
(1975) 12 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Civil Original Suit No. 89 of 1974

Vijay Kumar and another

APPELLANT

Vs

B.K. Thappar and another

RESPONDENT

Date of Decision : 29-12-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 22

Jammu and Kashmir Houses and Shops Rent Control Act, 1966 — Section 1(3)(iii)

Citation : AIR 1976 J&K 51

Hon'ble Judges : Mufti, J; Mian Jalal-Ud-Din, J; A.S. Anand, J

Bench : Full Bench

Advocate : S.P. Gupta, R.P. Sethi, G.L. Dogra and J.N. Bhan, for the Appellant;
G.D. Sharma, K.N. Raina and I.D. Grover, for the Respondent

Final Decision : Dismissed

Judgement

Mian Jalal-Ud-Din, J. (Minority view):

1. In the Civil original suit entitled Vijay Kumar and another Versus B.K. Thappar and another relating to ejectment of the defendants from the suit

premises pending before the learned Single Judge of this court the defendants moved an application praying that proceedings in the suit be

suspended in view of the Presidential Order dated 27th June, 1975/29th June, 1975, issued under Article 359(1) of the Constitution of India

suspending inter alia the enforcement of fundamental rights guaranteed under Article 14 of the Constitution of India. The prayer is grounded on the

plea that an important question relating to the constitutionality of the provisions of Section 1(3)(iii) of the Houses and Shops Rent Control Act,

1966, (hereinafter referred as the "Rent Control Act") is the subject matter of an issue in the case. The impugned provision is violative of Article 14

of the Constitution. The defendants' case is that as the enforcement of the right claimed has been suspended, therefore, the proceedings in the suit

will remain suspended till the enforcement of the Presidential Order.

2. This application was contested by the plaintiffs on the ground that the true effect of the Presidential Order was that proceedings in the Suit will

continue notwithstanding the objection raised by the defendants with regard to the constitutionality of the impugned provision of the Rent Control

Act. According to the plaintiffs such a plea was liable to be dismissed as incompetent on account of the order itself. The learned Single Judge felt

that the question raised before him was of vital importance and the decision bearing on it was likely to affect a large number of pending cases, he

therefore referred the question to a large Bench for consideration and decision. This is how the case has come up before the Full Bench.

3. We have heard the learned counsel for the parties at great length. We also had the advantage of hearing the learned Advocate General on the

point at issue though in a different case involving identical question of law.

4. Counsel appearing on either side have relied upon *Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of Tripura*, , *Makhan*

Singh Vs. State of Punjab (and connected appeals), , *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, , and *The District Collector of*

Hyderabad and Others Vs. Ibrahim and Co., etc., .

5. *M/s. I.D. Grover, K.N. Raina and G.D. Sharma*, appearing for the defendants have canvassed the proposition that the true effect of the

Presidential Order is that all proceedings in which questions of enforcements of rights, inter alia, under Article 14 of the Constitution are involved

shall remain suspended till the enforcement of the order. According to the learned counsel the issue raised in regard to the constitutionality of the

impugned provisions of the Rent Control Act is germane to the case. The court cannot, therefore, dispose of the suit without adjudicating upon the

issue relating to the vires of the impugned provision. As the right of the defendants to enforce a right under Article 14 has been suspended,

therefore, proceedings in the suit cannot be brought to their logical end and proceedings shall, therefore, have to be stayed. Relying upon the

observations made in *Makhan Singh Vs. State of Punjab (and connected appeals)*, (Para 13) the view has been enunciated that the consequence

of the operation of the Presidential Order is that pending proceedings have to remain suspended during the time the order is in force and these

proceedings can be revived when the said order ceases to operate. According to the learned counsel the word ""proceedings"" used in the said

Presidential Order includes Civil Suits and appeal in which any of the rights as specified in the order is claimed.

6. According to M/s. S.P. Gupta, and R.P. Sethi, appearing on behalf of the plaintiffs the effect of the Presidential Order is that a party intending to

enforce right under Article 14 in a proceeding is debarred from doing so as his very locus standi to claim such a right is lost. The locus standi to

claim right is lost in both cases whether by initiating an action at the beginning or during the continuance of the proceedings in which such a right has

been claimed. Locus standi to enforce such a right having been lost proceedings cannot, therefore, be suspended, and the suit will continue minus

the plea raised regarding the constitutionality of the impugned provision. It is further submitted that during the existence of emergency the courts

must feel loath to encourage the practice of raising frivolous pleas by a party under Article 14 of the Constitution because a clever party may

forestall the case of his adversary by raising an absurd plea of the unconstitutionality of a provision of law knowing it to be frivolous. Must in that

situation a court feel helpless and suspend proceedings and allow the party raising the plea to succeed in his nefarious design?. Surely, according to

the learned counsel the court cannot sit-still. The court shall examine the validity of the plea raised before it, before it is asked to stay its hands in

the suit. It will dismiss the plea as unfounded and incompetent.

7. A further argument canvassed is that during emergency when the operation of Article 14 has been suspended courts have to assume the validity

of the laws in force. Therefore, the vires of the impugned provisions of law cannot be challenged as being unconstitutional. The case will proceed

without the court determining this aspect of the matter. Again, the defendants cannot be heard to say that proceedings be stayed as according to

the learned counsel this plea has been raised by way of defence and not by way of claim by the institution of a proceeding. Here the defendants

seek to enforce the right in defence.

8. Shri G.L. Dogra who followed M/s. S.P. Gupta, and Shri R.P. Sethi, while

reiterating the arguments of his colleagues has also propounded the view that the proclamation of emergency and the consequent order of the President is meant to meet a particular situation obtaining in the country.

The President is empowered to issue proclamation under Art. 352 if the country is faced with threat of external aggression or internal disturbance.

The Presidential Order suspending the enforcement of the fundamental rights specified therein was to meet the situation created by abnormal

conditions in the country, therefore, the Presidential Order has to be given its true effect. It is not to be made applicable to private litigations

between the parties from whom there can be no threat to internal security. Therefore, the application made by the defendants claiming suspension

of proceedings is misconceived.

9. In order to appreciate the question posed before us, it is first of all necessary to understand the precise point at which the parties are at issue in

the suit. In their suit the plaintiffs have vide Paras 7 and 8 of the plaint made a definite averment that the defendants 1 and 2 claim right of

possession of the suit premises of Hari Talkies on the ground that they have become the statutory tenants under the Rent Control Act. The claim of

the defendants to have become statutory tenants is negated in the plaint and is characterised as fantastic inasmuch as the provisions of the Rent

Control Act are not applicable to the tenancy existing between the parties. Grounds have been detailed on the basis of which this claim of the

defendants has been denied. According to the plaintiffs the annual income of each of the defendants exceeds Rs. 20,000.00 per annum. In these

circumstances the plaintiffs rejected the claim of the defendants to be termed and styled as statutory tenants so as to claim protection under the

Rent Control Act.

10. In answer to these averments the defendant No. 1 in his written statement has pleaded that the contention urged in Para 7 of the plaint was

wrong. It was pleaded that the income of defendant No. 2 was less than Rs. 20,000.00. Even if he was to be treated as a joint tenant, he as one of

the tenants could validly claim to be governed by the Rent Control Act. The defendants further stated that in any case Section 1(3)(iii) of the Act

which debars the defendants from claiming protection as a statutory tenant on the ground that his income is more than Rupees 20,000.00 is

discriminatory and ultra vires of the Constitution of India as well of the Constitution of Jammu and Kashmir. On the basis of these pleadings the following issue was raised in the case with the consent of the parties. Issue No. 6 reads as under:

Whether the provisions of Section 1(3)(iii) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1960, are ultra vires of the Constitution? If so, what is its effect on the present suit?

It is quite manifest that the plea raised with regard to the vires of Section 1(3) (iii) was raised much before the promulgation of the Presidential Order. The vires were challenged on the ground of the impugned provision being discriminatory and violative of Article 14 of the Constitution.

11. It is also noticed that the defendants sought to raise the matter of constitutionality of the impugned provisions by way of writ before a Division Bench of this court. The Division Bench by its order dated June 26, 1975, observed that the matter sought to be raised was already covered by an appropriate issue raised in the main civil suit it would only be duplication of proceedings if the writ is admitted. The defendants have availed of an alternate remedy. On this ground the writ petition was held as incompetent and was, therefore, dismissed in limine.

12. To my mind the issue raised by the defendants is germane to the case for if the impugned provision of law is held ultra vires the defendant can claim to be entitled to the protection under the Rent Control Act and this will materially affect the decision of the case. Without deciding this issue the case cannot be brought to its logical end.

13. Having realised that the issue is germane to the case and its determination material for the purpose of adjudication upon the statutory rights of the defendants, the next question is as to what is the precise scope and the true effect of the Presidential Order. The order reads as under:

In exercise of the powers conferred by clause (1) of Article 359 of the Constitution, the President hereby declares that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Article 14, Article 21 and Article 29 of the Constitution and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended for the period during which the proclamations of emergency made under clause (1) of Article 352 of the

Constitution on the 3rd of December, 1971, and on the 25th June, 1975, are both in force.

14. The plain language of the order makes it abundantly clear that the right of a person to move any court for the enforcement of rights conferred by Articles specified therein and all proceedings pending in any Court for the enforcement of such rights have to remain suspended during the period the order is in force. This order postulates (1) suspension of remedial right to enforce a fundamental right specified in the order, (2) suspension of pending proceedings in which such right is claimed. Fresh action for the enforcement of the specified rights is barred as the very locus standi of a party to move the court is lost. If he does so, the action will be dismissed as incompetent. That is the effect of the first part of the order.

15. According to the second part of the order all the pending proceedings in which such right is claimed are to remain suspended. There is no warrant for the proposition that the plea touching the right can be dismissed and the proceedings can continue minus the plea raised. The contention raised at the bar that the locus standi of a party to claim enforcement of one of the specified rights barred under the Presidential Order is permanently lost in pending proceedings and that the plea raised cannot survive to a party cannot be acceded to in view of the plain language of the order. Presumably this argument is made on the assumption that the Supreme Court has laid down such a view in *Sree Mohan Chowdhury Vs.*

The Chief Commissioner, Union Territory of Tripura, . Also attempt is made to establish the argument that the locus standi having been lost to a party the plea cannot survive and it must be dismissed without judicial determination as one wholly incompetent, be it a case of fresh institution or a case of pending proceedings. The effect of the Presidential Order, it is claimed, is that the point relating to the fundamental right in a pending proceeding does not survive, But this argument does not commend itself to reason. This indeed is not the ratio of the authority relied upon. Their Lordships did not deal with a pending proceeding. In fact that was a case where an action for the enforcement of fundamental right was brought in the court after the Presidential Order of 1962 suspending the enforcement of fundamental right was proclaimed. Their Lordships held that as the

right to move the court for the enforcement of the right having been suspended under the Presidential Order, therefore, the party claiming such right

had lost his locus standi to enforce it. The petition was accordingly dismissed as not competent. No observations were, however, made with

regard to a pending proceeding in which the right affected was claimed. The authority is, therefore, distinguishable. In fact the position has been

made abundantly clear in the later authority of the same court (AIR 1964 SC 881 at page 399 Para 13) where their Lordships elaborately dealt

with the point at issue and made the following lucid exposition of law:

The consequence of the Presidential Order may be that any proceedings which may be pending at the date of order remains suspended during the

time that the order is in operation and may be revived when the said order ceased to be operative and fresh proceedings cannot be taken by a

citizen after the order has been issued, because the order takes away the right to move any court and during the operation of the order, the said

right cannot be exercised by instituting a fresh proceeding contrary to the order. If a fresh proceeding contrary to the order. If a fresh proceeding

falling within the mischief of Article 358(1) and the Presidential Order issued under it is instituted after the order has been issued it will have to be

dismissed as being incompetent. In other words Article 359(1) and the Presidential Order issued under it may constitute a sort of moratorium or a

blanket ban against the institution or continuance of any legal action subject to two important conditions (with these conditions we are not

concerned here)..... The ban operates either for the period of proclamation or for such shorter period as may be specified in the order.

The above discussion leads us to the irresistible conclusion that no court of competent jurisdiction can adjudicate upon a claim for the enforcement

of one of the fundamental rights specified in the order during the operation of the order itself. If such an action is brought by a party it cannot be

entertained and must be dismissed as incompetent. It may, be observed here that the fundamental right is not extinguished. It is assumed to remain

unaffected. Only the remedy to enforce the right is lost during the operation of the Presidential Order. But what about the pending proceedings in

which right has been claimed either by invoking judicial action or by way of defence?. The effect of the latter part of the Presidential Order is clear

words is that all such proceedings have to remain suspended. I cannot, therefore, subscribe to the view propounded by the counsel for the plaintiffs that the defence of the defendants challenging the vires of the impugned provisions be struck out and the plea dismissed as incompetent as the defendants have lost their locus standi to enforce the right claimed. As stated above, the right is not extinguished. It subsists. Only the remedy to enforce the right has been taken away. It is true that the court cannot during the operation of the order examine and determine the plea raised in the pending proceeding but that does not give the court unfettered power to decide the suit minus the plea raised. The plea cannot be dismissed summarily as incompetent and the case cannot be allowed to proceed as that would be the very antithesis of the order. To hold the view as enunciated by the learned counsel for the plaintiffs would be placing unwarranted construction on the order and would amount to doing violence to its language- The order is categorical Its language is express and explicit and does not admit of any exception, reservation or qualification. To hold otherwise would, I am afraid, run counter to the observations made by their Lordships in Makhan Singh Vs. State of Punjab (and connected appeals), for if this argument of the plaintiffs is stated to prevail then in each and every pending proceedings be it a writ petition, a civil suit, or an appeal, the claim of a party in regard to the suspended right would be dismissed for good and would not be revived even after the order has ceased to operate this will indeed create an anomalous situation which cannot be the intention of the order. How can a party after the proceedings are finally disposed of seek rehearing of the case or seek revival of the proceedings after the revocation of the order when the cause would not survive and would no longer be before the court.

16. Again the words ""proceedings"" and ""suspended"" occurring in the order are to be given their plain legal meaning. The word ""proceedings"" is used to denote a step in an action for the vindication and protection of one's right. According to Law Lexicon the term ""proceedings"" is a very comprehensive term and generally means a prescribed course of action in enforcing a legal right and it necessarily embraces all requisite steps by which a judicial action is invoked. Therefore, according to the intent and scope of the Presidential Order the word ""proceedings"" includes a suit

and all other actions taken to claim and enforce a legal right whether the said right is claimed by way of attack or by way of defence. The word

suspended"" means temporary deprivation of right. It means a temporary stop or stay as contrasted with complete extinguishment.

17. In my view, therefore, considering the connotations of the words ""proceedings" and ""suspended"" all the pending proceedings before a court of competent Jurisdiction whether they be in the form of writ petitions, suits or appeals by which a party seeks to enforce a legal right by judicial

action have to remain stayed, if in the said proceedings a question relating to Article 14 or any other Article specified in the order is sought to be

enforced.

18. This also brings us to the question of the precise connotation of the words ""any court"" occurring in the Presidential Order. The expression

signifies not only the High Court but all courts of competent jurisdiction in which the right claimed is sought to be enforced. There is no room for

any doubt that the Presidential Order only applies to writ proceedings brought under Articles 32 and 220 and does not apply to suits and other

proceedings to which right under Article 14 is claimed. The doubt expressed at the bar that the order of the President may not apply to all actions

including suits in which right is claimed or that it may apply only to High Court in exercise of its writ jurisdiction and not to other courts has got no

basis. The doubt, if any, has been removed by their Lordships of the Supreme Court by observing as follows:

(16) This argument attempts to interpret the words ""the right to move for the enforcement of the specified rights"" in isolation and without taking into

account the other words which indicate that the right to move which is specified in the said Article is the right to move 'any court'. In plain language,

the words ""any court"" cannot mean only the Supreme Court; they would necessarily take in all courts of competent jurisdiction. If the intention of

the Constitution makers was to confine the operation of Article 359(1) to the right to move only the Supreme Court, nothing could have been

easier than to say so expressly instead of using the wider words ""the right to move any court.

Again, their Lordships proceeded to observe:-

Therefore, the attempt to suggest that the use of the words ""any court"" used in

Article 359(1) is justified because they take in fee Supreme Court and some other courts, fails and the conclusion inevitably follows that the words "any court" must be given their plain grammatical meaning and must be construed to mean any court of competent jurisdiction. In other words, the words, "any court" include the Supreme Court and the High Courts before which the specified rights can be enforced by the citizens." It also matters little whether the right sought to be enforced is by the plaintiff by way of claim or by defendant by way of his defence. The proceedings are to remain suspended till the enforcement of the order and may be revived after the order ceases to operate.

19. It is also noteworthy to mention here that an important distinction exists between the provisions of Article 358 and Article 359(1) under which the Presidential Order is made. Article 19 is ipso facto suspended as a result of the Constitutional position arising under Article 358. During emergency the consequences of suspension of Article 19 is that it removes the fetters on the legislative and executive powers of the State. The State can make laws which are inconsistent with the rights guaranteed under Article 19. Their validity is not open to challenge either during the continuance of emergency or even thereafter. After the emergency ceases Article 19 is revived but whatever legislative and executive actions have been taken in contravention of Article 19 during this period cannot be questioned even after the emergency is over. No indemnity can be afforded against the executive or legislative action. But this constitutional position and guarantee is available only under Article 358 and not under Article 359(1) where the President makes an Order suspending the fundamental rights specified in the order.

20. Again, the apprehension entertained by the plaintiffs that if proceedings are suspended in all cases it will encourage the raising of frivolous pleas under Article 14 of the Constitution by a party and thereby result in forestalling the case of his adversary and in this way throw open flood-gates of frivolous pleas has got no foundation inasmuch as no fresh claim to enforce such a right can be entertained at its inception and the proceedings shall have to be dismissed as incompetent. In such a situation there can be no fresh institution of proceedings and thus no question of raising frivolous, false or vexatious pleas arises. The order of the President operates as

moratorium on fresh institutions. But the position of pending proceedings is somewhat different. The order operates as a blanket ban on these proceedings in which the right has already been claimed before the promulgation of the Presidential Order. When the ban is removed, the proceeding is automatically revived. In the present case, however, the question of any frivolous plea does not arise as the plea raised arises out of the very pleadings of the parties and Issue No. 6 raised is an agreed issue in the case.

21. The argument that the Presidential Order is to meet a particular situation affecting external and internal security of the country and, therefore, should not be made applicable to common type of litigation in which claim to enforce right under Article 14 is made cannot be acceded to as that would be going against the very scope and object of the order. The court has to read the order as it is and has to give effect to it in terms of the language employed in the order. The court cannot go beyond that and exercise discrimination in its application to a particular set of litigation. That would not be the true effect of the order.

22. Before parting I may observe that the Advocate General has also supported the stand taken by the counsel for the defendants in construing the Presidential Order.

23. For the foregoing reasons, I am positively of the view that the question must be answered in favour of the proposition that the proceedings will remain suspended during the enforcement of the Presidential Order. The application made by the defendants must be allowed and the proceedings stayed. The application is accordingly allowed and the proceedings are stayed.

Mufti, J. (Majority view):

24. The question referred to the Full Bench is:

What is the effect of the Presidential Order dated 27-6-1975 issued under Article 359(1) on the pending actions, particularly suits, writ petitions and appeals involving pleas based on any Article mentioned in the order as a ground of claim or defence, alone or in conjunction with other grounds?

25. Article 352 gives the President of India power to declare by proclamation that a grave emergency exists whereby the security of India is threatened either by external aggression or by internal disturbance. On

December 3, 1971, the President issued a proclamation under this Article declaring that a grave emergency existed whereby the security of the country was threatened by external aggression. On June 25, 1975, the President issued a further proclamation declaring that a grave emergency existed whereby the security of India was threatened by internal disturbance. Thereafter, the President made the following order:

G.S.R. 361(E). In exercise of the powers conferred by clause (1) of Article 359 of the Constitution, the President hereby declares that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the Constitution and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended for the period during which the proclamation of Emergency made under Clause (1) of Article 352 of the Constitution on the 3rd December, 1971, and on the 25th June, 1975, are both in force. This order shall extend to the whole of the territory of India except the State of Jammu and Kashmir.

This order shall be in addition to and not in derogation of any order made before the date of this Order under clause (1) of Article 359 of the Constitution.

26. In the beginning this order did not apply to the State of Jammu and Kashmir. Afterwards, on 29-6-1975, it was, however, made applicable also to the State. Before that date Vijay Kumar and another, first party herein, had filed a suit against B.K. Thappar and another, the opposite party herein, for declaration of title with consequential relief for injunction and, in the alternative, for eviction of the defendants from the suit property consisting of a cinema house known as ""Hari Talkies"". The suit was pending on the original side of this Court before me, sitting singly, when the aforesaid order was made applicable to the State. The defendants had already filed their written statement and resisted the suit inter alia on the ground that Section 1(3)(iii) of the Jammu and Kashmir Houses and Shops Rent Control Act, was ultra vires the Constitution, being discriminatory. On this plea an issue was framed which is the subject-matter of Issue No. 6. That issue reads:

Whether the provisions of Section 1(3)(iii) of the J. and K. Houses and Shops Rent Control Act, 1966, are ultra vires of the Constitution? If so,

what is its effect on the present suit?

In the wake of the Presidential Order the defendants filed an application on 11-8-1975 for an order staying the suit on the ground that one of the

defences related to the vires of Section 1(3)(iii) of the Jammu and Kashmir Houses and Shops Rent Control Act, which, they said, was based on

Article 14 of the Constitution-one of the Articles specified in the Presidential Order. The plaintiffs opposed the application. At the hearing of the

application before me, it was argued on behalf of the defendants that the effect of the Presidential Order was that pending actions involving pleas

based on the specified Articles were liable to be stayed for the period of emergency. On the other hand, it was urged on behalf of the plaintiffs that

the effect actually was that such actions would continue minus the plea so raised which was liable to be dismissed as incompetent. These rival

arguments raised a question of general importance set out in the beginning of this judgment which, I felt, should appropriately be determined by a

larger bench of this court. I made a reference accordingly. That is how this matter has come up before this Bench.

27. Let me now revert to the Presidential order. No question was raised before us as regards the validity of the order. I will, therefore, assume that

the order is valid. I will only consider its scope and effect. Analysing and expanding the order it provides:

(a) That the right of any person to move any court for the enforcement of the rights conferred by Articles 14, 21 and 22 of the Constitution shall

remain suspended for the period during which the proclamations of emergency are in force; and,

(b) That all proceedings pending in any court for the enforcement of the aforementioned rights shall remain suspended for the period during which

the proclamations of emergency are in force.

Thus the order consists of two parts. The first part suspends the right to commence a legal proceeding for the enforcement of the rights conferred

by the specified Articles during the period of Emergency. The second part suspends the right to continue an already duly commenced legal

proceeding for the enforcement of the aforesaid rights during such period. The dictionary meaning of the word "'suspend" is "'to debar from any

privilege, office, emoluments etc. for a time.'" In substance, the order, therefore,

provides that a person will not be entitled to commence a legal proceeding or to continue an already duly commenced legal proceeding for the enforcement of the rights conferred by the specified Articles so long as the Emergency subsists. That is the same thing as saying that all legal proceedings, including legal proceedings commenced before and pending on the date of the Presidential order, for the enforcement of the rights conferred by the specified Articles shall be incompetent and unsustainable. That being so, all such proceedings must be dismissed. In this view the true scope and effect of the Presidential Order is that all legal proceedings, including those pending on the date of the Presidential order, for the enforcement of the rights conferred by the specified Articles must be dismissed as being incompetent during the operation of the Emergency.

28. Such a legal proceeding need not be in any particular form. Enough to constitute it is a plea for the enforcement of any specified fundamental right as a reason or excuse for the grant or refusal of any relief or claim. The plea may appear alone or in conjunction with other pleas. That does not matter much. In either case the plea will constitute a legal proceeding for the enforcement of the right conferred by the relevant specified Article. The only difference that might arise is that the dismissal of the plea will finally decide the matter in the former case but not so in the latter case when the matter will continue for adjudication on the remaining pleas. The nature and character of the matter will not make any difference nor also the fact that the matter was at the appellate stage when the Presidential Order became effective. In this background I have no difficulty in holding that in all legal actions, be it those which were pending on the date the Presidential Order became effective or those brought after that date, the plea based on any specified Article as a ground of claim or defence, alone or in conjunction with other grounds, must be dismissed as incompetent irrespective of the fact whether such plea was raised before the date of the Presidential Order or is raised after that date. This principle will be equally applicable to appeals arising from such legal actions because an appeal is nothing but a continuation of a legal action. In this view my answer to the question before the Full Bench will be that in all pending actions, be they suits, writ petitions or other legal actions, whatever be the stage at which they are, the plea based on any specified Article as a

ground of claim or defence alone or in conjunction with other grounds,
must be dismissed as incompetent.

29. In the year 1982 the President of India proclaimed Emergency as a sequel to the Chinese Aggression and thereafter made the following order

under Article 359(1):

In exercise of the powers conferred by clause (1) of Article 359 of the Constitution, the President hereby declares that the right of any person to

move any court for the enforcement of the rights conferred by Article 21 and Article 22 of the Constitution shall remain suspended for the period

during which the proclamation of Emergency issued under clause (1) of Article 352 thereof on the 26th October, 1962, is in force if such person has

been deprived of any such rights under the Defence of India Ordinance, 1962 (4 of 1962) or any rule or order made thereunder.

Dealing with this order in *Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of Tripura*, their Lordships of the Supreme Court

observed:

Thus, as a result of the President's order aforesaid, the petitioner's right to move this court, but not this court's power under Article 32, has been

suspended during the operation of the Emergency, with the result that the petitioner has no locus standi to enforce his right, if any, during the

Emergency.

(Emphasis supplied).

These observations unquestionably suggest that the word "suspend" in the Presidential order implies loss of locus standi. If that be so, as it really is,

then, on the terms of the Presidential order, it must be held that a person has lost the locus standi to commence a fresh legal proceeding and also to

continue a pending legal proceeding for the enforcement of the rights conferred by the specified Articles so long as the Emergency subsists.

Because, suspension of 'right to move' would in the context of the meaning as aforesaid given to the word "suspend" imply loss of locus standi to

commence a fresh legal proceeding while suspension of "pending proceedings" will imply the loss of locus standi to continue the existing

proceedings. Thus the judgment supports the view expressed above.

30. The learned counsel for the opposite party vehemently argued that the true

site party vehemently argued that the true legal position under the Presidential order was that fresh proceedings for the enforcement of specified rights were barred while pending proceedings for such enforcement were liable to be stayed so long as the Emergency subsisted. In order to support his argument he relied on the following passage from the judgment of their Lordships of the Supreme Court in *Makhan Singh Vs. State of Punjab* (and connected appeals), :

Since the object of Article 359(1) is to suspend the rights of the citizens to move any court, the consequence of the Presidential order may be that any proceeding which may be pending at the date of the Order remains suspended during the time that the Order is in operation and may be revived when the said order ceases to be operative; and fresh proceedings cannot be taken by a citizen after the order has been issued, because the Order takes away the right to move any court and during the operation of the order, the said right cannot be exercised by instituting a fresh proceeding contrary to the Order. If a fresh proceeding falling within the mischief of Article 359(1) and the Presidential Order issued under it is instituted after the order has been issued, it will have to be dismissed as being incompetent. In other words, Article 359(1) and the Presidential Order issued under it may constitute a sort of moratorium or a blanket (sic) against the institution or continuance of any legal action, subject to two important conditions. The first condition relates to the character of the legal action and requires that the said action must seek to obtain a relief on the ground that the claimant's, fundamental rights specified in the Presidential order have been contravened and the second condition relates to the period during which this ban is to operate. The ban operates either for the period of the proclamation or for such shorter period as may be specified in the order.

31. The argument attempts to give to the words ""shall remain suspended"" occurring in the Presidential order two meanings, each distinct from the other. When related to the first clause, namely: the right of any person to move for the enforcement of the rights conferred by Article 14, 21 and 23 of the Constitution the aforesaid words would mean, ""shall stand barred,"" but when related to the second clause, namely: ""all proceedings pending in any court for the enforcement of aforesaid rights,"" these words would mean

""shall be stayed"". It is difficult to accept this position. Firstly because the two clauses forming the Presidential Order are conjunctive joined by the word ""and"". The sentence so formed is qualified by the words ""shall remain suspended"" which words should, therefore, have only one meaning attached to them. Secondly, because the rule of interpretation is that the same meaning is intended for the same words in every part of a provision and so, even if it were assumed that the two clauses are disjunctive, different meanings cannot be given to the same words qualifying them when the two clauses form part of the same provision in the order.

32. Moreover, if the argument were accepted, it would lead to absurd and anomalous results. The argument virtually is that the plea for the enforcement of any specified right; if raised now or previously at any time after the date the Presidential order became effective, must be dismissed as incompetent, and the action, in which it be raised, must be decided as if the plea did not exist but, if such plea was raised before the date the Presidential order became effective, it should be treated to be in position and should not be dismissed as incompetent, rather the action, in which the plea was raised must be stayed. To take a concrete example let us conceive of a civil suit which was brought before and was pending on the date the Presidential Order became effective. If the written statement were filed today and the plea based on Article 14 of the Constitution raised therein, the plea, in accordance with the argument of the learned counsel, must be rejected as incompetent and the suit must be allowed to proceed as if the plea did not exist. But if the written statement was filed and a plea, as aforesaid, raised therein, before the date the Presidential Order became effective, the suit must, as the argument suggests, be stayed so long as the Emergency subsists. Thus the pending action will be susceptible to different consequences according as the written statement containing the plea based on the Specified Article was filed before or after the date the Presidential Order became effective. It is difficult to assume that the President intended such absurdities and anomalies in the order. In this background the argument is clearly erroneous and must be rejected.

33. The observations of their Lordships of the Supreme Court relied on by the learned counsel do not really support his argument. He has attempted to view these observations in isolation and without taking into account

other observations which indicate their true meaning. The observations relied on by the learned counsel appear in Para 13 of the Judgment. In Para 12 their Lordships have observed as under:-

It would be noticed that the Presidential order cannot widen the authority of the legislature or the executive; it merely suspends the right to move any court to obtain a relief on the ground that the rights conferred by Part III have been contravened if the said rights are specified in the order.

The inevitable consequence of this position is that as soon as the order ceased to be operative, the infringement of the rights made either by the legislative enactment or by executive action can perhaps be challenged by a citizen in a court of law and the same may have to be tried on the merits on the basis that the rights alleged to have been infringed were in operation even during the pendency of the Presidential order. If at the expiration of the Presidential order, Parliament passes any legislation to protect executive action taken during the pendency of the Presidential order and afford indemnity to the executive in that behalf, the validity and the effect of such legislative action may have to be carefully scrutinized.

Thus their Lordships visualised that the right suspended under Article 359(1) as a result of a Presidential Order may or may not survive for enforcement after the Emergency was over. In this context their Lordships observed in Paragraph 13 ""that the consequences of the Presidential order may be that any proceeding, which may be pending at the date of the order, remains suspended during the time that the order is in operation and may be revived when the said order ceased to be operative,"" implying thereby that the consequence of a Presidential order may be that a pending proceeding for the enforcement of a specified right is dismissed as incompetent so long as the order remains in force but even so a litigant in such proceeding may be able to re-commence the proceeding for the enforcement of such right after the order ceases to be operative and not that such pending proceeding shall be stayed, as suggested by the learned counsel. Their Lordships have themselves made this point clear towards the end of the paragraph observing:

In other words, Article 359(1) and the Presidential order issued under it may constitute a sort of moratorium or a blanket ban against the institution or continuance of any legal action.

34. These observations clearly suggest that the right to institute a fresh action or the right to continue a pending action for the enforcement of specified rights may or may not survive at end of a Presidential Order issued under Art. 359(1) and, if it survives, the order will operate as a moratorium on such right or putting it differently, the order will operate simply to put off enforcement. But where it does not survive at the end of a Presidential Order, say, for instance, as a result of any protective action taken meanwhile by the Parliament, the order will operate as a blanket ban on the enforcement of such right. That being so, the observations of their Lordships of the Supreme Court cannot be read as supporting the argument of the learned counsel.

35. In the view expressed above, on the broad question stated in the beginning, I respectfully dissent from the judgment of my learned brother Mian Jalal-ud-Din J. and hold that the suit pending between the parties in this Court will proceed minus the plea raised by the defendants against the constitutionality of Section 1(3)(iii) of the Houses and Shops Rent Control Act which must be dismissed as incompetent, based as it is, on Article 14 of the Constitution which is one of the Articles specified in the Presidential order. Accordingly I dismiss the application for stay of the suit filed by the defendants but without any order as to costs.

Anand, J. (Majority view):

36. I have had the advantage of going through the judgment proposed to be delivered by my learned brother Mian Jalal-ud-din J. and regret my inability to concur with the reasonings or the conclusions arrived at by his Lordship. I proceed to give my own views in the matter.

37. The facts of the case are not in dispute and have been elaborately given by my learned brother Mian Jalal-ud-Din J. His Lordship has given the facts and has also summarised the various contentions raised on behalf of the plaintiffs and the defendants, through their learned counsel. The various authorities cited at the bar have also been noticed by his Lordship, and I do not propose to repeat either the facts, submissions made or the authorities cited at the bar. I shall straightway proceed to determine the question which has been referred by my learned brother Mufti Baha-ud-Din Farooqi J. to this larger bench.

38. The controversy which has arisen in the present case, is as to whether the

plea which defendant No. 1 has raised in his written statement regarding the vires of the Houses and Shops Bent Control Act, 1966, can be allowed to be agitated in view of the order issued by the President of India, barring the citizens to move any court, as well as suspending all pending proceedings for the enforcement of their fundamental rights conferred by Arts. 14, 21 and 22 of the Constitution of India after the promulgation of emergency. The decision of this question will depend upon whether the effect of Presidential order, to which reference will be made shortly hereinafter, is to keep in suspension all proceedings in which some consideration of principles of Articles 14, 21 or 22 of the Constitution of India are involved or only such proceedings have to remain suspended by which the citizen seeks the enforcement of his fundamental rights under Articles 14, 21 and 22 of the Constitution of India. Article 352 of the Constitution of India authorises the President, in Case he is satisfied that a grave emergency exists whereby security of the country is threatened, either by external aggression or by internal disturbance, to make a declaration to that effect by means of a proclamation. Article 358 of the Constitution of India provides that while a proclamation of emergency is in operation, the State would be empowered to make laws and/or to take any executive action in derogation of the provisions of Article 19 of the Constitution of India, and the law so made or action so taken would be valid, but any law so made in contravention of the provisions of Article 19 of the Constitution of India shall cease to have the effect as soon as such a proclamation ceases to be operative.

39. Article 359(1) of the Constitution of India which is very relevant for the purpose of the present discussion provides:

Where a proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

In exercise of the powers conferred on the President of India by Article 352(1) of the Constitution of India, a Proclamation of emergency was

issued on June 25, 1975, in addition to the one earlier issued on December 3, 1971. Thereafter on June 27, 1975, the President of India issued an order No. G.S.R. 361(E) under Article 359(1) of the Constitution of India which provides as under:-

In exercise of the powers conferred by clause (1) of Article 359 of the Constitution, the President hereby declares that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Article 14, Article 21 and Art. 22 of the Constitution and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended for the period during which the proclamations of emergency made under clause (1) of Article 352 of the Constitution on the 3rd December, 1971, and on the 25th June, 1975, are both in force.

This order was extended to the State of Jammu and Kashmir by G.S.R. 367(E) dated 29-6-1975 as published in the Government of India gazette dated 29-6-1975.

40. In view of the Presidential order reproduced above, issued under Article 359(1) of the Constitution of India, there can be no doubt that the right to move any court for the enforcement of rights conferred by Articles 14, 21 and 22 of the Constitution of India has been suspended during the period the emergency subsists and all proceedings pending in any court, prior to the declaration of emergency, for the enforcement of the rights conferred by Articles 14, 21 and 22 would also have to remain suspended during the aforesaid period. The question which requires determination is whether the ""pending proceedings"" by which a citizen has sought the enforcement of his specified fundamental rights only are to remain suspended during the period of emergency or even such proceedings in which the citizen does not seek the enforcement of the specified fundamental rights but in which some 'consideration' of the specified articles of the Constitution of India is involved have also to remain, under suspension during the period of emergency?

41. In *Makhan Singh Vs. State of Punjab* (and connected appeals), the Supreme Court made the following observations which have a great bearing on the present controversy.

Since the object of Article 359(1) is to suspend the rights of the citizens to move

any court, the consequence of the Presidential Order may be that any proceeding which may be pending at the date of the order remains suspended during the time that the order is in operation and may be revived when the said order ceases to be operative; and fresh proceedings cannot be taken by a citizen after the Order has been issued, because the Order takes away the right to move any court and during the operation of the order, the said right cannot be exercised by instituting a fresh proceeding contrary to the Order. If a fresh proceeding falling within the mischief of Article 359(1) and the Presidential Order issued under it is instituted after the order has been issued, it will have to be dismissed as being incompetent. In other words, Article 359(1) and the Presidential Order issued under it may constitute a sort of moratorium or a blanket ban against the institution or continuance of any legal action subject to two important conditions, the first condition relates to the character of the legal action and requires that the said action must seek to obtain a relief on the ground that the claimant's fundamental rights specified in the Presidential Order have been contravened and the second condition relates to the period during which this ban is to operate.

(Emphasis mine)

Speaking for the majority in *Makhan Singh's case* (Supra) Mr. Justice P.B. Gajendragadkar (as his Lordship then was) observed thus:

The next question to consider is, what is the nature of the proceedings which are barred by the Presidential Order issued under Article 359(1).

They are proceedings taken by citizens for the enforcement of such of the rights conferred by part III as may be mentioned in the order. If a citizen

moves any court to obtain a relief on the ground that his fundamental rights specified in the order have been contravened, that proceeding is barred.

In determining the question as to whether a particular proceeding falls within the mischief of the Presidential Order or not, what has to be examined

is not so much the form which the proceeding has taken, or the words in which the relief is claimed as the substance of the matter and consider

whether before granting, the relief claimed by the citizen, it would be necessary for the Court to enquire into the question whether any of his

specified fundamental rights have been contravened. If any relief cannot be granted to the citizen without determining the question of the alleged

infringement of the said specified fundamental rights, that is it proceeding which falls under Article 369(1) and would therefore, be hit by the Presidential order issued under the said article. The sweep of Article 359(1) and the Presidential order issued under it is thus wide enough to include all claims made by citizens in any court of competent jurisdiction when it is shown that the said claims cannot be effectively adjudicated upon without examining the question as to whether the citizen is in substance, seeking to enforce any of the said specified fundamental rights. We have already seen that the operation of Article 350(1) and the Presidential order issued under it, is limited to the period during which the proclamation of emergency is in force, or for such shorter period as may be specified in the order. That being so, we feel no difficulty in holding that proceedings taken by a citizen either under Article 32(1) or under Article 226(1) are hit by Article 359(1) and the Presidential order issued under it.

(Emphasis mine)

Later on in para 31 of the same judgment Gajendragadkar J. observed:

If the Presidential order precludes a citizen from moving the Court for the enforcement of the specified fundamental rights, it would not be open to the citizen to urge that the Act is void for the reason that it offends against the said fundamental rights. It is in order to prevent the citizen from making such a claim that the Presidential order has been issued, and so, during the period of its operation, the challenge to the validity of the Act cannot be entertained.

(Emphasis mine)

42. In *Durgadas Shirali Vs. union of india (UOI) and Others.*, their Lordships of the Supreme Court reiterated the observations in *Makhan Singh*

Vs. State of Punjab (and connected appeals), regarding the legal effect of the Presidential order issued under Article 359(1) of the Constitution of

India and observed as follows:

It was pointed out that during the pendency of the Presidential Order, the validity of the Ordinance or any rule or order made thereunder cannot be questioned on the ground that it contravenes Articles 14, 21 and 22.

Again in *Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of*

Tripura, , while considering the effect of the Presidential Order

their Lordships observed as follows:

Thus, as a result of the Presidential Order, aforesaid the petitioner's right to move the Supreme Court, but not the court's power under Article 32

has been suspended during the operation of the Emergency, with the result that the petitioner has no locus standi to enforce his rights, if any, during

the Emergency.

From the perusal of the case law discussed above an irresistible conclusion follows that only such proceedings which are pending for the

enforcement of fundamental rights have to remain suspended and not all proceedings in which the enforcement of specified fundamental rights is not

directly involved but in which some consideration of the specified articles of the Constitution might be involved especially when the claim of the

citizen can be effectively disposed of without considering the plea based on the contravention of Article 14 of the Constitution. The effect of the

Presidential order, therefore, clearly is that the locus standi of the citizen to invoke Articles 14, 21 and 22 of the Constitution of India is taken

away. As a natural corollary it follows that when the Presidential Order precludes a citizen from moving any court for the enforcement of his

fundamental rights under Articles 14, 21 and 22, it would also not be open to hurt to urge that a particular Act is void being violative of the said

fundamental rights. So long as the Presidential Order is in force, the challenge to the validity of an Act of the legislature on the ground that it is

violative of Articles 14, 21 and 22 of the Constitution of India cannot be entertained or adjudicated upon and has to be ignored as incompetent.

43. The interpretation to be given to that part of the Presidential order which provides ""and all proceedings in any court for the enforcement of the

above mentioned rights shall remain suspended" has to be considered and adjudicated upon in the light of the first part of the Presidential Order

which bars the citizen from moving any court for the enforcement of his fundamental rights guaranteed under Articles 14, 21 and 22 of the

Constitution. Both parts of the order have to be read ejusdem generis. When so read, it becomes quite clear that the effect of the Presidential

Order is to preclude a citizen to move any court for the enforcement of his specified fundamental rights, and in case some proceedings are pending

in a court in which the enforcement of the fundamental right of a citizen is involved these proceedings shall have to remain suspended during the period of emergency and may be revived after the Presidential order either expires or is revoked. During the period when the proclamation of emergency is in force any plea to the effect that a particular Act of the Legislature or action of the executive is violative of the specified fundamental rights cannot be allowed to be raised, and if already raised in some pending proceedings will have to be rejected as an incompetent plea. The expression "right to move" in the Presidential Order is qualified by the expression "for the enforcement of such rights conferred by Part III. Therefore, the "(sic)" or the "blanket ban", which terms in my opinion are synonymous, is placed on the right of a citizen "to move any court" for the enforcement of the specified fundamental rights. The words in the second part of the Presidential Order that "all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended" only relate to proceedings instituted in exercise of the said rights conferred by Part III of the Constitution and do not relate to such proceedings by which the enforcement of the specified fundamental rights is resisted and nor do they relate to proceedings in which the enforcement of the specified rights is not involved but some consideration of the specified articles of the Constitution only is involved. If the intention behind the Presidential Order was to stay all proceedings whenever some consideration of the specified Articles of the Constitution is involved and not only those proceedings by which the enforcement of the fundamental rights is involved, irrespective of the fact whether such consideration is necessary for the effective adjudication of the claim of the party or not, the President of India would have, instead of saying "that the right of any person (including a foreigner) to move any court for the enforcement of rights conferred by Article 14, Article 21 and Article 22 of the Constitution in the first part of the Presidential order would have said "all such causes wherein the consideration of the provisions of Article 14, Article 21 and Article 22 of the Constitution of India is involved" and the second part of the order would have read and all proceedings pending in any court in which consideration of the aforesaid articles of the Constitution is involved" shall remain suspended for the period during which the proclamation of period during which the proclamation of emergency is in force. The language of

the order is so clear and explicit that it admits of no such ambiguity and the order has to be read and interpreted in the light of the express language

used in the order. In my opinion, the bar which is sought to be placed by the Presidential Order is to preclude a citizen to "inforce" his "fundamental

rights" and, therefore, during the period when the proclamation of emergency is in force, it would not be open to a citizen to challenge the validity

of any Act of the legislature on the ground that it contravenes any of one specified rights. During the period of emergency the challenge to the

validity of Acts or Rules etc., on the ground of being in contravention of Articles 14, 21 or 22 of the Constitution, has not to be permitted to be

raised and the Presidential Order has been issued to prevent the citizen from making such a claim during the period when the order is in force. Any

other, interpretation would amount to defending the object of the Presidential order and doing violence to its language. In the Presidential order,

apart from the expression "right to move", the other crucial words are "enforcement of the rights"....and these leave no manner of doubt that the

Presidential order relates only to such proceedings (pending or fresh) whereby the citizen seeks the "enforcement of the rights....." and not such

proceedings in which only some consideration of the specified articles of the Constitution is involved and more so when such consideration is not

absolutely necessary to effectively adjudicate upon the controversy between the parties. When the Presidential order is construed in the manner

indicated above, all the expressions used in the said order are given full meaning.

44. Coming to the facts of the present case, it is quite clear and is also undisputed that, in his suit, the plaintiff has not sought the enforcement of any

of the rights under Articles 14, 21 or 22 of the Constitution of India. It is the defendant who has challenged the vires of Houses and Shops Rent

Control Act, 1966, on the ground that the said. Act is violative of Article 14 of the Constitution of India in his written statement. The defendant,

while resisting the suit of the plaintiff by raising a plea of unconstitutionality of an Act, cannot be said to be seeking the enforcement of any of his

specified fundamental rights. Since a citizen is not permitted during the period when the Presidential order is in force, to challenge the validity of any

Act or Rule etc. on the ground that the same contravenes Articles 14, 21 or 22 of the Constitution of India any such challenge if made has to be

rejected as incompetent. I cannot persuade myself to concede the argument raised on behalf of the defendants that since they have raised a plea based on the consideration of Article 14 of the Constitution in their written statement, that would make the suit of the plaintiff fall squarely within the ambit of the Presidential Order. The defendants are not seeking the "enforcement" of any of their fundamental rights and the plaintiffs on the other hand seek by their suit to deny the so called "enforcement of the fundamental right" of the defendants. The expression "right to move....." and for the "enforcement of the rights...." are the blood and soul of the Presidential order and for the application of the Presidential Order to some given proceedings, they have to be given their natural meanings. Moreover, the plea raised by the defendants is only one of the pleas in their defence and the suit of the plaintiffs can be effectively adjudicated upon without taking the plea about the constitutionality of the Act into consideration. Position might have been different if that was the only plea, but since that is not the position in the case in hand, I would refrain from making any observation in that behalf. To test the argument of the defendants noted above, let us take an example. A citizen filed a writ petition in a High Court before the Presidential Order was issued claiming that a particular Act of the legislature, under which action had been taken against him, was violative of Article 14 of the Constitution of India and was, therefore ultra vires and the Single Judge of the High Court granted the writ and declared the particular Act to be invalid being ultra vires Article 14 of the Constitution of India. The respondents filed an appeal before the issuance of the Presidential order, and the proceedings in the appeal were pending at the time when the Presidential order was issued. The question that would arise is whether during the period of Presidential order is in force, the proceedings in the appeal have to remain stayed or can they continue since the appellant is not seeking the enforcement of any of his fundamental rights and by his appeal is questioning the validity of the order of the Single Judge declaring the Act to be violative of Article 14. If the argument of the defendant in the present case is to be accepted. It would imply that the proceedings in the appeal would have to be stayed during the period of emergency as the adjudication of the appeal would definitely involve consideration of Article 14 of the Constitution and the validity of the Act which had been declared ultra vires Article 14 by the Single Judge.

Undoubtedly the respondent in the appeal would support the judgment of the Single Judge by maintaining that the particular Act which had been declared invalid was ultra vires Article 14 of the Constitution and the appellant, on the other hand, would seek the deletion of the enforcement of the so-called fundamental right by enforcing which the Single Judge had declared the Act invalid. In other words the acceptance of the line of reasoning which is advocated by the defendants would imply that the words "right to move any court for the enforcement of the rights" is synonymous, with the "right to resist the enforcement of the rights." In my opinion, that cannot be the amplitude of the Presidential Order. The proceedings in the appeal are not for the "enforcement of the rights....." and those proceedings in my view are not required to remain in suspension by virtue of the Presidential order even though in these proceedings detailed consideration of Article 14 of the Constitution of India would be involved and the validity or otherwise of an Act would be adjudicated upon. I am fortified in my view by a very recent pronouncement of their Lordships of the Supreme Court in *The State of Orissa Vs. Khageswar Das and Others*, wherein their Lordships have very elaborately explained the implications of Article 14 of the Constitution of India and the Presidential Order issued thereunder by observing:

The judgment of the High Court was handed down on the 30th November, 1972, long before the issuance of the notification dated 28th June, 1975, by the President of India under Article 359(1) of the Constitution. The rule was declared ultra vires on the ground of violation of Articles 14 and 16. The State of Orissa was the appellant before us. It was, therefore, agreed on all hands that this appeal was not proceeding pending in this court for the enforcement of the right under Article 14 of the Constitution of India and was, therefore not suspended. The enforcement of the right was made by the delivery of the High Court judgment and State merely wanted in this appeal a decision of enforcement.

(emphasis mine)

In the light of the above reasoning, it would appear that the case of the defendants in the present case can easily be equated with the case of the respondent in the above given example and following the law laid down in *Khageswar Dass* case (Supra) I would hold that the argument raised

by the defendant is devoid of any merit and the proceedings in the suit do not require to be stayed as the plaintiff's case is that the Act is not ultra

vires the Constitution as opposed to the defendants' plea.

45. Even otherwise, if the effect of the Presidential order was to stay all the proceedings in which any plea based on Articles 14, 21, or 22 of the

Constitution of India was raised, irrespective of the fact whether the plea was for the enforcement of the specified fundamental right or not and its

consideration was or was not necessary for effective adjudication of the dispute, flood gates of frivolous pleas based on Articles 14, 21 or 22 of

the Constitution would be open to persons who are interested in delaying the disposal of the proceedings pending against them. Unscrupulous

defendant or respondent in any claim would put up the plea of the Act under which the plaintiff appellant or the petitioner seeks relief to be ultra

vires of a specified fundamental right and thereby frustrate the proceedings and delay adjudication. Under the Presidential order only such

proceedings which seek the "enforcement of the rights....." (pending or fresh) have been barred and which have to remain suspended during the

period when the Presidential order is in force. The court shall have to examine the plea put forward before deciding whether the proceedings have

to remain suspended or not. While considering the question as to what proceedings have to remain suspended the courts will have to see whether

or not those proceedings involve the "enforcement of the right....." If the court finds that the proceedings do not involve the "enforcement of

right....." those proceedings have not to be stayed. If the court comes to the conclusion that the proceedings are in fact for the enforcement of

the fundamental right, it shall suspend those proceedings which may be revived only after the Presidential Order either expires or is revoked. If on

the other hand the court finds that directly the proceedings do not involve the enforcement of the fundamental rights but the proceedings involve the

consideration of violation of the specified articles of the Constitution, then it shall at the same time determine whether the claim can be effectively

adjudicated upon without examining the plea based on the contravention of the specified articles of the Constitution. If the court comes to the

conclusion that the claim of the parties can be effectively adjudicated upon without going into that plea, the court shall not suspend those

proceedings, otherwise it shall.

46. I have already held above that the controversy between the parties can be effectively adjudicated upon without taking into consideration the

plea put forward by the defendant about the constitutional validity of the Rent Act, since that is only one of the defence pleas, the proceedings in

the suit under consideration do not therefore, come within the mischief of the Presidential Order and do not require to be stayed. The learned

Single Judge can adjudicate the claim of the plaintiff in the light of the various other pleas raised by the defendants without taking into consideration

the plea about the constitutional validity of the Rent Act, since, during the period the Presidential order is in force, the defendant has got no locus

standi either to initiate or continue a challenge based on the contravention of Article 14 of the Constitution. Such a plea about the Constitutional

validity will have to be ruled out of consideration being incompetent.

47. After giving my careful consideration to the facts and circumstances of the case in the light of the above discussion, I am of the opinion, that the

proceedings in the present suit do not require to be kept in a state of suspension during the period when the Presidential Order is in force and the

plea raised by the defendant about the constitutionality of the Rent Act, based as it is on the violation of Article 14, will have to be rejected as

incompetent and the suit would proceed without taking into consideration the plea raised by the defendants. No difficulty would be occasioned

since that plea is only one of the pleas raised by the defendants and a judgment can be delivered on the basis of the other pleas raised by the

defendants. The application, in my opinion, merits dismissal and I would dismiss the same but without any order as to costs.

PER FULL COURT

48. In accordance with the opinion of the majority, the application for stay is dismissed. The case will now go back to the learned Single Judge for

holding further proceedings on a date to be fixed by the Deputy Registrar.