having terminated till then and not terminating before the expiry of the notice to quit, that is, 23-1-1951, but it is also important to note that the principle, laid down by the Judicial Committee, is much wider and much more far-reaching in that the discussion in the judgment of their Lordships clearly appears to sanction the making of an application for standardisation of rent by an "ex-tenant" even when such "ex-tenant" has submitted to eviction and delivered back possession.

The contrary pronouncements of this Court in the cases of -- Sukhdeodas Ram Prosad Vs. Jaintilal Jamunadas and Another, (K) and -- Satya Neranjan Shaw and Another Vs. The Karnani Industrial Bank, Ltd., (L), (which last-cited decision was reversed by the Privy Council on appeal in AIR 1928 227 (Privy Council) (D)) must be held to be bad law after AIR 1928 227 (Privy Council) (D)" and the position as appearing from this last quoted authority must be accepted. True, these cases were all under the 1920 Act but, as already sufficiently explained above, the definition of "tenant" and the other material provisions, bearing on the point involved, are substantially similar in the two Acts of 1920 and 1950.

33. We hold, therefore, that the petitioner has locus standi to maintain and continue the proceedings for standardisation of rent, started by him, and that the same were validly initiated and remained valid and were improperly dismissed by the Rent Controller, and, further, that the petitioner's appeal from the said order of dismissal was also thrown out by the learned Appellate Judge on a wrong view of the law.

34. The position then is that this Rule ought to succeed unless we are prepared to give effect to the preliminary objection, raised by the appearing opposite parties on the basis of certain allegations to which we shall now refer. Those allegations are as follows:

1. that the Firm Dulichand Inderchand Asofa which was made the opposite party in the petitioner's application for standardisation of rent and against which the present Rule was obtained has no existence and never had any and was not the owner of the disputed premises or the petitioner's landlord, as alleged by the petitioner;
2. That the appearing opposite party No. 1, Dulichand Asofa, and his brother Inderchand Asofa, since deceased, were the owners of the said premises and were the petitioner's landlords and, after Inderchand's death in June 1952, the appearing opposite parties became the owners of the disputed premises and thus

the petitioner's landlords; and

3. that, in the ejectment suit against the petitioner in respect of the disputed premises, it has been found as a fact that the alleged Firm Dulichand Inderchand Asofa has no existence and was not the petitioner's landlord and, further, that the appearing opposite party No. 1 Dulichand Asofa, and his brother Inderchand Asofa, since deceased, who was the predecessor of the other appearing opposite parties before us, were the owners of the disputed premises and were the petitioner's landlords and, on Inderchand's death, the appearing opposite parties have become such owners and landlords.

Upon the above allegations, which the petitioner stoutly denies, it has been contended by Mr. Janah, the learned Advocate for the appearing opposite parties, that the petitioner's application for standardisation of rent, out of which this Rule arises and, indeed, the Rule itself are both incompetent, the landlords, namely, the appearing opposite party No. 1 and the other appearing opposite parties or their predecessor Inderchand Asofa, since deceased not having been impleaded in either.

To this objection there is one simple answer. There is clearly a dispute between the parties as to whether the firm, referred to above, namely the Firm Dulichand Inderchand Asofa, exists or not and as to whether the said firm or the appearing opposite party No. 1 and the other appearing opposite parties or their predecessor Inderchand Asofa, since deceased, are or were the owners of the disputed premises and the petitioner's landlords. That dispute, it is true, was decided against the petitioner by the trial court in the ejectment suit but it was again put in issue before the lower appellate court and by reason of our judgment just delivered in the connected Second Appeal No. 85 of 1953 and the alternative revisional application, filed therein, the petitioner's said appeal before the lower Appellate Court must be held to be pending and awaiting decision by that Court, with the result that the dispute between the parties, referred to above, is still sub judice.

It is also to be noted that the allegation, now made, or the objection, now raised, in regard to the competence of the proceedings for standardisation of rent that is, the present plea of defect of parties, was never made or raised either before the Rent Controller or before the Appellate Authority. On the other hand, the appearing opposite party No. 1 and the predecessor of the other appearing opposite parties contested the proceedings before the said two tribunals, purporting to appear as the opposite party, impleaded therein, although, clearly enough, at least at the appellate stage, the alleged Firm Dulichand Inderchand Asofa was the only opposite party on record.

In such circumstances, it is hardly proper to throw out this Rule or the proceedings for standardisation of rent, out of which the same has arisen, on the strength of the allegations on which the said preliminary objection of the appearing opposite parties is founded. That preliminary objection must,

therefore, fail and it is overruled.

35. In the light of the discussion, so far made, this Rule ought to succeed and the orders, complained against, ought to be set aside and the matter remanded to the Rent Controller for a decision of the petitioner's application for standardisation of rent on the merits in accordance with law. We feel, however, that in the interest of justice -- and that is one of the pre-eminent considerations when a case comes up to this Court u/s 32 (4), Rent Control Act of 1950, as in the present case, -- one other direction is necessary.

We have seen above that there is a dispute between the parties as to who originally were or now are the owners of the disputed premises or the landlords of the petitioner. According to the petitioner the Firm Dulichand Inderchand Asofa were and are the owners and landlords as aforesaid. According to the appearing opposite parties, the said Firm never had nor has any existence and the appearing opposite party No. 1, Dulichand Asofa, and his brother Inderchand Asola, since deceased, the predecessor of the other appearing opposite parties, were the original owners & landlords, and, after the latter's namely, Inderchand's death in June 1952, the appearing opposite parties are now occupying that position. We have also seen that the present proceedings were instituted against the Firm as landlords.

It appears, however, as already noted, that, before the Rent controller, appearance was entered on behalf of the two Asofa brothers in their individual capacities and they were allowed to contest the said proceedings and it was their objection to the petitioner's locus standi which succeeded before the Rent Controller. In the appeal also, that followed, those two brothers appeared and put up a contest, although the Firm was the respondent on record, and they, namely, the two brothers Dulichand Asola and Inderchand Asofa, succeeded ultimately in getting the petitioner's appeal dismissed on the 1st May 1952. In this Court also, as already seen, the appearing opposite parties entered contest and obtained permission to oppose this Rule though this permission "to appear and contest the Rule" was given "without prejudice."

In such circumstances, it seems proper and desirable and necessary too in the interest of justice that the appearing opposite parties should be formally added as opposite parties to the application before the Rent Controller so that the proceedings for standardisation of rent which will now re-commence before that authority in pursuance of this judgment may be decided with the real landlord on the record, whoever may ultimately turn out to be so. In the events which have happened in this case, it is hardly open to either party to object to this course and, as otherwise there may be material failure of justice and unnecessary complications and multiplicity of proceedings, we have little doubt as to our powers to adopt this course or as to the propriety of adopting the same u/s 32(4), Rent Control Act of 1950 or at any rate, under Article 227 of the Constitution. We do not think also that, in the circumstances of this case, the fact that Inderchand Asofa died more than 90 days ago would stand in the way of our

exercising those powers or adopting that course. The circumstances of this case are exceptional and, as otherwise great hardship and injustice may occur, we feel amply justified in making an order to the above effect.

36. In the result, therefore, this Rule is made absolute in part. The orders, complained of, are set aside and the case is sent back to the Rent Controller to be disposed of on the merits in accordance with law in the light of the directions, contained in this judgment after formally adding Dulichand Asofa and Sm. Gita Devi for self and as natural guardian of her minor son Sushil Kumar Asofa as opposite parties to the petitioner's application for standardisation of rent. There will be no order for costs in this Rule.

37. Let the records be sent down as early as possible.