Karam Singh Sobti & Anr.

Vs

Shri Pratap Chand & Anr.

Civil Appeal No. 392 of 1963

(CJI S. K. Das, A. K. Sarkar, M Hidayatullah JJ)

29.08.1963

JUDGMENT

S. K. DAS,

Acting Chief Justice. - With much regret, we have come to a conclusion different from that of our learned brother Sarkar, J. as respects the true scope and defect of s. 57 of the Delhi Rent Control Act, 1958, hereinafter referred to as the Control Act of 1958. The Control Act of 1958 repeals the Delhi and Ajmer Rent Control Act of 1952, hereinafter called the Control Act of 1952, in so far as that Act was applicable to the Union territory of Delhi, but contains certain savings in respect of "suits and proceedings" pending at the commencement of the Control, Act of 1958. To these savings we shall advert later.

The facts giving rise to the appeal have been stated fully in the judgment of Sarkar, J. and we need not re-state the fats. The respondent, Pratap Chand, relied on cl. (c), sub-cl. (i), of the proviso to s. 13(1) of the Control Act of 1952 in support of his claim for eviction of the appellant from a room, being room no. 6 in Pratap Buildings situated in Connaught Circus, New Delhi. Sub-s. (1) of s. 13 of the Control Act of 1952 stated that notwithstanding anything to the contrary continued in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of landlord against any tenant (including a tenant whose tenancy is terminated); the proviso creates certain exceptions and states that nothing in sub-s. (1) shall pay to any suit or other proceeding for such recovery of possession if the case comes within the exceptions mentioned in the proviso. One of the exceptions is mentioned in cl. (c), sub-cl. (i), of the proviso. That exception relates to a case where the tenant without obtaining the consent of the landlord has before the commencement of the Control Act of 1952 sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises. The principal question for decision in the appeal is whether the respondent-landlord is entitled to rely on the exception provided by cl. (c), sub-cl. (i), of the proviso to sub-s. (1) of s. 13 of the Control Act of 1952.

The learned trial Judge by his judgment dated June 11, 1956 gave a decree in favour of the respondent-landlord. One of the questions raised before the learned trial Judge was whether the respondent-landlord had acquiesced in the sub-letting in favour of the appellant. The learned trial Judge decided against the appellant on the question of acquiescence. There was then an appeal which was heard by the learned Additional Senior Subordinate Judge of Delhi. The learned Subordinate Judge found ....(1) that the sub-letting had commenced not later than November, 1950, and (2) that thereafter the respondent-landlord continued to receive rent with full knowledge of the sub-letting. On these findings he held that the respondent-landlord was not entitled to avail himself of the exception stated in cl. (c), sub-cl. (i), of the proviso to sub-s. (1) of s. 13 of the Control Act of

1952. The learned Subordinate Judge gave his judgment on June 11, 1957. It has to be noted that these judgment were given prior to the coming into force of the Control Act of 1958. That Act came into force on February 9, 1959. On August 26, 1957 the respondent-landlord moved the High Court of Punjab in revision under s. 35 of the Control Act of 1952. When the revision was pending in the High Court, the Control Act of 1958 came into force. The High Court held that there was no evidence to justify the finding of the learned Subordinate Judge that the respondent-landlord had acquiesced in the sub-letting of the room in favour of the appellant, and the case being one where there is no evidence to justify a finding, it was open to the High Court in interfere in revision. The question of the true scope and effect of s. 57 of the Control Act of 1958 was agitated before the High Court and the High Court held that by reason of the provisions of sub-s. (2) of s. 57 of the Control Act of 1958, the revision before it had to be disposed of in accordance with the provisions of the Control Act of 1952. Accordingly, the High Court allowed the petition in revision and restored the decree for possession made by the trial court. The appellant then moved this court for special leave and having obtained such leave has preferred the present appeal from the judgment and order of the High Court dated December 13, 1962.

We are in complete agreement with the conclusions reached by our learned brother, Sarkar, J. in respect of the following questions :

> (1) whether the High Court was competent on an application in revision to set aside the finding of the lower appellate court on the question of acquiescence;
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> (2) whether the High Court was right in its view that there was no evidence in the case to support the finding of the learned Subordinate Judge on the question of acquiescence; and
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> (3) whether the appeal before the learned Subordinate Judge was maintainable in the absence of an appeal by the Automobile Association of Upper India.

On the conclusions reached on the aforesaid three questions, the respondent-landlord will be entitled to succeed, unless s. 57 of the Control Act of 1958 stands in his way. If the provisions of the Control Act of 1958 apply, then sub-s. (1) of s. 14 of the Control Act of 1958 will stand in the way of the respondent-landlord, because the sub-letting in the present case did not take place on or after June 9, 1952 and will not therefore come within the exception provided in cl. (b) of the proviso to sub-s. (1) of s. 14 of the Control Act of 1958. Therefore, the narrow question before us is ..... is the present case governed by cl. (c), sub-cl. (i), of the proviso to sub-s. (1) of s. 13 of the Control Act of 1952 or is it governed by the provisions of the Control Act of 1958 ? The answer to this question depends on the true scope and effect of s. 57 of the Control Act of 1958.

We now proceed to read s. 57 of the Control Act of 1958. That section is in these terms :

> "57. (1) The Delhi and Ajmer Rent Control Act, 1952, in so far as it is applicable to the Union territory of Delhi, is hereby repealed.
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> (2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed :
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> Provided that in any such suit or proceeding for the fixation of standard rent or the

eviction of a tenant from any premises to which section 54 does not apply, the court or other authority shall have regard to the provisions of this Act :

Provided further that the provisions for appeal under the said act shall continue in force in respect of suits and proceedings disposed of thereunder."

Two questions arise out of s. 57. It is clear beyond dispute that had sub-s. (2) of s. 57 stood by itself, then the present case would be governed by the provisions of the Control Act of 1952, assuming that an application in revision is a 'proceeding' within the meaning of the sub-section. There are however two provisos to sub-s. (2) of s. 57. It is the interpretation of these two provisos which has caused much difficulty in the present case. The first question is, what is the true scope and effect of the first proviso, with particular reference to the expression "shall have regard to the provisions of this Act" occurring therein ? The second question is .... does an application in revision come within the expression "suits and proceedings" occurring in sub-s. (2) by reason of the second proviso which makes a special provision for appeals ? If, however, we decided against the appellant on the first question and hold that the application in revision, assuming it to be a proceeding within the meaning of sub-s. (2), must be disposed of in accordance with the provisions of the Control Act of 1952, then the second question need not be decided by us in the present case.

Therefore, we proceed to deal with the first question the answer to which will be decisive of the appeal.

S. 57 of the Control Act of 1958 has been the subject of several decisions in the Punjab High Court. We shall refer to these decisions at a later stage. We prefer first ton consider the question on general principles of construction having regard to the words used in the section.

But before we do so, a brief reference may be made to the general scheme of the two Control Acts. Chapter II of the Control Act of 1952 dealt with standard rent and also contained provisions relating to other charges by the landlord. The dominant object was to prevent payment of rent in excess of standard rent and unlawful charges made by the landlord. Chapter III dealt with control of eviction of tenants and in this chapter occurred s. 13 to which we have already made a reference. Chapter IV dealt with hotels and lodging houses and as we are not concerned with hotels and lodging houses no, reference need be made to the provisions in this chapter. Chapter V dealt with jurisdiction of Courts, Appeals, Review and Revision and Chapter VI dealt with miscellaneous provisions. The point to be noticed with regard to the provisions in chapter V is that the Control Act of 1952 conferred power and jurisdiction on ordinary civil courts with the usual right of appeal from the first court as in other civil proceedings and a right to move the High court in revision from the appellant judgment, in respect of suits for recovery of possession of all premises as defined in the Act, which definition excluded rooms in a hotel or lodging hose. With regard to hotels and lodging houses, jurisdiction was conferred on a Controller to be appointed by the Central Government.

The Control Act of 1958 made a radical change in respect of many matters. So far as eviction of tenants is concerned, a matter with which we are concerned in the present appeal jurisdiction was conferred on the Controller to be appointed under s. 35 to order recovery of possession of the premises on one or more of the grounds mentioned in the proviso to s. 14 of the Control Act of 1958. S. 16 of the Control Act of 1958 put certain restrictions on sub-letting and one of these restrictions was that no premises which had been sub-let either in whole or in part on or after June 9, 1952 without obtaining the consent in writing of the landlord should be deemed to have been lawfully sub-let; but where at any time before June 9, 1952 a tenant had sub-let the whole or any

part of the premises and the sub-tenant was at the commencement of the act in occupation of such premises, then notwithstanding that the consent of the landlord was not obtained for such sub-letting, the premises would be deemed to have been lawfully sub-let. S. 17 required the sub-tenant to give notice to the landlord and s. 18 provided that in certain circumstances the sub-tenant was to be treated as the tenant. With the details of these provisions we are not concerned in the present case except to point out that the Control Act of 1958 made radical changes in the matter of eviction of tenants on the ground of sub-letting. In the matter of sub-letting the relevant date was taken as June 9, 1952 the date on which the Control Act of 1952 came into force, and a distinction was made between sub-letting before that date and sub-letting after that date. A sub-letting before June 9, 1952 was treated as a lawful sub-letting if the sub-tenant was in occupation of the premises at the commencement of the Control Act of 1958; but a sub-letting after June 9, 1952 without the previous consent in writing of the landlord was treated as unlawful for the purposes of the Control Act of 1958.

Let us now consider s. 57 of the Control act of 1958 against the background of the scheme of the Control Acts, as stated above. The first sub-section of s. 57 repeals the Control Act of 1952 in so far as it is applicable to the Union territory of Delhi. If the repeal stood by itself the provisions of the General Clauses Act (X of 1897) would have applied with regard to the effect of the repeal and the repeal would not affect the previous operation of an enactment repealed or anything duty done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The provisions of the General Clauses Act will not, however, apply where a different intention appears from the repealing enactment. Such an intention is clear from sub-s. (2) of s. 57 which contains the saving clause. It states in express terms that notwithstanding the repeal of the Control Act of 1952, all suits and proceedings under the Control Act of 1952 pending before any court or other authority at the commencement of the Control Act of 1958, shall be continued and disposed of in accordance with the provisions of the Control Act of 1952, as if the Control Act of 1952 had continued in force and the Control Act of 1958 had not been passed. Nothing can be more emphatic in the matter of a saving clauses than what is contained in sub-s. (2) of s. 57. We had said earlier that had sub-s. (2) of s. 57 stood by itself without the provisos, then the incontestable position would have been that the present case would be governed by the provisions of the Control Act of 1952. The question before us is, does the first proviso to sub-s. (2) make a change in the position and if so, to what extent ? The first proviso states inter alia that in the matter of eviction of a tenant from any premises to which s. 54 does not apply, the court or other authority shall have regard to the provisions of the Control of Act of 1958. S. 54 need not be considered by us as it merely saves the operation of certain enactments which do not apply to premises under our consideration. What is the meaning of the expression "shall have regard to the provisions of this Act" (meaning the Control Act of 1958) ? Does it mean that the proviso takes away what is given by sub-s. (2), except in the matter of jurisdiction of the civil court to deal with an eviction matter which was pending before the Control Act of 1958 came into force ? We are unable to agree that such is the meaning of the first proviso. We think that the first proviso must be read harmoniously with the substantive provision contained in sub-s. (2) and the only way of harmonising the two is to accept the view of harmonising the two is to accept the view which the Punjab High Court has accepted, namely, that the words "shall have regard to the provisions of this Act" merely mean that "where the new Act has slightly modified or clarified the previous provisions, these modifications and clarifications should be applied". We see no other way of harmonising sub-s. (2) with the first proviso thereto.

A similar expression occurring in s. 49 of the Electricity (Supply) Act (LIV of 1948) was considered by this court in the Mysore State Electricity Board v. The Bangalore Woolen, Cotton and

Silk Mills Ltd. and others etc. ([1963] Supp. 2 S.C.R. 127.). This Court referred to the decision of the Privy Council in Ryots of Garbandro v. Zemindar of Parlakimedi ([1943] L.R. 70 I.A. 129.) and expressed agreement with the view of the Privy Council that the expression "have regard to" or "having regard to" has no more definite or technical meaning than that of ordinary usage, and only requires that the provisions to which regard must be had should be taken into consideration. If the expression "have regard to" in the first proviso to sub-s. (2) means that the provisions of the Control Act of 1958 shall apply to all such suits or proceedings as are referred to in sub-s. (2) except in the matter of juridiction of the civil court, then in reality the sub-stantive provision of sub-s. (2) will be denuded of its full effect for all practical purposes. We do not think that it would be right to read the first proviso of sub-s (2) in that way. It was argued before us that the first proviso related only to two matters, (a) fixation of standard rent and (b) eviction of a tenant, and the intention was that in these two matters only the provisions of the Control Act of 1958 would apply and not in others. If that was the intention, nothing would have been easier than to say in sub-s. (2). "Notwithstanding such repeal, all suits and other proceedings under the said Act except those for fixation of standard rent and eviction of a tenant etc." Subs-s. (2) does not, however say so, and if the first proviso is to be interpreted in the manner suggested by the appellant, the provisions as to jurisdiction in the new Act would affect the power of the civil court to pass a decree for eviction.

We now turn to the decisions of the Punjab High Court. In Shri Krishna Aggarwal v. Satya Dev ((1959) LXI P.L.R. 574) it was held that the first proviso to sub-s. (2) of s. 57 was directory in character and not mandatory; therefore, the courts and authorities concerned had a discretion conferred on them to take into consideration the provisions of the new Act when it was considered necessary in a proper case and in the interest of justice. We do not wish, however, to base our decision on these grounds. We think that the proper way of reading sub-s (2) and the first proviso thereto is to harmonise both in the best way possible. In Bulaqi Das Madan Mohan & other v. Ram Sarup ((1960) LXII P.L.R. 231) the view expressed was that the proviso must have some meaning and force and the proviso intended that where the old provisions had been repeated with modifications, the old Act should be interpreted in the light of the modification so long as they did not involve creating any new rights and liabilities. A similar view was expressed by the same Judge in Shri Bimal Parshad Jain v. Shri Niadarmal ((1960) LXII P.L.R. 664). The question was considered by a Division Bench in Shri Jhabar Mal Chokhani v. Shri Jinendra Pershad (1963) LXV P.L.R. 469.). At pages 474 and 475 of the report Dulat, J. who spoke for the Bench said :

> "It would thus appear that apart from Gosain, J. the other learned Judges of this court have generally agree that the proviso to s. 57, sub-section (2), does not demand that a suit for the eviction of a tenant filed under the previous Act of 1952 must be governed entirely by the provisions of the new Act but that on the other hand, the provisions applicable continue to be the provisions of the old Act has slightly modified or clarified the previous provisions, those modifications and clarifications should be applied, but, where entirely new rights and new liabilities have been created, the new provisions must not be allowed to override the provisions of the previous Act and nearly all the case have been decide on that basis."

We agree with the view expressed by Dulat, J. We also agree with the High Court that if the first proviso to sub-s (2) of s. 57 is interpreted in the way contended for by the appellant here, it would really be giving effect to the provisions of the Control Act of 1958 retrospectively, though sub-s (2) of s. 57 states in clear terms that all suits and proceedings pending at the commencement of the new Act will be dealt in accordance with the provision of the old Act. This is really putting the same argument that the proviso must be read harmoniously with the substantive provision, in another way.

For the reasons given above we have came to the conclusion that in the present case the respondent-landlord is entitled to the benefit of cl. (c), sub-cl. (i), of the proviso to s. 13(1) of the Control Act of 1952 and the first proviso to sub-s (2) of s. 57 of the Control Act of 1958 does not stand in his way. He is, therefore, entitled to succeed, as the appellant has failed to make out any acquiescence by the landlord to the sub-letting in question. Therefore, the High Court rightly allowed the petition in revision and restored the decree for possession made by the trial court. The appeal fails and is dismissed with costs.

SARKAR J. 

The respondent Pratap Chand, hereafter referred to as the respondent, who was the owner of Pratap Buildings in Connaught Circus, New Delhi had let a room in it, being room No. 6, to the respondent, the Automobile Association of Upper India, formerly known as the Automobile Association of Northern India and hereafter referred to as the Association. The appellant was a sub-tenant of the room under the Association. These facts are not in dispute. On October 5, 1959, the respondent gave the Association a notice to quit and on December 25, 1954 brought a suit against the Association and the appellant for their eviction from the room. It is out of this suit that the present appeal arises and the question is - Is the appellant liable to be evicted ?

Section 13 of the Delhi and Ajmer Rent Act, 1952 which had come into force on June 9, 1952 and governed the case, prohibited Courts from directing eviction of a tenant at the suit of a landlord excepting in the cases mentioned in the proviso to it. Clause (c) of this proviso said that a decree for recovery of possession might be made where the Court was satisfied that the "tenant without obtaining the consent of the landlord has before the commencement of this Act, - sublet, assigned or otherwise parted with the possession of, the whole or any part of the premises." The respondent relied on this provision in the Act and contended that the Association had without his consent sub-let the shop-room to the appellant and that he had come to know of this sub-letting about the end of May 1954. The Association does not appear to have seriously contested the suit but the appellant did. Both the Association and the appellant admitted that the landlord had not consented to the sub-letting before it started but the appellant contended that the respondent had full knowledge of his occupation of the shop-room as a sub-tenant and had with such knowledge accepted rent from the Association and thereby acquiesced in the sub-letting and was, therefore, not entitled to eviction on the ground of sub-letting without the landlord's consent.

The learned trial Judge by his judgment dated June 11, 1956 held that the respondent landlord had not acquiesced in the sub-letting and in that view of the matter directed ejectment of the Association and the appellant. The appellant then went up in appeal under s. 34 of the Act to the Additional Senior Sub-Judge of Delhi who held that the sub-letting had commenced not later that November 1950 and that the respondent continued to received rent with full knowledge of the sub-letting. He, therefore, decided that the respondent was not entitled to the decree for possession and allowed the appeal, set aside the judgment of the trial Court and dismissed the suit by his judgment dated June 11, 1957. On August 26, 1957, the respondent moved the High Court of Punjab in revision under s. 35 of the Act.

While the revision petition was pending the High Court the Delhi Rent Control Act, 1958 came into force. It repealed the Act of 1952 but made some of the provisions of the repealed Act applicable to certain pending matters. One of the questions in this appeal will be, which of the provisions of the new Act are to apply to the pending cases.

In the revision petition, apart from challenging the finding of acquiescence by the learned Senior Sub-Judge, the respondent contended that the appellant judgment was in any event wrong because the tenant, the Association not having appealed from the decree in ejectment made against it by the learned trial Judge, that decree stood and as a result of it the tenancy was at an end and, therefore, the appellant sub-tenant who only derived titled through the tenant, had no right to remain in possession of the demised room. The appellant on his part in opposing the petition supported the judgment of the Additional Senior Sub-Judges on the merits, disputed that his rights were concluded by the failure of the Association to appeal from the judgment of the trial Judge and further contended that in view of provisions of s. 57(2) of the Act of 1958 to which I will later refer, the right of the landlord to possession had to be decided by the provisions of that Act and under s. 16 of this Act the respondent was not on the facts found entitled to an order for ejectment on the ground of sub-letting without his consent.

The various points raised in the case were not all hear together in the High Court but the result of the several hearings was as follows : that the fact that the tenant had not appealed did not take away the sub-tenant's right to relief, that there was no evidence to justify the appellant Court's finding that the respondent had acquiesced in the sub-letting by the Association to the appellant, that the High Court could in revision set aside the judgment of the lower appellate Court on this ground and lastly, that s. 57(2) of the Act of 1958 did not require the High Court in exercising its revisional powers to decide the landlord's right to possession by reference to the provisions of the Act of 1958. In that view of the matter the High Court allowed the petition for revision and restored the decree for possession passed by the trial Court. This judgment of the High Court is challenged in this appeal.

The first question is whether the High Court was competent in the exercise of its revisional jurisdiction to set aside the finding of the lower appellant Court that the landlord had acquiesced in the sub-letting. Section 35 of the Act of 1952 under which the revision petition had been filed gave jurisdiction to the High Court to satisfy itself that the decision of the Court below had been "according to law". It has been held by this Court in Hari Shankar v. Rao Girdhari Lal Choudhury that ([1962] supp. 1 S.C.R. 933.) that a revision petition under s. 35 of the Act of 1952 did not lie to interfere with a plain finding of fact. Relying on this case learned counsel for the appellant contended that the High Court had no jurisdiction to interfere with the finding of acquiescence by the lower appellant Court. In that case however there was evidence which could have supported the finding arrived at by the Court below the High court and the High Court had only re-assessed the value of that evidence. This, it was held, the High Court could not do. Such a case is very different from a case where, as in the present, the High Court interferes with the finding on the ground that there is no evidence to support it. If a Court had arrived at a finding without any evidence to support it, it can be legitimately said that it had not decided the case "according to law" : see Pooran Chand v. Motilal ([1963] Supp. 2 S.C.R. 906.). I may also refer to Lala Beni Ram v. Kundan Lal ([1899] L.R. 26 I.A. 58.) cited on behalf of the respondent where it was observed that, acquiescence is not a question of fact but of legal inference from the facts found.

The question than arises whether the High Court was right in its view that there was no evidence in the case to support the finding of acquiescence. The evidence only showed that the respondent knew that the appellant was in occupation of the demised premises. I think that the High Court pointed out rightly that the fact that a landlord had knowledge that a person other than a tenant was in possession did not by itself always lead to an inference that the landlord had knowledge that the person in possession was a sub-tenant. The facts of the present case made such in inference more difficult. They were as follows : The appellant had been in possession of the room from sometime in 1949 till November 1950 along with the Association. All this time he was publishing a magazine

called the All India Motorist which was the official organ of the Association. This he was doing under an agreement with the Association which provided that office accommodation for the staff of the A.I. Motorist to be provided by the Association in 6, Pratap Buildings." He was at one the General Secretary of the association and constantly on the premises doing also his own business there. In November 1950 the Association took another premises as the demised room was found two small for its expanding in sole possession of the premises carrying on his businesses there as previously, including the business of publishing the aforesaid official organ of the Association. In may 1954, the agreement between the Association and the appellant for the printing and publication of the magazine was brought to an end the Association started its own magazine. Since then the appellant alone has been using the room for his own purposes.

I do not think that these facts establish that the respondent had any reason to think that from November 1950, when the sub-tenancy commenced, the appellant had been in possession as a sub-tenant for he had been using the room for the work of the Association. Only since May 1954, the appellant occupied the room solely for his own purposes. The respondent might well, therefore, have thought that the occupation of the appellant prior to 1954 was really for the Association. Since 1954 however the respondent had not accepted any rent. I am unable in this state of the evidence to hold that the view that the High Court took was erroneous. I do not think that the case of Mukesh Chand v. Jamboo Parshad ((1963) LXV P.L.R. 285) to which learned counsel for the appellant referred assists him on this point. There it was held that knowledge of possession was on the facts of the case evidence of knowledge of possession under a licence. It is not necessary to pronounce on the correctness of that decision for we are concerned with a different question, namely, whether knowledge of possession is evidence of knowledge of possession under a contract of sub-tenancy. A point was raised at the bar that even if acquiescence had been proved that would not have affected the landlord's statutory right to recover possession on proof of a sub-letting without his consent. I do not think it necessary to deal which that question in the present case as no acquiescence was proved.

The next question is as to the rights of the appellant in the absence of an appeal by the Association from the decision of the trial Court. This question does not present any rent difficulty. The suit had been filed both against the tenant and the sub-tenant, being respectively the Association and the appellant. One decree had been passed by the trial Judge against both. The appellant had his own right to appeal from that decree. That right could not be affected by the Association's decision not to file an appeal. There was one decree and, therefore, the appellant was entitled to have it set aside even though thereby the Association would also be freed from the decree. He could say that decree was wrong and should be set aside as it was passed on the erroneous finding that the respondent had not acquiesced in the sub-letting by the Association to him. He could challenge that decree on any ground available. The lower appellant Court was, therefore, quite competent in the appeal by the appellant from the joint decree in ejectment against him and the Association, to give him whatever relief he was found entitled to, even though the Association had filed no appeal.

I come now to the last and the more difficult of the points argued in this case. That point turns on the interpretation of s. 57 of the Act of 1958 the terms of which are as follows :

> S. 57. (1) The Delhi and Ajmer Rent Control Act, 1952, in so far as it is applicable to the Union territory of Delhi, is hereby repealed.
>
> (2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if

the said Act had continued in force and this Act had not been passed :

Provided that in any such suit or proceeding for the fixation of standard rent or for the eviction of a tenant from any premises to which section 54 does not apply the court or other authority shall have regard to the provisions of this Act :

Provided further that the provisions for appeal under the said Act shall continue in force in respect of suits and proceedings disposes of thereunder.

It is said by the appellant that the first proviso to sub-s. (2) of s. 57 of the Act of 1958 required the High Court to decide the claim fro ejectment in the revision case pending before it in accordance with the provisions of that Act and as under s. 16 of the Act no decree in ejectment could be passed against the Association or the appellant on the facts of the present case, the High Court was wrong in passing such a decree.

The respondent's answer to this contention is two fold. It is first said that the proviso only required a Court to have regard to the provisions of this Act and that meant that only those provisions of the new Act were to be applied which were clarifications and modifications of the old but none other. If this is so, no doubt the new Act could be of no assistance to the appellant. This contention is based on judgment of the Punjab High Court but I am unable to accept it is correct.

The earliest case before the High Court was Shri Krishna Aggarwal v. Satya Dev ([1959] LXI P.L.R. 574.). There it was held that the first proviso only gave a discretion to the Court to apply the provisions of the new Act when the interests of justice required it. This view has not however been accepted in the later cases and has been expressly given up in the last case which was Jhabar Mal Chokhani v. Jinendra Parshad ([1963] LXV P.L.R. 469.). As it has not been pressed before us, it is not necessary to discuss it further. Plainly, an interpretation which makes the substantive rights of parties depend on the discretion of court is impossible of acceptance.

The reasons which have been given to support the contention that the first proviso only made the provisions of the new Act which were modifications and clarifications of the provisions of the old Act are various but none of them appears to me to be well founded. First, it is said that the words "have regard to" support that view and reliance is placed on Ryats of Garbandho v. Zemindar of Parlakimedi ([1943] L.R. 70 I.A. 129.) for this purpose : see Jhabar Mal's case ([1963] LXV P.L.R. 469.). In the case the Judicial Committee held that the words meant that the provisions referred to must be taken into consideration but it was not obligatory to follow them.

Apart from the fact that the view expressed by the Judicial Committee turned on the statute before it as it was careful to observe by saying "any general interpretation of such a phrase is dangerous and unnecessary", I am unable to see how the decision supports the view for which it was cited in Jhabar Mal's case ([1963] LXV P.L.R. 439.). In that case the words were given the meaning that compliance with the provisions indicated was not obligatory, a meaning which is not sought to be put on them in the present case by any one, for the view that the first proviso gives a discretion to the Court has been discarded. Surely the Parlakimedi case ([1943] L.R. 70 I.A. 129.) is no authority for the view that the words "shall have regard to the provisions of this Act" mean that it shall be obligatory to apply only such of the provisions of the new Act which are modifications or clarifications of the earlier Act, and this is the meaning which is canvassed by the respondent. The Judicial Committee were indeed not concerned with the provisions of two statures one of which had been repealed, as we are. The two cases are wholly different. The decision of this Court in Mysore

State Electricity Board v. The Bangalore Woollen Cotton and Silk Mills Ltd. ([1963] Supp. 2 S.C.R. 127.) in which the same words fell to be considered, is of even less assistance.

Another reason given is that the rule is that no more retrospective operation is to be given to a statue than its language renders necessary : see Shri Krishna's case ([1959] LXI P.L.R. 574.). A somewhat similar view was expressed in Bulaqui Das v. Ram Sarup where it was said that the proviso should be read making only those provisions of the new Act applicable which re modifications of the old as that would cause least disturbance of the vested rights. Again I am unable to agree. The words "shall have regard to the provisions of this Act" do give these provisions a retrospective operation and there is nothing in them to limit the scope of such operation to some of those provisions. The rule that a stature is not presumed to have retrospective operation is no justification for astuteness in limiting the scope of that operation where the words do no indicate any limits. In am wholly unable to agree that the words "shall have regard to the provisions of this Act" at all provide any limit. They would not indicate any limits if no question of retrospective operation arose (see Parlakimedi case) and the natural meaning of the words is not changed when they are used in a clause for given retrospective operation to a statute. I may add that this reasoning is based only on those words.

The last reasoning on which the respondent founded his contention was that the proviso had to be construed harmoniously with the first part of sub-s. (2) and not so as to destroy it altogether : see Shri Krishna's case ([1959] LXI P.L.R. 574). and Jhabr Mal's case. ([1960] LXII P.L.R. 231). There is no doubt about this principle but it is applicable when there is a conflict between two parts of a statute, conflict which could not have been intended. But where, as in the present case - and as to this I feel no doubt at all - the proviso is an exception to the part to which it is attached there is no conflict for it was intended to reduce the field of operation of that part by the proviso. There is no occasion in such a case to feel perturbed if the plain language of the proviso has the effect of cutting down the scope of operation of large part of the provision to which it is attached, for such was the intention of the legislature. There is of course no sounder principle of interpretation of statutes than to give plain language its plain meaning.

Suppose the words in the proviso were "shall apply the provisions of this Act." Then those provisions would have to be applied even though the result was the wiping out of the larger portion of the first part of the sub-section, The words however are "shall have regard to the provisions of this Act." Whatever they mean, they do not mean that the intention was that some of the provisions of the new Act only were to be applied and they cannot be given that meaning because otherwise the effect of the proviso would be to largely wipe out the first part of the sub-section. There is no justification for twisting the language of the proviso in a zealous quest for harmony. The expressed intention must be given effect to and no question of creating any harmony arises. Since those words do not confer a discretionary power, they must be read as imposing obligatory duties.

I do not also think that if the provisions of the new Act are applied to pending proceedings, there would be a tremendous disharmony, a disharmony which could not have been intended. Under the first part of the sub-section all pending suits and proceedings are to be disposed of under the old Act. Under the proviso in some of them the court or authority before whom they are pending are to have regard to the provisions of the new Act. Now, the courts and authorities under the two Acts are different. The first part of the sub-section requires the courts and authorities under the old Act to dispose of the matters pending before them and the proviso does not touch this portion of that part, for it require the courts and authorities under the old Act to dispose of some of the pending matters by applying some of the provisions of the new Act. Again the proviso leaves the scope of the first part of the sub-section wholly unaffected as regards pending suits and proceedings other than those

for eviction of a tenant or fixation of standard rent. These would include proceedings by tenants for being put back into possession and those between hotels and lodging house keepers and their boarders. It may be that these would be fewer than the proceedings for ejectment of tenants or standardisation of rents, but that would be irrelevant. What I which now to observe is that if the proviso is interpreted as making it obligatory to apply all the provisions of the new Act to pending proceedings other that those I have indicated above, the result would not be to wipe out the first part of the sub-section altogether, a good part would still remain operative. I do not conceive it to be the duty of a court interpreting a statute to give words a meaning which they do not plainly bear because otherwise some or even a large portion of another part of the stature would become inoperative. This would be more so where one part was intended admittedly to cut down the effect of another. One must not further forget that in interpreting a beneficent statute the effort should always be in cases of doubt to put that interpretation which confers the larger benefit on those intended to be benefited : Jiva Bhai Purshottam v. Chhagan Karson ([1962] 1 S.C.R. 568, 573.). I do not however which it to be understood that I feel a doubt that the words "shall have regard to the provisions of this Act" may mean those provision only of the new Act which are modifications or clarifications of the provisions in the old Act.

I have now discussed all the reasons advanced in support of the respondent's contention and am unable to accept it for the reasons earlier mentioned. I think the proviso plainly makes it obligatory to apply the provisions of the new Act in the decision of the pending suits and proceedings for ejectment of tenants by the courts before whom they were pending under the old Act.

The respondent then said that the first proviso to s. 57 (2) of the Act of 1958 did not in any even make any part of the Act of 1958 applicable to pending revisions cases for that proviso only referred to suits or proceedings and a revision case was neither. This view receives support from Shri Krishna's case ([1959] LXI P.L.R. 574.). and Man Mohan Lal v. B. D. Gupta ([1962] LXIV P.L.R. 51). but a contrary view was taken in Bimal Parshad Jain v. Niadarmal ([1960] LXII P.L.R.664). In fact the two earlier mentioned judgments in the High Court held that the words "suit or proceedings" in the first proviso did not include either an appeal or a revision case.

This view is based on the terms of the second proviso to sub-s. (2) of s. 57 which I have earlier set out. It was said that by dealing specifically with appeals in that proviso the legislature has indicated clearly that it did not intended in appeal to be considered as a suit or proceedings in that sub-section. It was also said that if a suit or proceeding included an appeal then the second proviso would become wholly redundant for what is provided there would then come within the rest of sub-s. (2).

This reasoning seems to me to be bases on a misreading of the second proviso which states that "the provisions for appeal under the said Act shall continue in force in respect of suits and proceedings disposed of thereunder". Now what are "provisions for appeal" ? They of course mean the provisions which set out how or when and in what court an appeal may be filed and so on, that is, provisions dealing with the institution of appeals, their competence, their procedure and the courts where they may be filed and so on. The words do not refer to any provisions of the old Act dealing with the merits of an appeal. The old Act does not contain, as indeed no Act does, any specific provision for the decision of the merits of an appeal as distinguished from the decision of the same case at the trial stage. The provisions for deciding the merits are always the same in both cases. The words "provisions for appeal" therefore cannot possibly refer to provisions dealing which the merits of a case. The words "appeal" had to be used in the second proviso as it was concerned with appeals from suits or proceedings mentioned in it, namely, those which had been disposed of under the old Act. That word was not used to indicate that suits or proceedings mentioned in the rest of the sub-

section were not to include an appeal. Furthermore the second proviso would not be redundant if the words "suit or proceedings" in the rest of the sub-section were understood as including an appeal, for it states under which law the competence of appeals and revision petitions from cases disposed of under the old Act are to be decided while the rest of the sub-section does not deal which such matters but deals with the courts where pending matters are to be heard and the law by which they are to be decided and disposed of. I may also point out that under the two Acts jurisdiction is conferred on different authorities. There is, therefore, nothing in the second proviso which would indicate that the words "suit or proceeding" in the first part of sub-s (2) or in the first proviso were not intended to include an appeal or a revision case.

Another reason given was that a revision could not be a suit because it was not a re-hearing. Even if this is so, it would not be an answer to the contention that the word "proceeding" would include an appeal or a revision case. Furthermore, it is conceded that an appeal is a rehearing and would be included within the word suit if the second proviso was not there. I have already shown why the second proviso does not prevent an appeal from being included in the words "suit or proceedings" in the rest of the sub-section. Now if an appeal is to be held a suit and as no distinction can be made between an appeal and a revision case, it would follow that the word "suit" might on this reasoning include a revision case. It is indeed admitted that the words "appeal" in the second proviso includes a revision case. Obviously any other view would be untenable for no intelligible reason can be found why a revision case should be treated differently from an appeal. For myself however I would say that as a matter of plain English there is no difficulty in including within the word "proceeding" an appeal or a revision case. I see no reason why the legislature should have thought of applying one law for cases which were pending at the original stage when the new Act came into force and another law for the appeals or revision cases from original trial which were pending then.

A third reason given why suits or proceeding in the first part of sub s. (2) and the first proviso should not include an appeal or a revision case is that might necessitate a remand for further evidence. This is admittedly an argument of convenience and hence not of great strength. But I am unable to see why a remand would be necessary. Ex-hypothesi the case had been started under the old Act and all evidence that should have been led had already been led. A remand for taking fresh evidence could only be necessary if an amendment of the pleadings was allowed in view of the fresh rights created by the new Act. So far as a new right is given to the landlord he can always file a fresh suit. The taking of the new evidence which it is said would be an inconvenience cannot therefore in any event be avoided.

If the words "suit or proceeding" in the first part of sub-s. (2) or the first proviso do not include an appeal or a revision case the result would be somewhat anomalous. It is clear that s. 6 of the General Clauses Act keeping alive certain rights under repealed Act cannot be availed of to keep alive rights under the 1952 Act for sub-s (2) of s. 57 of the 1958 Act specifically states which of the provisions of the 1952 Act are to remain available in spite of the repeal of that Act. On the respondent's contention nothing in the first part of sub-s (2) or the first proviso to it would make the old Act applicable to pending appeals or one that came to be filed after the coming into force of the new Act. One is then left wondering by which law the appeals and revision cases which are pending when the new Act comes into force or are subsequently filed under the second proviso are to be governed. It clearly could not have been intended that the pending appeals or revision cases were not to be proceeded with any more. Therefore, it seems to me that it would be an unnatural construction of the words "suit or proceeding" in the first part of sub-s (2) or the first proviso to it to say that they do not include appeals or revision cases. In my view the High Court was under s. 57(2) of the 1958 Act bound to apply the provision of that Act in deciding the merits of the revision case

pending before it when the new Act came into force.

The next question is, How were the merits of the pending revision case affected by the new Act ? The appellant contends that s. 16 of this Act prevents a decree in ejectment being passed against him by the High Court in the revision case. This is fallacious. Section 16(1) no doubt says that certain sub-letting would be deemed to be lawful sub-letting. It is also true that the sub-letting to the appellant was of the kind mentioned in s. 16(1). The effect however of making sub-lettings lawful under s. 16(1) is to prevent an ejectment being ordered against the sub-tenant when the tenancy of the intermediate tenant comes to an end but this only in cases where the sub-tenant has given the prescribed notice : see ss. 17 and 18. The appellant cannot get the benefit of these provisions for he had not given that notice Section 16(1) does not otherwise prevent the ejectment of a tenant or sub-tenant.

None the less however as the provisions of the new Act apply to the pending revision case, the respondent has to show that he is entitled to an order for ejectment under those provisions. Now the only ground on which the respondent claims ejectment is for sub-letting without his consent. The circumstances under which ejectment can be decreed under the new Act are set out in the proviso to s. 14. Under the proviso a sub-letting on or after June 9, 1952 without the consent of the landlord in writing may justify a decree for possession but not any other kind of sub-letting. In the present case on the facts founds, the sub-letting to the appellant was not of this kind for it took place in November 1950. A sub-letting which took place on the date even if it was without the landlord's consent would not justify an order for possession against the tenant at the instance of the landlord. No other provisions in the new Act has been pointed out under which for such sub-letting the landlord was entitled to an order for possession. It follows that the High Court was not entitled to pass a decree for possession but should have dismissed the revision case. Whether the landlord respondent is entitled to an order for possession for any other reason under the new Act is not a question that arises in this appeal and I express no opinion on it.

I would, therefore, allow the appeal.

ORDER BY COURT

In view of the majority judgment, the appeal stands dismissed with costs.

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