
(1967) 02 BOM CK 0030

In the Bombay High Court

Case No : Second Appeal No. 111 of 1965 with Civil Revn Application No. 570 of 1965

Rupchand Hemandsar Panjwani and Others

APPELLANT

Vs

Heera Jawaharlal Mirchandani

RESPONDENT

Date of Decision : 16-02-1967

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 50

Citation : AIR 1968 Bom 100 : (1967) 69 BOMLR 587 : (1967) MhLj 906

Hon'ble Judges : Thakkar, J;Patel, J

Bench : Division Bench

Advocate : N.H. Gursahani, S.H. Gursahani, S.P. Kanga and V.B. Rege, for the Appellant; K.J. Abhyankar, G.N. Vaidya and V.P. Tipnis, for the Respondent

Judgement

Patel, J.

(1) These matters came before me while I was sitting as a single Judge. They raised the question of the applicability of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (which will be hereinafter referred to as the Rent Act) to appeals pending on the date on which the provisions of Parts II and III came to be applied to the premises, which are subject matter of the proceedings. It was pointed out to me that there were two contradicting decisions of the Single Judges Mr. Justice Naik in Second Appeal No. 738 of 1964, decided on December 14, 1965 Bom took the view that the Rent Act did not apply to all appeal if Parts II and III came to be applied during the pendency of the appeal. Mr. Justice Gokhale held otherwise in a group of Civil Revision Applications Nos, 793, 870 and 1122 of 1963 Umedmal Deviji Oswal Vs. K. Chopda and Co., . He held that it did. Mr. Justice Naik's decision was cited before the learned judge yet the learned Judge held differently. Having regard to the difference of opinion between the two judges I referred the matter to a Division Bench. Before dealing with the question in issue, the short facts of each case may briefly be stated.

(2) Second Appeal No. 111 of 1965:- In this appeal, the appellant was the tenant

of the premises in suit. Appellant No. 2 was posted as defendant as he was residing with him. He is his father. The tenement is situated in Ulhas Nagar. The appellant who was originally a licensee was granted tenancy of the suit premises on June 1, 1962 at Rs 35 per month and the original deposit of Rs. 150 which was paid at the time the license was granted, was continued at the time the tenancy was created. The appellant did not pay rent in the months of October to December 1962 and therefore the plaintiff terminated his tenancy by notice to quit dated December 4, 1962. On January 11, 1963, the appellant paid a sum of Rs. 58 on which date the plaintiff instituted the suit for possession of the premises on the ground that the tenancy of the appellant was terminated. This suit was decreed on August 28, 1963. Against this Judgment the appellant filed an appeal on September 27, 1963. On October 31, 1963, the Government issued a Notification Under Sec. 2 applying the provisions of Part II to premises let out for residence, business or trade. Even so the appellant before the appellate Court did not in terms claim the protection of the Act. The only contentions which he raised were whether the Civil Court at Kalyan had jurisdiction to entertain the suit, the suit being entertainable by the Court of Small Causes, whether there was misjoinder of parties and whether the notice was illegal and void. All these questions were answered against the defendant and his appeal was dismissed. The question about the applicability of the Rent Act has been taken up only in this appeal.

(3) In Civil Revision Application No. 570 of 1965 the premises were situated in Thakurli. The petitioner was a tenant at Rs. 37 per month since 1962. It appears that at one time Part II was applied to this areas, but later on by a Notification u/s 6 the Government having power to do so, the application the Act was withdrawn. After terminating the tenancy of the petitioner, the plaintiff filed this suit on March 19, 1963, in the Court of Civil Judge at Kalyan. The trial Court decreed the suit against which the petitioner filed an appeal. In the appeal it was contended that the original notification was still in force and was applicable to those premises. Th issue, therefore, was sent down to the trial Court. The trial Court negated that contention and therefore the District Court dismissed the appeal of the petitioner. In the mean time on February 18, 1965, the Government reapplied the provisions of Part II of the Rent Act u/s 22 of the Act. No. contention in this case was also taken before the learned District Judge that the Petitioner was entitled to the protection the Rent Act, which was then applied. The contention was taken only in the revision application.

(4) The Rent Act came on the Statute Book on January 19, 1948. It came into operation on February 13, 1948. Parts I and IV were applied to the whole of Maharashtra and Parts II and III were applied in the first instant respectively to the areas claimed in Schedules I and II to the Act and the State Government was given u/s 2 powers to extend the provisions of Part II or Part III or both to any other areas. It was also given power to withdraw the extension of the provisions to such areas by a notification. By this Act two other Acts which were in force at the time when this Act was passed, viz. the Bombay Rents, Hotel Rates and

Lodging House Rates Control Act, 1944 were repealed. This Act apparently recasts in some measure the provisions of the earlier Acts and provides for a larger number of matters between landlords and the tenants.

(5) The sections which fall to be considered are Sections 12 and 50. Sections 12(1) is in a way in a declaratory form and provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay the amount of the standard rent and permitted increases, if any and observes and performs the other conditions of the tenancy, in so far as they are consistent with provisions of this Act. Three other sub-sections lay down the conditions under which a landlord can file a suit against a tenant for arrears of rent and the circumstances under which an ejectment order can be passed or refused to be passed by a Court. Some of this matter is carried to Section 13, which is to be read along with Section 12. Section 50 is important in the present case and it reads as follows:-

50. "The Bombay Rent Restriction Act, 1989, and the Bombay Rents, Hotel Rates and Lodging House Rules Control Act, 1944 are hereby repealed.

Provided that all suits and proceedings between a landlord and a tenant relating to the recovery or fixing of rent or possession of any premises to which the provisions of Part II apply and all suits and proceedings by a manager of a hotel or an owner of a lodging house against a ledger for the recovery of charges for, or possession of, the accommodation provided in a hotel or lodging house situate in an area to which Part III applies, which are pending in any Court, shall be transferred to and continued before the Courts which would have jurisdiction to try such suits or proceedings under this Act and the rules made thereunder shall apply to all such suits and proceedings.

Nothing in this proviso shall apply to execute the proceedings and appeals arising out of decree or orders passed before the coming into operation of this Act and such execution proceedings and appeals shall be decided and disposed of as if this Act had not been passed.

Provided further that:-

(a) every order passed or act done by the Controllers under Part IV of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 , and every order or act deemed to have been passed or done under that part shall be deemed to have been passed or done under this Act; and

(b) all proceedings pending before the Controllers under Part IV of that Act shall be transferred to and continued before the Controllers appointed under this Act as if they were proceedings instituted before the Controllers under this Act".

(6) We will call the later para of the proviso the exception as it indeed is, for the sake of brevity.

(7) The section was cast in its present form first by an Ordinance, being

Ordinance No. IX of 1949, passed on February 3, 1949. Prior to it the words " other than execution proceedings and appeals " appeared in the first sentence of the proviso after the words " suits and proceedings and the words " (or shall be continued in such Court as the case may be)" which now appear in the latter part of the proviso were not there, and the words " thereupon" came after the words " and immediately thereafter". The latter part of the proviso which is an exception to the proviso itself was not there, apparently because the words " appeals and execution proceedings" as excepted subjects were placed in the beginning of the proviso.

(8) The question of the applicability of the provisions of Sections 12 to a pending appeal after, the Act became applicable during the pendency of the appeal came before this Court in *Surjitlal Ladhamal v. Chandrasinh Manibhai F.A.* 365 of 1947, decided on 13-4-1948 (Bom). The bench took the view that the Section 50 was only to provide for transfer of cases from ordinary Courts to Special Court and was not concerned with the applicability of the substantive provisions of the Act and it further held that Section 12 was retrospective. On this view the Bench allowed the appeal of the tenant and dismissed the plaintiff's suit. This question later came to be discussed in *Nilkanth Ramchandra v. Rasiklal*, 51 Bom LR 280 = AIR 1949 Bom 210 (FB). It was accepted in the decision that ordinarily the appeal is re-hearing of the suit and the words "suit or proceedings include appeal and execution proceedings. It also accepted the principle that though normally the provisions of the statute apply prospectively, the Legislature was entitled to apply the provisions retrospectively, and if the Legislature has so done, it is the duty of the Court to apply the provisions of the Act even to the pending appeals. The Court, however, made the following pertinent observations, and that is

"Before we apply these principles of which are well settled and beyond dispute one must first find in the legislation itself some provision which makes it retrospective, and we do not agree, with every great respect to the two learned Judges, that merely because Section 50 makes certain provisions retrospective, it is possible for the Court to draw an inference that the Legislature did not intend that only certain proceedings should be affected by the new legislation but that the intention was to make all pending proceedings irrespective of the provisions of Section 50 to come within the ambit of the new statute. In this particular case reading Section 50 and 12 together, it at all, a contrary perception appears to have been entertained by the Legislature."

In this case the earlier decision was overruled. Even the earlier case went to the Supreme Court and Supreme Court reversed the decision of the High Court and affirmed the principle enunciated in the Full Bench decision. In *Chandrasingh Manibhai and Others Vs. Surjit Lal Ladhamal Chhabda and Others*, the judgment was delivered by Mr. Justice Mahajan and he says:-

" On a plain reading of the language of Sections 12 and 50 it seem clear to us that the Act was given retrospective operation only to a limited extent and execution proceedings and appeals were excluded from this effect and were to be

governed by the provisions of the law in force at the time when the decrees were passed".

The Lordships also held that Section 12 was in terms prospective and not retrospective.

(9) The question to be decided is the ambit of the first proviso to Section 50 of the Rent Act. The proviso deals firstly with the premises to which Part II applies and then refers to the premises to which Part III applies and directs that the suits in respect of premises to which Part II applies and the suits in respect of premises to which Part III applies, which are pending in any Court, shall be transferred to and continued. . . etc. The first question that falls to be decided is whether this proviso applies to a case where the suits are pending when the two general provisions of the Act, i.e. Part I and Part IV are applied or to suits which are pending on the date when Parts II and III are applied to the premises. The question was apparently canvassed before the Supreme Court in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, but it was . Secondly, the Solicitor General for the appellants contended that even if the proviso was treated as substantive law, it must be taken to apply only to suits and proceedings pending at the time of the repeal which. But for the proviso, would be governed the Act repealed. On this the Attorney General argued that the effect of the saving is much wider, and it applies to such cases as fall within the words of the proviso, whenever the Act is extended. This question their Lordships left open. The words of the proviso must be given the full and natural meaning and cannot be altered by any artificial construction unless intention of the legislature is clearly expressed to show that they were intended to apply only to a limited number of cases. Normal function of the proviso is to except out of the main enactment what falls within it, but it is now well accepted that a proviso in a section may itself be a substantive enactment and in such a case it has to be given its effect. Having regard to the wide language used in the proviso it must be regarded as a substantive enactment as held in 51 Bom LR 280 = AIR 1949 Bom 210 (FB) and in *Shankarlal Ramratan Shet Vs. Pandharinath Vishnu Phatak*, . Again with respect such construction could be accepted only by a complete black out of the language of the proviso, The words "all suits and proceedings. . Pending" are so wide it would be unfair to restrict their application. We hold therefore that it applies to all suits and proceedings pending on the date of the application of Part II and or III to the premises the subject matter of such suits or proceedings.

(10) The contention on behalf of the appellants before us is normally the word "suits" must include appeals, for the reason that the appeal is merely a re-bearing of the suit. The proviso must, therefore, in terms makes the provisions of the Act applicable to pending appeals if Part II is applied during the pendency of the appeals. It is argued that the words "except suit and execution proceedings" which were originally there have been omitted from this proviso and later part which we call the exception does not extend to appeals pending at the date Part

II became applicable to the premises in the suit. This argument commended to Mr. Justice Gokhale and was rejected by Mr. Justice Naik.

(11) The question is whether this contention is sound. Before we address ourselves to the exception we may refer to some well recognised principles of statutory construction. In *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, . Mr. Justice Venkatarama Ayyar, accepting the principle that the intention of the law maker is to be found from the language used in the statute says:

" That , however, does not mean that the decision should rest on a literal interpretation of the words and in disregard of all other materials. "The literal construction then," says Maxwell on Interpretation of Statutes, 10th Edn. P. 19. "has in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the Whole Act: to consider. According to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy. These are principles well settled and were applied by this Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . To decide the true scope of the present Act, therefore, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislature and the purpose therein, the mischief which is intended to suppress and the other provisions of the statute and construe the language of the section."

It is also recognised that the words in an enactment may derive colour from the context on which they have been used and thus carry a larger or narrower meaning. It is therefore said that the statute must be construed as a whole. In *Bradlaugh v. Clarke* (1883) AC 354, Lord Fitz Gerald cited with approval the some comprehensive rule stated. Burton J. in *Warburton v. Loveland* (1828) H B 632. It is as follows:-

"I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve an absurdly repugnance , or inconsistency, the grammatical sense must be modified, extended or abridged, so far as to avoid such an inconvenience, but no further".

(12) It is difficult to hold that the terminal date for the application of the proviso of the Act is the date of the general provisions of Parts I and II of the Act coming into force. In this construction had to be adopted the very condition or transfer and continuance of the suits in the special Courts and the applicability of all the provisions of the Act on the application to the premises of Part II or III would be tendered nugatory and useless, for it provides "that such suits shall be transferred and or shall be continued in the Court and all provisions of this Act and the rules made thereunder shall apply to such suits and proceedings."

To adopt such a construction would mean that the Legislature gave useless powers to the Government u/s 2 to extend and withdraw the extension of the provisions of Part II and Part III to certain areas. Proviso to Section 6 empowers the State Government to make modification in the applicability of Part II of premises in Schedule I. The very fact that the first proviso comes into operation when Part II or Part III is applied to the premises in the suit, must indicate that the terminal date for the application of the Act is the date on which Part II or Part III is applied. Once these parts of the Act are applied to the premises, the suit must stand either transferred to the special Court or if it is already pending in it, it must be heard according to the provisions of the Act since all the provisions of the Act become applicable. In *Mahalinga Bandappa Vs. Venkatesh Waman*, this view was taken though the statement "the word "apply" in the expression "premises to which the provisions of Part II apply" means full application" is not very happily worded. Having regard to the finding of the learned Judges it is obvious that what the learned Judges meant by the expression was that Part II became applicable to the premises in the suit.

(13) The non-obstante clause to the proviso is in the nature of an exception or qualification to the proviso. The opening words "nothing in this proviso" must clearly indicate that the exception created by it must become applicable to what is enacted by the proviso. Unless the proviso applies there can be no question of the exception applying at all. Now the proviso applies to a suit in respect of premises to which Part II is applied or Part III is applied. It must be remembered that the mere application of the Act, i.e. Part I and Part IV does not give any relief to a tenant. Part I merely consists of six sections and deals with title, extent, commencement, durations, exemptions and the power of the State to issue orders in respect of premises belonging to the local authorities and definitions. Part IV consists of miscellaneous provisions such as offences which are made cognizable offences by company etc., rules regarding repeals and removal of doubts, regarding applicability of the Act to the proceedings under the Presidency Small Cause Courts Act. It is obvious, that by mere application, therefore, of Parts I and IV no relief is intended to be provided to the tenant. In this connection it is also to be borne in mind that even though by Section 2(1) Part I and Part IV have been applied to the Whole State it is only after Part II or III is applied to the premises in suit that last words in the proviso prescribe that "all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings; obviously, therefore, the mere coming into force of Part I and Part IV does not mean the application of the Act or coming into operation of the Act. The words, therefore which come in the exception must be construed with due regard to what is provided in the proviso itself.

(14) Coming to the clause the words which are emphasised before us by Mr. Kanuga and Mr. Rege, both are "before coming into operation of this Act" following the words "decree or orders passed" and the words "as if this Act had not been passed" following the words "execution proceedings and appeals shall be decided and disposed". It has been argued that since Part I and Part IV of the

Act became applicable it must mean this Act has come into operation. This contention succeeded before Mr. Justice Gokhale. It is interesting to note in this connection that we often find that some enactments provide that the Act would come into operation as soon as it is published but the provisions are applied as and when the State Government does so. Such for examples are the Bombay Tenancy and Agricultural Lands Act, 1948, the Bombay Land Acquisition Lands Act, 1948, and similarly the Advocates, 1961. The Legislature has in the present case not used that nomenclature. In Section 2 which is the extant Clause (i) provides that Parts I and IV of this Act shall extend to the Bombay area of the State of Maharashtra and sub-section (2) extends Parts II and III to the scheduled areas. As the Legislature itself does bring into operation the Act on its enactments it is impossible to say that merely by bringing in force Parts I and IV the Act came into force. The State Legislature has not advisedly used these words in the enacting part of the section.

(15) The last words in the proviso are "all provisions of the Act and the rules made thereunder shall apply to all such suits and proceedings". It would, therefore, appear that the Act would come into operation only when Part II and/or Part III becomes applicable and not before. When, therefore, the legislature used the words "coming into operation of this Act", in the non-obstante clause it clearly intended the words to be used in the sense in which they are used in the last part of the proviso quoted above and not in any other sense. This, therefore, is the second reason why the second proviso applies to appeals and execution proceedings which are pending on the date when Part II or Part III is applied to the suit premises. The words "as if this Act had not been passed" do not present any difficulty whatsoever. They merely state how appeals and execution proceedings are to be disposed of if the provisions of the Act did not apply.

(16) If the words "before coming into operation of this Act" mean the enactment of the Act and its publication and the extension of Parts I and IV under sub-section (i) of Section (2) the result would render nugatory the non-obstante clause itself and render it wholly meaningless. We have shown that having regard to the opening words "Nothing in this proviso", exception can apply only when the proviso becomes applicable. If, however, the meaning as contended for, is given the exception, it must apply to nothing, for the obvious reason that unless Part II or III is applied the suit could not be governed by the provisions of the Act and it will go on according to ordinary rules. Mr. Justice Gokhale says that the latter part of the proviso being an exception to it, it should be construed strictly. Even so, it must be construed reasonably and fairly. In statutory construction by Crawford, 1940 Edition at page 612 we find the following:

"the Court cannot construe an exception so as to make it ambiguous or meaningless when a reasonable construction can be given to it". It cannot be again said that it is our duty to bring about harmony between the proviso and the non-obstante clause and not to make either one or the other redundant or useless. It is impossible, therefore, to accept the construction that is suggested

on behalf of the appellants. The words "on the coming into operation of this Act" must be held in context to mean on the coming into operation of the whole Act in relation to premises in appeal or execution proceedings.

(17) Relying upon some observations in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, , it is argued that the Supreme Court has decided that Section 12(i) is by itself retrospective notwithstanding the provisos of Section 50 and the provisos thereto and we must therefore apply it to pending appeals. It is true that the language of a section may be capable of retrospective application even to a pending appeal and in such a case the Court must so apply to it irrespective of any supposed hardship to any of the parties. So far as it goes, the principle cannot be questioned. But the question, however, is whether when a specific provision has been made by the Legislature in form of Section 50 with its provisos and its exception, is it open for the Court to disregard the same and apply Section 12(1) retrospectively? Though Section 12(1) is in a way declaratory and is capable of applying to all pending proceedings, that, however, is not all. Section 50 with all its three provisos is to be considered and if it applies then Section 12(1) cannot apply to appeals. The rule of construction is a general rule, but the legislature is ultimately the supreme authority and it is for the legislature to say that an apparently retrospective enactment shall be applied only in particular way. Section 12(1) is a general provision while the proviso is a special one dealing specifically with the application of the Act retrospectively to appeals and suits. It is well settled that the special provision must be applied irrespective of the exception provided in Section 50 of the Act. On the contrary, while distinguishing the Full Bench case in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, , their Lordships said: " The question then was whether Section 12 by itself or read with the proviso to Section 50 was applicable retrospectively to appeals. That is not the question which has arisen here". And their Lordships distinctly said that "the language of the sub-section applies equally to suits pending when Part II comes into force and those to be filed subsequently, and that the contention of the respondent that the operation of S. 12(1) is limited to suits filed after the Act came into force in a particular area could not be accepted."

(18) Having regard to what we have stated above we hold that the judgment of Mr. Justice Naik lays down the correct law and not the decision of Mr. Justice Gokhale.

(19) In Second Appeal No. 11 of 1965, Mr. Kanuga contended that the Small Cause Court had jurisdiction in the matter and not the Civil Judge, Junior Division, even if the Rent Act did not apply. He accordingly contended that the decree as made is erroneous and cannot be supported. There is no substance in this contention because the claim in the suit was Rs. 432 while the jurisdiction of the then Civil Judge, Junior Division, Mr. P. B. Patil, was limited to suits of Small Cause nature of the value of Rs. 400 only. It is rather surprising that the learned

District Judge should have allowed such contentions to be raised before him without enquiring as to whether the suit really fell within the jurisdiction of the Small Cause Court.

(20) It was then contended that the appellant had paid Rs. 150 as advance and that is lying with the plaintiff, therefore, the rent was not in arrears and the tenancy could not be terminated. If the Rent Act did not apply to the area then the landlord was entitled to terminate the tenancy of the tenant in accordance with the provisions of the Transfer of Property Act and no exception can be taken even assuming that the tenant's contention is right. His contention, however, that Rs. 150 were paid towards advance rent cannot be accepted. The learned trial Judge has not apparently accepted it and no contention was raised before the District Court. This contention also fails.

(21) As we have held that in neither case the rent Act applied both the appeal and the revisional application must fail. The appeal is dismissed with costs and in Civil Revisional Application rule is discharged with costs.

(21) Appeal and revision dismissed.