S. Sundaram Pillai and Others

Vs

V. R. Pattabiraman and Others

And

Kousalaya Devi and Others

Vs

P. Lakshminarayana Charya and Others

And

Murugesa Mudaliar

Vs

Selvaraj Chettiar

And

N. S. Dhanalakshmi Ammal

Vs

B. S. Ramachari

And

Thahira Beevi

Vs

R. A. Muthiah Nadar

And

M. Balakrishnan

Vs

Fathima Bai and Others

And

K. R. Krishnan

Vs

P. Bhanumati

Civil Appeal No. 1178 of 1984 with Civil Appeals Nos. 6211 of 1983 1992, 1659, 3668, 2246 and 4012 of 1982

(Eradi, Syed M. Fazal Ali, A. Varadarajan, Sabyasachi Mukharji JJ)

24.01.1985

JUDGMENT

FAZAL ALI, J. -

1. These appeals involve more or less an identical point of law relating to the interpretation of the term 'wilful default' appearing in the proviso to Section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the 'Act') coupled with the Explanation which seeks to explain the intent of the proviso. We have heard counsel for the parties at great length and a large number of authorities have been cited before us in support of both the parties.

2. Before we take up the points of law involved in these appeals we would briefly narrate the bare facts of each of these cases in order to test the correctness of the points argued before us.

3. In Civil Appeal No. 1178 of 1984, the respondent landlord let out the suit premises No. 3-B, New No. 2-B, Davidson Street, Broadway, Madras, to the appellant-tenant on a monthly rent of Rs. 600 for non-residential use. The appellant, despite repeated reminders, did not pay the rent for the period from October 1978 to August 1979. The respondent filed a suit on December 2, 1979 for evicting the appellant on two grounds : (1) wilful default in payment of rent, and (2) material acts of waste committed in the building.

4. It may be mentioned here that before filing a suit for eviction of the appellant, the respondent on September 17, 1979 sent a two months' notice to the appellant, through his advocate to clear up the dues. The appellant on receipt of the notice paid up the amount of the arrears, amounting to Rs. 6600, on October 3, 1979, i.e. within the stipulated period of two months. But, the respondent contended that in view of the past conduct of the appellant he was guilty of wilful default within the meaning of proviso to Section 10(2) of the Act.

5. So far as this appeal is concerned, as the entire rent had been paid up in pursuance of the notice dated September 17, 1979 even prior to the filing of the suit, it is manifest that on the date of filing of the suit no cause of action in presenti having arisen, the suit should have been dismissed on this short ground alone as being not maintainable. As indicated above, it was not open to the landlord after having received the entire amount of arrears before filing of the suit to have filed a suit for past conduct of the tenant. This appeal, therefore, merits dismissal on this ground alone.

6. In Civil Appeal No. 6211 of 1983, the respondent-tenants were given the suit premises No. 17/582, Ward B, Old corresponding No. 2, New No. 5/8/582 Abid Road, Hyderabad, on a monthly rent of Rs. 225 which was, by mutual consent, increased to Rs. 275 per month in the year 1964. From July 1, 1966, the rent was again agreed to be increased to Rs. 300 per month. The appellants landlord filed a suit under Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction Control) Act, 1960 on November 12, 1971, against the respondents for eviction on three grounds : (1) wilful default by the tenants in payment of rent for the months of September, October and

November 1971 (total amount being Rs. 900), (2) the tenants sublet the premises to one Hanumantha, and (3) that the premises were required bona fide for their own use. However, during the pendency of the matter, the original landlords sold away their interest in the property in favour of the present appellants before us and, therefore, the question of bona fide requirement abated there itself.

7. The Rent Controller upheld both the grounds of wilful default and subletting. Aggrieved by the said decision the respondents-tenant filed an appeal to the Chief Judge, City Small Cause Court, Hyderabad and the learned Chief Judge by his judgment held that wilful default in payment of rent for the month of September 1971 as also the question of subletting was proved. Against this decision of the Chief Judge, City Small Cause Court, the respondents filed a revision petition in the High Court. It is not in dispute that the rent from September 1971 onwards has not been paid and that by the time the eviction petition was filed, the default was only for the month of September 1971. The High Court agreed with the lower courts with regard to wilful default for the month of September 1971 and reversed the finding with regard to subletting but on the ground of wilful default ordered eviction of the respondents.

8. In Civil Appeal No. 1992 of 1982, the respondent-landlord filed an eviction petition against the appellant-tenant on the grounds of wilful default and the premises needing repairs. However, the second ground was not pressed and the only point which survived for determination was whether there was any wilful default in the part of the appellant. The brief facts are that the appellant became a tenant under the father of the respondent in 1953 at a monthly rent of Rs. 15 which was subsequently mutually agreed to be increased to Rs. 49 per month. The respondent contended in his petition that the appellant became a defaulter in payment of the rent as he did not pay the rent for the months of June 1977 to January 1978. The respondent also issued a notice on January 16, 1978 demanding the dues amounting to Rs. 392. The appellant sent a detailed reply on January 30, 1978 along with a bank draft for Rs. 392 which was, however, not encashed by the respondent and returned to the appellant subsequent to the filing of an eviction petition which was filed on August 11, 1978.

9. The Rent Controller found the tenant to be a wilful defaulter and consequently ordered his eviction. However, on appeal the Appellate Authority reversed the finding of the Rent Controller and accepted the plea of the tenant that as he was ill he was not able to pay the rent. In revision, the High Court did not agree with the finding of the Appellate Authority and restored the finding of the Rent Controller and ordered the eviction of the appellant, holding that the explanation offered by the tenant could not be accepted as his sons were carrying on the business in the same premises and nothing prevented them from paying the rent to the landlord if the appellant was ill.

10. In Civil Appeal No. 1659 of 1982, the respondent-landlord filed an eviction petition against the appellant-tenant in respect of a non-residential premises on two grounds : (1) wilful default in payment of rent from May 1, 1977 to August 31, 1977, and (2) bona fide requirement for personal use. The Rent Controller, after an enquiry, ordered eviction of the tenant on both the grounds and the Appellate Authority confirmed the findings of the Rent Controller. The landlord issued a lawyer's notice on September 1, 1977 to the tenant to clear up the dues. After receipt of the notice the tenant paid the rent of two months' only and for the remaining two months the tenant could not offer any satisfactory explanation and, therefore, the High Court in revision agreed with the findings of both the courts below in regard to wilful default of payment of arrears of rent and ordered eviction of the tenant of this ground alone. The High Court, however, did not agree with the findings of the courts below with regard to bona fide requirement of the landlord and held that the

landlord could not ask for a non-residential portion for residential purposes having leased it out for a non-residential purposes.

11. In Civil Appeal No. 3668 of 1982, the appellant took out the premises form the respondent for non-residential use on a monthly rent of Rs. 350. There was some misunderstanding between the parties over payment of rent and as result of which it was agreed that the tenant would deposit the rent in the bank. The respondent-landlord filed an eviction petition on April 1, 1980 in the Court of the Rent Controller, after verifying from the Bank, that the tenant had not deposited the rent for the months of January and February 1980, thereby committing a wilful default. The authorities below found against the arrangement of depositing the rent in the Bank and ordered the eviction of the appellant on the ground of wilful default. The High Court upheld the decision of the courts below and held that the appellant had wilfully defaulted in the payment of rent and ordered the eviction of the appellant.

12. In Civil Appeal No. 2246 of 1982, the respondent-landladies let out the premises to the tenant-appellant for non-residential use on a monthly rent of Rs. 105. The respondents filed an eviction petition on November 2, 1976 against the tenant on the ground of wilful default for non-payment of rent for the period from January 1976 to September 1976, i.e., for a period of 9 months. But before filing the eviction petition, the respondents on July 6, 1976 issued a notice to the tenant to pay the dues and on July 17, 1976 the appellant paid a sum of Rs. 630 which was accepted by the landladies without prejudice. The Rent Controller found that the default in payment of rent was not wilful and therefore dismissed the application of the landladies. On appeal, the Appellate Authority reversed the finding of the Rent Controller and held that the default was wilful. In revision, the High Court did not agree with the contention of the appellant that he was not a wilful defaulter as immediately after filing of the eviction petition he had paid the entire arrears even before the serving of summons. The High Court held that there was no satisfactory explanation by the tenant for non-payment of rent for the period from January to June 1976 before the issue of notice. Even after the payment of rent the tenant committed further default till the petition for eviction was filed on November 2, 1976. The High Court, therefore, upheld the finding of the Appellate Authority and ordered eviction of the tenant on the ground of wilful default.

13. In Civil Appeal No. 4012 of 1982, the appellant is in occupation of the residential premises bearing No. 17 (New No. 59), Burkit Road, T. Nagar Madras on a monthly rent of Rs. 325, payable according to English calendar month. The respondent filed an eviction petition, against the appellant on the ground of wilful default and bona fide requirement for her own occupation. It was stated on behalf of the respondent-landlady that the appellant committed wilful default in payment of rent from June 1976 onwards and after repeated demands a sum of Rs. 1000 was paid by him on April 1, 1977. He had paid rent for five months to the Income Tax Department on behalf of the respondent but he did not produce any receipt evidencing payment to the Income Tax Department. Assuming that the appellant had made the said payment, the respondent further contended that from February 1977 to July 1978 the appellant was in arrears, thereby committing a wilful default. The Rent Controller did not agree with the contentions of the respondent and held that the default was not wilful and the requirement for own occupation of the landlady was not bona fide. On appeal, the Appellate Court came to the conclusion that the tenant had committed wilful default in payment of rent from May 1976 onwards as on April 1, 1977 and from December 1976 as on April 10, 1977. However, the Appellate Authority was of the view that the respondent had not been able to prove her case for bona fide requirement. But, on the ground of wilful default, the eviction of the appellant was ordered. In revision, the High Court agreed with the findings of the Appellate Court and confirmed the eviction of the appellant on the ground of wilful default.

14. From a detailed survey of the provisions of the various Rent Acts prevailing in the States and various Union Territories of our country, it appears that the provisions regarding eviction for default in payment of rent are not uniform and differ from State to State. Some Acts do not mention 'wilful default' at all, some mention it in a negative form while some put it in an affirmative form. To cut the matter short, from a review of the various Rent Acts, the position that emerges is that the provisions relating to eviction are couched in three different types of default -

> (1) Acts which expressly mention 'wilful default' without defining the same.
>
> (2) Acts which do not mention the words 'wilful default' at all but confer a right on the landlord to evict the tenant on pure and simple default after a certain period of time when the rent has become due, which is also different in different States,
>
> (3) Acts which use the expression 'wilful default' but in a negative form rather than in an affirmative form.

15. These are the A.P. Buildings (Lease, Rent and Eviction) Control Act of 1960, the Orissa House Rent Control Act, 1958 and the Pondicherry Buildings (Lease and Rent Control) Act, 1969 (hereinafter referred to as the 'A.P. Act', 'Orissa Act' and 'Pondicherry Act' respectively). The last category of the Acts is the Tamil Nadu Act, which is the statute in question and which makes a marked improvement by broadening the ambit of 'wilful default' in the proviso to Section 10(2) which is further clarified by virtue of the Explanation added to the said proviso by Act 23 of 1973. There are other Rent Acts which not only use the expression 'wilful default' but which also give a sort of a facility to a tenant even for an ordinary default to pay the entire rent together with interest, on payment of which the suit for eviction is dismissed or, at any rate, they contain provisions by which even if a suit for eviction is filed, the tenant is required to pay the entire arrears of rent, costs and interest, failing which his defence is struck out and the suit for eviction is decreed automatically.

16. In these circumstances, for the purpose of the present cases, it is not necessary for us to make a roving enquiry into or carry on a detailed survey of the Acts which do not use the term 'wilful default'. We might usefully refer only to those Acts which contain the term 'wilful default' either in a negative or in a positive form. These Acts, as already indicated, are the A.P., Orissa, Pondicherry and the Tamil Nadu Acts. Though we are concerned mainly with the Tamil Nadu Act yet in order to understand the contextual background of the words 'wilful default' and its proper setting, we might briefly examine the relevant provisions of the aforesaid Acts. Section 10(2) of the A.P. Act is the only provision which confers protection to the tenant from eviction under certain conditions. Proviso to the sub-section runs thus :

> Provided that in any case falling under clause (i), if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord upto the date of such payment or tender and on such payment or tender, the application shall be rejected.

17. It may be noticed that although the default contemplated by the Act is wilful yet it has been put in a negative form which undoubtedly gives sufficient leeway to the tenant to get out of the rigours of the statutory provision. The proviso to Section 7(2) of the Orissa Act is similarly worded and the relevant portion of which runs thus :

> Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful.....

18. Pondicherry Act is another statute which also contains the word 'wilful' in a negative form, the relevant portion of which runs thus :

> Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful....

19. The aforesaid Acts undoubtedly contemplate that a default simpliciter would not be sufficient to evict the tenant but it must further be shown that the default was not wilful. The Act, however, is silent on the mode and the manner in which a court may decide as to what is wilful and what is not wilful. Thus, the Act has left it to the courts to decide this question. So far as the Tamil Nadu Act is concerned, it clearly defines as to what is 'wilful default'. Proviso to Section 10(2) of the Act runs thus :

> Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

20. This proviso was clarified by an Explanation added to it by Act 23 of 1973 which provides a clear criterion to determine as to what is wilful default and what is not. In this connection, it was submitted by counsel for the tenants that despite the Explanation it is open to the court on an appraisement of the circumstances of each case to determine whether or not the default was wilful and in doing so it cannot be guided wholly and solely by the Explanation which is merely clarificatory in nature. If the court in the circumstances of each case finds that the default is not wilful then it can come to this finding despite the Explanation. On the other hand, the argument of the counsel for the landlords is that the very purpose of the Explanation is to bring about uniformity in court decisions by laying down a conclusive yardstick in the shape of the Explanation which says that a default would be wilful only if the landlord gives two months' notice to the tenant and the tenant does not pay the rent after the expiry of this period. In other words, the argument seems to be that the Explanation is to be read into the proviso so that the word 'Wilful' will have to be defined and interpreted in accordance with the criterion laid down by the said explanation, i.e. "Issue of two months' notice". The argument merits consideration by before coming to any conclusion it may be necessary for us to examine the exact meaning of the words 'wilful default' as also the interpretation and the scope of the proviso and the Explanation. Prima facie, there seems to be some force in the argument of the counsel for the tenants that unless the conditions of the Explanation are fulfilled, whatever may be the nature of the default, it cannot be a 'wilful default' as contemplated by the proviso.

21. Before, however, going into this question further, let us find out the real meaning and content of the word 'wilful' or the words 'wilful default'. In the book A Dictionary of Law by L. B. Curzon, at page 361 the words 'wilful' and 'wilful default' have been defined thus :

> 'Wilful'- deliberate conduct of a person who is a free agent, knows what he is doing and intends to do what he is doing.

'Wilful default' - Either a consciousness of negligence or breach of duty, or a recklessness in the performance of a duty.

22. In other words, 'wilful default' would mean a deliberate and intentional default knowing full well the legal consequence thereof. In Words and Phrases, Volume 11-A (Permanent Edition) at page 268 the word 'default' has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In volume 45 of words and phrases, the word 'wilful' has been very clearly defined thus :

'Wilful - intentional; not incidental or involuntary;

> - done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently;
>
> - in common parlance word 'wilful' is used in sense of intentional, as distinguished from accidental or involuntary.
>
> P. 269 - 'Wilful' refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

23. In Volume III of Webster's Third New International Dictionary at page 2617, the word 'wilful' has been defined thus :

> governed by will without yielding to reason or without regard to reason; obstinately or perversely self-willed.

24. The word 'default' has been defined in Vol. I of Webster's Third New International Dictionary at page 590 thus :

> to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation.

25. In Black's Law Dictionary (Fourth Edn.), at page 1773 the word 'wilful' has been defined thus :

> 'Wilfulness' implies an act done intentionally and designedly; a conscious failure to observe care; conscious; knowing; done with stubborn purpose, but not with malice.

The word 'reckless' as applied to negligence, is the legal equivalent of 'wilful' or 'wanton'.

26. Thus, a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above.

27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first

take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have been three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

28. Craies in his book Statute Law (Seventh Edn.) while explaining the purpose and import of a proviso states at page 218 thus :

> The effect of an exception or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it. ... The natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

29. Odgers in Construction of Deeds and Statutes (Fifth Edn.) while referring to the scope of a proviso mentioned the following ingredients :

> P. 317. Provisos - These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.
>
> P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.

30. Sarathi in interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso :

> (a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.
>
> (b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.
>
> (c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.
>
> (d) Where the section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.
>
> (e) The proviso is subordinate to the main section.
>
> (f) A proviso does not enlarge an enactment except for compelling reasons.
>
> (g) Sometimes an unnecessary proviso is inserted by way of abundant caution.
>
> (h) A construction placed upon a proviso which brings it into general harmony with

the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

31. In the case of Local Governmental Board v. South Stoneham Union (1909 AC 57 : 99 LT 896 (HL)), Lord Macnaghten made the following observation :

I think the proviso is a qualification of the preceding enactment, which is expressed in terms too general to be quite accurate.

32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai ((1966) 1 SCR 367 : AIR 1966 SC 459 : (1967) 1 SCJ 41) it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahratta Railway Co. Ltd. v. Bezwala Municipality (AIR 1944 PC 71 : 71 IA 113 : 218 IC 333), Lord Macmillan observed thus :

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.

33. The above case was approved by this Court in C.I.T. v. Indo Mercantile Bank Ltd. (1959 Supp 2 SCR 256 : AIR 1959 SC 713), where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha ((1962) 2 SCR 159 : AIR 1961 SC 1596 : (1962) 1 SCJ 377, Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus :

> As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.

34. In West Derby Union v. Metropolitan Life Assurance Society (1987 AC 647 : 66 LJ Ch 726 : 77 LT 284 (HL)) while guarding against the danger of interpretation of a proviso, Lord Watson observed thus :

> a very dangerous and certainly unusual course to import legislation from a proviso wholesale into the body of the statute.

35. A very apt description and extent of a proviso was given by Lord Oreburn in Rhondda Urban District Council v. Taff Vale Railway Co. (1909 AC 253 : 100 LT 713 (HL)) where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly (1940 AC 206 : (1939) 4 All ER 464 : 162 LT 1 (HL)), where it was observed thus :

> We must now come to the proviso, for there is, I think, no doubt that, in the

> construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are : ... "provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place ...". There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25 per cent. of the population mentioned in the opening words of the section.

36. While interpreting a proviso care must be taken that it is used to remove special case from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

38. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades, aspect and elements of a proviso. In State of Rajasthan v. Leela Jain ((1965) 1 SCR 276 : AIR 1965 SC 1296 : (1966) 1 SCJ 37), the following observation were made :

> So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part.

39. In the case of S.T.O., Circle-I, Jabalpur v. Hanuman Prasad ((1967) 1 SCR 831 : AIR 1967 SC 565 : (1967) 19 STC 87), Bhargava J. observed thus :

> It is well-recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded.

40. In Commissioner of Commercial Taxes v. R. S. Jhaver ((1968) 1 SCR 148 : AIR 1968 SC 59 : 20 STC 453), this Court made the following observations :

> Generally speaking, it is true than the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself.

41. In Dwarka Prasad v. Dwarka Das Saraf ((1976) 1 SCC 128 : (1976) 1 SCR 277 : AIR 1975 SC 1758), Krishna Iyer, J. speaking for the Court observed thus : (SCC pp. 136-37, paras 16, 18)

There is some validity in this submission but if, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case.

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If he rule of construction is that prima facie a proviso should be limited in its operation to the

subject-mater of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

42. In Hiralal Rattanlal v. State of U.P. ((1973 1 SCC 216 : 1973 SCC (Tax) 307) this Court made the following observations : [SCC para 22 p. 224 : SCC Tax) p. 315]

Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section.

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes :

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

44. These seem to be by and large the main purport and parameters of a proviso.

45. So far as the Act in question is concerned the matter does not rest only on the question of wilful default, but by an amendment (Act 23 of 1973) an Explanation, in the following terms, was added to the proviso to Section 10(2) of the Act :

Explanation. - For the purpose for this sub-section, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent.

46. We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in Interpretation of Statutes while dwelling on the various aspects of an Explanation observes as follows :

> (a) The object of an Explanation is to understand the Act in the light of the explanation.
>
> (b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute. (p. 329)

47. Swarup in Legislation and Interpretation very aptly sums up the scope and effect of an Explanation thus :

> Sometimes an Explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an Explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an Explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain .... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa. (Pp. 297-298)

48. Bindra in Interpretation of Statutes (Fifth Edn.) at page 67 states thus :

> An Explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an Explanation only explains and does not expand or add to the scope of the original section .... The purpose of an Explanation is, however, not to limit the scope of the main provision .... The construction of the Explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An 'Explanation' must be interpreted according to its own tenor.

49. The principles laid down by the aforesaid authors are fully supported by various authorities of this Court. To quote only a few, in Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. C.T.O. ((1961) 1 SCR 902 : AIR 1961 SC 315 : (1960) 11 STC 764), a Constitution Bench decision, Hidayatullah, J. speaking for the Court, observed thus :

> Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain clause (1)(a) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles.

50. In Bihta Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar ((1967) 1 SCR 848 : AIR 1967 SC 389 : 37 Com Cas 98), this Court observed thus :

> The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

51. In Hiralal Rattanlal case ((1973) 1 SCC 216 : 1973 SCC (Tax) 307), this Court observed thus : [SCC para 25, p. 225 : SCC (Tax) p. 316]

On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an

Explanation.

52. In Dattatraya Govind Mahajan v. State of Maharashtra ((1977) 2 SCR 790 : (1977) 2 SCC 548 : AIR 1977 SC 915), Bhagwati, J. observed thus : (SCC p. 563, para 9)

It is true that the orthodox function of an Explanation is to explain the meaning and effect of the main provision to which it is an Explanation and to clear up any doubt or ambiguity in it .... Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations.

53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

54. Having, therefore, fully discussed the main scope and ambit of a proviso and an Explanation, we shall now proceed to elucidate the various provisions of the Act and other Acts. We have already discussed that although almost every State has its own Rent Act, neither the Explanation nor the statutory clause concerning the term 'wilful default' is mentioned therein. These Acts seem to proceed only on the simple word 'default' and perhaps to buttress their intention they have laid down certain guidelines to indicate the grounds of ejectment wherever a default takes place. Looking generally at such Acts, they seem to have first provided statutorily a particular date or time when the tenant on being inducted under the contract of tenancy, is to pay the rent. Such a provision may or may not be against the contract of the tenancy and it is to that extent, it overrides the contract. This, therefore, gives sufficient notice to any tenant inducted in any premises that he must pay the rent according to the yardstick set out by the Act, failing which he runs the risk of being evicted for default. Some Acts, however, have provided a particular number of defaults to enable the Rent Controller or court to find out whether such a default would entitle the landlord to get an order of eviction. There are some other Acts which have made rather ingenious and, if we may say so, apt provisions for expediting the process of eviction in case of default by providing that whenever a suit for eviction is filed against a tenant on the ground of default, the tenant in order to show his bona fides must first deposit the entire rent, arrears and cost in the court of the Rent Controller where the action is filed on the very first date of hearing, failing which the court or the authority concerned would be fully justified in striking down the defence and passing an order of eviction then and there.

The dominant object of such a procedure is to put the tenants on their guard. It is true that such provisions are rather harsh but if a tenant goes on defaulting then there can be no other remedy but to make him pay the rent punctually unless some drastic step is taken. These Acts, therefore, strike a just balance between the rights of a landlord and those of a tenant. For deciding these cases, it is not necessary for us to go either into the ethics into the ethics or philosophy of such a provision because we are concerned with statutes having different kinds of provisions.

55. With this little preface we would now examine the working and relevant provisions of the Act along with similar provision contained in the other three Acts, viz., A.P., Orissa, and Pondicherry Acts, which are almost in pari materia the proviso to Section 10(2) of the Act. The only difference between the Act and the other Acts is that whereas an Explanation is added to the proviso to Section 10(2) of the Act, no such Explanation has been added to the provisions of the other three Acts; hence we have now to consider the combined effect of the proviso taken in conjunction with the Explanation.

56. We may, therefore, extract the Explanation again to find out what it really means and to what extent does it affect the provisions of the proviso :

> Explanation. - For the purpose of this sub-section default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent.

57. If we analyse the various concomitants of the Explanation, the position seems to be that -

(a) there should be a default to pay or tender rent,

> (b) the default should continue even after the landlord has issued two months' notice claiming the arrears of rent,
>
> (c) if, despite notice, the arrears are not paid the tenant is said to have committed a wilful default and consequently liable to be evicted forthwith.

58. The question is : do these three conditions whittle down the effect of the proviso or merely seek to explain the intendment of a wilful default ? One view which may be possible and which forms the basis of the argument of the counsel for the tenants is that mere non-payment of arrears of rent after issue of two months' notice cannot in all circumstances automatically amount to a wilful default if the non-payment does not fulfill the various ingredients pointed out by us while defining the term 'wilful default'. The other view which has been canvassed before us by the counsel for landlords is that in view of the Explanation once it is proved that after issue of two months' notice if the tenant does not pay the arrears within the stipulated period of two months he is liable to be ejected straightaway. Another view is that such an interpretation would be extremely harsh and penal in nature because if, after receipt of the notice, the tenant is not able to pay the arrears due to circumstances beyond his control, of which the court is satisfied, it will be putting a serious premium or handicap on the right of the tenant. In the same token, it was argued that if such an interpretation is put on the Explanation then the entire provisions of the proviso become otiose thus rendering the said proviso nugatory.

59. Another aspect that must be stressed at this stage is that where a tenant has committed default after default without any lawful or reasonable cause and the said defaults contain all the qualities of a wilful default, viz., deliberate, intentional, calculated and conscious, should he be given a further

chance of locus poenitentie ? After hearing counsel for the parties at great length, we fell that although the question is a difficult one yet it is not beyond solution. If we keep the objects of the proviso and the Explanation separate, there would be no difficulty in deciding these cases.

60. To begin with, Section 10(2)(i) of the Act lays down that where the Controller is satisfied that the tenant has not paid or tendered the rent within 15 days after the expiry of the time fixed in the agreement of tenancy or in the absence of any such agreement, by the last date of the month next following that for which the rent is payable, he (tenant) undoubtedly commits a default. Two factors mentioned in Section 10(2)(i) seem to give a clear notice to a tenant as to the mode of payment as also the last date by which he is legally supposed to pay the rent. This, however, does not put the matter beyond controversy because before passing an order of eviction under the proviso, it must also be proved that the default was wilful and if the Controller is of the opinion that the default in the circumstances and facts of the case was not wilful, in the sense that it did not contain any of the qualities or attributes of a wilful default as indicated by us above, he may give the tenant a reasonable time, not exceeding 15 days, to pay the entire rent and of this is complied with, the application for ejectment would stand rejected. The difficulty, however, is created by the Explanation which says that once a landlord gives a two months' notice to his tenant for paying the arrears of rent but the tenant continues in default even thereafter, then he is liable to be evicted. There is a good deal of force in this argument which has its won advantages. In the first place, it protects the court from going into the intricate question as to what is a wilful default and whether or not the conditions of a wilful default have been satisfied which, if permitted would differ from case to case and court to court. But the difficulty is that if such a blanket ban is put on the court for not examining the question of wilful default once the conditions laid down in the Explanation are satisfied then it would undoubtedly lead to serious injustice to the tenant. A subsidiary consequence of such an interpretation would be that even though the tenant, after receipt of the notice, may be wanting to pay the arrears of rent but is unable to do so because of unforeseen circumstances like, death, accident, robbery, etc., which prevent him from paying the arrears, yet under the Explanation he has to be evicted.

61. Another view which, in our opinion, is a more acceptable one and flows from the actual words used by the proviso is that where the Explanation does not apply in the sense that the landlord has not issued two months' notice, it will be for the court to determine in each case whether the default is wilful having regard to the tests laid down by us and if the court finds that the default is wilful then a decree for eviction can be passed without any difficulty.

62. Another difficulty in accepting the first view, viz., if two months' notice is not given the tenant must not be presumed to be a wilful defaulter, is that in such a case each landlord would have to maintain a separate office so that after every default a two months' notice should be given and if no notice is given no action can be taken against a tenant. We are unable to place such an unreasonable restriction on the landlord to give two months' notice after every default which may or may not be possible in every case. A correct interpretation, in our opinion, would be that where -

> (1) no notice, as required by the Explanation, is given to the tenant, the Controller or the court can certainly examine the question whether the default has been wilful and to such a case the Explanation would have no application,
>
> (2) the landlord chooses to issue two months' notice and the rent is not paid then that would be a conclusive proof of the default being wilful unless the tenant proves his incapability of paying the rent due to unavoidable circumstances.

63. The argument of the counsel for landlords was that even if a notice under the Explanation is given that does not take away the jurisdiction of the proviso to determine whether or not the default has been wilful if it contains the qualities and attributes referred to above because what the Explanation does is merely to incorporate an instance of a wilful default and is not conclusive on the point and would have to be construed by the court in conjunction with the conditions mentioned in the proviso. We are, however, unable to go to this extreme extent because that will actually thwart the object of the Explanation. As we read the Explanation, it does not, at all take away the mandatory duty cast on the Controller in the proviso to decide if a default is wilful or not. Indeed, if the landlord chooses to give two months' notice to his tenant and he does not pay the rent, then, in the absence of substantial and compelling reasons, the Controller or the court can certainly presume that the default is wilful and order his eviction straightaway. We are unable to accept the view that whether two months' notice for payment of rent is given or not, it will always be open to the Controller under the proviso to determine the question of wilful default because that would render the very object of Explanation otiose and nugatory. We express our view in the matter in the following terms :

> (1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful. If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of locus poenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.
>
> (2) If the landlord chooses to give two months' notice to the tenant to clear up dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honoring the notice sent by the landlord.

64. We would, however, refer to some case law on the question of wilful default as interpreted by the Madras High Court because there appear to be three decisions of the Madras High Court taking somewhat contrary views. In Rajeswari v. Vasumal Lalchand (AIR 1983 Mad 97 : (1983) 1 Mad LJ 52 : (1982) 95 Mad LW 588 : (1983) 1 Rent CJ 475) it was held that non-payment of rent amounted to such supine and callous indifference on the part of the tenant as to amount to a wilful default. However, the learned Judge does not appear to have noticed the effect of the Explanation to Section 10(2) introduced in 1973. This decision undoubtedly supports the view that a wilful default is not merely a pure and simple default but a default which is per se deliberate and intentional. In N. Ramaswami Reddiar v. S. N. Periamuthu Nadar ((1980) 93 Mad LW 577), Explanation to the proviso to Section 10(2) of the Act was expressly considered and Ratnam, J. observed as follows :

> A reading of the Explanation indicates that it is not exhaustive of all cases of wilful default, but it specifies only one instance where the default should be construed as wilful. If a tenant does not pay the rents at all for a considerable time and the landlord files a petition for an order of eviction on the basis that the tenant had committed wilful default without issuing any notice, then, in the absence of any other explanation by the tenant, the default should be construed as wilful, in spite of the

> fact that the landlord had not chosen to issue a notice to the tenant claiming the rents. In this view, I hold that counsel for the petitioner cannot be of any assistance to him.

65. We feel ourselves in complete agreement with that view taken by the learned Judge on the interpretation of the proviso read with the Explanation. In the case of Khivraj Chordia v. G. Maniklal Bhattad (AIR 1966 Mad 67 : ILR (1966) 1 Mad 431 : 78 Mad LW 352), Ramamurti, J. has drawn a very apt and clear-cut distinction between a simple default and a wilful default and has pointed out that in order to be a 'wilful default' it must be proved that the conduct of the tenant was such as would lead to the inference that his omission was a conscious violation of his obligation to pay the rent. In this connection, the learned Judge observed thus :

> The decisions of this Court have repeatedly pointed out that there is a clear difference in law between default and wilful default and that non-payment of rent within the time specified by the Act, though would amount to default cannot by itself be treated as wilful default, and that it the rent was paid after the expiry of the time in the following month within a short time thereafter, the default cannot be said to be wilful to warrant the punishment of eviction ....

Keeping in mind the main object of the enactment, namely, prevention of unreasonable eviction of tenants, the principle that emerges from the several decisions is that for default to be regarded as wilful default, the conduct of the tenant should be such as to lead to the inference that his omission was a conscious violation of his obligation to pay the rent or reckless indifference. If the default was due to accident or inadvertence or erroneous of false sense of security based upon the conduct of the landlord himself, the default cannot be said to be wilful default.

66. Having, therefore, enunciated the various principles and tests to be applied by courts in deciding the question of wilful default we now proceed to decide the various appeals filed before us. The brief facts of each appeal have already been narrated in the opening part of our judgment and we would like to sum up our conclusions flowing from the facts found by the High Court in each case.

67. In Civil Appeal No. 1178 of 1984, it would appear that though the tenant had committed a default but he had paid the entire rent well before the filing of the suit by the landlord. In fact, the suit for eviction was filed by the landlord not on the ground of pending arrears but to penalise the tenant for having defaulted in the past. Such a suit cannot be entertained because once the entire dues are paid to the landlord the cause of action for filing of a suit completely vanishes. Hence, the suit arising out of Civil Appeal No. 1178 of 1984 must be dismissed as being not maintainable and the order of ejectment passed by the High Court is hereby set aside.

68. In Civil Appeal No. 6211 of 1983, having regard to the tests and the criteria laid down by us there can be no doubt that wilful default in the payment of arrears to the tune of Rs. 900 has been proved and as there is nothing to show that the arrears were not paid or withheld due to circumstances beyond the control of the tenant, the order of eviction passed by the High Court is confirmed, and the appeal is allowed.

69. In Civil Appeal No. 1992 of 1982, a somewhat peculiar position seems to have arisen. It is true that, to begin with, the tenant did not pay the rent for the months of June 1977 to January 1978 which led the landlord to issue a notice on January 16, 1978 demanding payment of arrears amounting to Rs. 392. The tenant within 15 days of receipt of the notice (on January 30, 1978) sent a detailed reply to the landlord and enclosed a bank draft of Rs. 392 which was, however, not

encashed by the landlord and returned to the tenant after filing of the eviction petition, for reasons best known to him. Therefore, since the tenant had already complied with the notice within the stipulated time envisaged by the Explanation to proviso to Section 10(2) of the Act, by no stretch of imagination could he be called guilty of wilful default. On the other hand, the conduct of the landlord in filing a suit and not encashing the bank draft was motivated with a view to get a decree for eviction on false excuse. Such a state of affairs could not be countenanced by the court. In these circumstances, we are of the opinion that the arrears having been paid through the bank draft, the question of eviction of the tenant did not arise nor did the question of default come into the picture merely because the landlord wanted to harass him by filing an eviction petition. The High Court was, therefore, clearly in error in passing the decree of ejectment against the tenant. We, therefore, allow the appeal and set aside the order of the High Court evicting the tenant.

70. In Civil Appeal No. 1659 of 1982, as it was clearly a case of wilful default on the part of the tenant we affirm the order of the High Court evicting the tenant and dismiss the appeal.

71. In Civil Appeal No. 3668 of 1982, some dispute arose between the parties as to whether the rent was to be deposited in bank, resulting in the filing of the present suit for eviction on April 1, 1980 in the court of the rent Controller by the landlord after verifying from the bank that the tenant had not deposited the rent for the months of January and February 1980. This default, in our opinion, was undoubtedly deliberate, conscious and without any reasonable or rational basis and the High Court was perfectly right in holding that the tenant was guilty of wilful default and passing a decree for ejectment. As no notice was given by the landlord, Explanation to proviso to Section 10(2) of the Act does not apply at all. The appeal is accordingly dismissed.

72. In Civil Appeal No. 2264 of 1982, the respondent-landladies had let out the premises to the tenant at a monthly rent of Rs. 105. A petition for eviction was filed by them on November 2, 1976 for non-payment of rent by the tenant from January 1976 to September 1976, a period of 9 months. But, we might state here that before filing the eviction petition, the respondents had issued a notice on July 6, 1976 asking the tenant to pay the dues, which the tenant paid on July 17, 1976, i.e., within 10 days of the receipt of the notice, which was accepted by the landladies without any prejudice. The Rent Controller held that the default was not wilful as in pursuance of the notice the payment had already been made. The Appellate Authority reversed the finding of the Rent Controller and held that the default was wilful. The High Court in revision upheld the order of eviction on the ground that there was no satisfactory explanation for non-payment of rent for the period January to June 1976. In coming to this finding, the High Court was clearly in error because the tenant had already deposited the entire dues including the rent from January to June, on July 17, 1976. Thus, the question of wilful default could not arise nor could it be said that the default was either conscious or deliberate or intentional. Moreover, in view of the Explanation since the tenant had paid the amount within the time of the notice, there could be no question of wilful default. This fact seems to have been completely overlooked by the High Court. We, therefore, allow the appeal and set aside the order of the High Court directing eviction of the tenant.

73. In Civil Appeal No. 4012 of 1982, the tenant occupied the premises at a monthly rent of Rs. 325. It appears that the tenant defaulted in payment of rent from June 1976 onwards and after repeated demands, only a sum of Rs. 1000 was paid by him on April 1, 1977, leaving a substantial balance of arrears unpaid. The plea of the tenant that he had made payments to the Income Tax Department has not been proved, nor did the tenant have any right under the contract to pay any amount to the Income Tax Department and if he did so on his own, he must be held responsible for his conduct. Even so, the landlord contended that right from February 1977 to July 1978, the

appellant was in arrears without any lawful cause. This was, therefore, a clear case of wilful default where the tenant did not pay the rent deliberately, consciously and intentionally. In these circumstances, the High Court was fully justified in holding that the default was wilful and affirming the decree passed by the Appellate Court. The appeal is accordingly dismissed.

74. The result is that all the appeals are disposed of as indicated above but in the circumstances there will be no order as to costs in any of the appeals. Civil Appeal No. 5769 of 1983 already stands disposed of in terms of our Order of September 12, 1984.

SABYASACHI MUKHARJI, J. (dissenting) ◆

With great respect to my learned brothers, I regret I am unable to agree on the construction put on the expression 'wilful default' in the Explanation to the proviso of sub-section (2) of Section 10 of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It may be borne in mind that The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 hereinafter called the 'Act' was an Act to amend and consolidate the law relating to the regulation of letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu. The Act was from time to time amended and was last amended by Act 1 of 1980. By Act 23 of 1973, an Explanation was added to the proviso to sub-section (2) of Section 10 of the Act.

76. Section 10 of the Act deals with the eviction of tenants. In order to appreciate the scheme of the section and the meaning of the expression 'wilful' introduced by the Explanation to the proviso of sub-section (2) of Section 10, we have to examine the provisions of Section 10 and the various sub-sections of the section. As mentioned hereinbefore Section 10 deals with the eviction of tenants and postulates that a tenant shall not be evicted whether in execution of decree or otherwise except in accordance with the provisions of Section 10 or Sections 14 to 16. For these appeals we are not concerned with the provisions of Sections 14 to 16.

77. The first proviso to sub-section (1) of Section 10 stipulates that the said Sections 14 to 16 would not apply to a tenant whose landlord is the Government. The second proviso also provides that if the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and the court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded. Sub-section (2) of Section 10 of the Act deals with the procedure which a landlord must follow in order to evict his tenant. It provides that a landlord should apply to the Controller for a direction for eviction if he wants it and, if the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied with any of the various conditions which are stipulated in clauses (i), (ii), (iii), (iv), (v), (vi) and (vii) then he shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not satisfied, he shall make an order rejecting the application. The proviso to sub-section (2) of Section 10 is as follows :

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he way, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

78. The Explanation which was added by Act 23 of 1973 to the said proviso stipulates that for the purpose of this sub-section, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent. It is this Explanation that falls for consideration in these appeals. Clause (i) of sub-section (2) of Section 10 of the Act requires the Controller to be satisfied that the tenant has not paid or tendered rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of the tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable. For the purpose of these appeals, it is not necessary to consider the grounds of eviction mentioned in other clauses of sub-section (2) of Section 10 of the Act. If the Controller is satisfied of any of the grounds mentioned in clause (i) to clause (vii) of sub-section (2) of Section 10, then he shall, so the section stipulates, make an order directing the tenant to put the landlord in possession of the building and if he is not so satisfied, he shall make an order rejecting the application; the proviso provides that in any case falling under clause (i) which we have noted hereinbefore, if the controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected. The Explanation which is the subject matter of interpretation before us and which was added, as noted before, by Act 23 of 1973 by Section 10, stipulates that for the purpose of the said sub-section, namely sub-section (2) of Section 10, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent. The question, therefore, is - can the default be construed as wilful under any other circumstances apart from default continuing after the issue of two months' notice by the landlord claiming the rent ? In other words, for the purpose of this section, will the wilful default be only when notice has been given by the landlord and two months have expired and the tenant has not paid the rent ? My learned brethren say that there may be other circumstances constituting wilful default. With respect, I differ. I will briefly note the reasons.

79. As I read the provision, it appears to me that there must be satisfaction of the Controller whether default was wilful and a default will be construed as wilful, in may opinion, only where the landlord has given notice and two months have expired without payment of such rent. Default has been construed in various ways depending upon the context. 'Default' would seem to embrace every failure to perform part of one's contract or bargain. It is a purely relative term like negligence. (See in this connection Stroud's Judicial Dictionary, Vol I, Third Edition, p. 757.) It means nothing more, nothing less, than not doing what is reasonable under the circumstances; not doing something which you ought to do, having regard to the transaction. Similarly, default in payment imports something wrongful, the omission to do some act which, as between the parties, ought to gave been done by one of them. It simply means non-payment, failure or omission to pay. (See Prem's Judicial Dictionary, Vol. I, 1964, page 483.) Earl Jowitt defines 'default' as omission of that which a man ought to do. (See The Dictionary of English Law, page 597.)

80. The Privy Council in the case of Fakir Chunder Dutt v. Ram Kumar Chatterji ((1904) 31 IA 195 : ILR (1904) 31 Cal 901 : 6 Bom LR 741), observed that 'default' did not necessarily mean breach of contractual obligation, but simply non-payment of rent by a person capable of protecting his tenure by doing so.

81. Default happens in payment of rents under various contingencies and situations. Default is a fact which can be proved by evidence. Whether the default is wilful or not is also a question of fact to be

proved from evidence, direct and circumstantial, drawing inferences from certain conduct. If the courts are free to decide from varying circumstances whether default was wilful or not, then divergence of conclusions are likely to arise, one judicial authority coming to the conclusion from certain circumstances that the default was wilful, another judicial authority coming to a contrary conclusion from more or less same circumstances. That creates anomalies. In order to obviate such anomalies and bring about a uniform standard, the Explanation as I read, explains the expression 'wilful' and according to the Explanation added, a default to pay or tender rent "shall be construed", as wilful if the default by the tenant in the payment of rent continues after issue of two months' notice by the landlord claiming the rent. If that is the position, in a case where the landlord has given notice to the tenant claiming the rent and the tenant has not paid the same for two months, then the same must be construed as wilful default, whatever may be the cause for non-payment, - bereavement on the date of payment in the family of near or dear ones or serious heat attack or other ailment of the tenant or of any person sent by the tenant to pay the rent cannot be excused and cannot be considered to be not wilful because the Legislature has chosen to use the expression "shall be construed as wilful" if after a notice by the landlord for two months, failure to pay or tender rent on the part of the tenant continues, and if it is wilful then under sub-section (2) clause (i) read with the proviso as explained by the Explanation, the Controller must be satisfied and give an order for eviction. The question is whether in other cases, that is to say, in cases where admittedly or by other facts or aliunde the Court comes to the conclusion that the default is wilful, for instance, in a case where there is chronic default, regular defaults or habitual defaults the two months' notice is necessary or not. It was the argument on behalf of the respondents that in those circumstances such notice was to necessary and this is the view which has found acceptance by my learned brethren. I am unable to agree, with respect. If in cases where there are genuine and bona fide reasons for failure or non-payment of rent which cannot be excused after two months' notice to pay rent, then other causes which lead to inference of wilful default cannot also be construed as 'wilful default' in the context of the Explanation. The Legislature has provided and absolute and clear definition of 'wilful default'. Other circumstances cannot be considered as wilful default.

82. In may opinion, the expression "shall be construed" would have the effect of providing a definition of wilful default in the proviso to sub-section (2) of Section 10.

83. If a definition is provided of an expression, then the courts are not free to construe the expression otherwise unless it is so warranted by the use of the expression such as "except otherwise provided or except if the context otherwise indicates". There is no such expression in the instant case. There may be in certain circumstances intrinsic evidence indicating otherwise. Here there is none.

84. The whole scheme of Section 10 is that in order to be entitled to eviction on the ground of arrears of rent, the ingredients of which the Controller must be satisfied are : (a) default; (b) default was wilful. Whether in a particular case default is wilful or not, must be considered in accordance with the definition provided in the Explanation to proviso to sub-section (2) of Section 10 of the Act. If it was intended that the courts would be free to judge whether in a particular set up of facts, the default was wilful or not where no notice has been given, then in such a case there was no necessity of adding this Explanation to the proviso which is a step to the making of the findings under clause (i) of sub-section (2) of Section 10 of the Act. It is well-settled that the Legislature does not act without purpose or in futility.

85. It was contended on behalf of the landlords that the Legislature has not used the expression default to pay or tender rent shall be construed as wilful only if the default by the tenant in the

payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent. It is true that Legislature has not chosen to use language to indicate that in no other cases, the default could be considered to be wilful except one case which has been indicated in the Explanation.

86. As I read the Explanation it is not so necessary because Legislature has defined 'wilful default' by the expression that "default to pay or tender rent shall be construed" meaning thereby that it will mean only this and no other. My learned brethren have given instances of difficulties and hardships, if the other defaults, that is to say, default apart from tenant not paying after the expiry of notice by the landlord are not considered as wilful default. It is true the there may be hardships and many problems might arise. I share the apprehension of these problems and hardships but I find no justification to read that these hardships of which Legislature must have been aware, were also intended to be covered by the Explanation. It appears to me that the meaning is clear about the purpose of introduction of the Explanation, i.e., to obviate the difficulties and divergence of judicial opinions depending upon varying circumstances, the Legislature has provided a uniform definition to the concept of 'wilful default'. It is true that where two constructions are possible, one which avoids anomalies and creates reasonable results should be preferred but where the language is clear and where there is a purpose that can be understood and appreciated for construing in one particular manner, that is to say, avoidance of divergence of judicial opinions in construing wilful default and thereby avoiding anomalies for different tenants, one Judge taking a particular view on the same set of facts, another Judges taking a different view on the same set of facts, in may opinion, it would not be proper in such a situation to say that this definition of wilful default was only illustrative and not exhaustive. I cannot construe the expression used in the Explanation to the proviso to sub-section (2) of Section 10 as illustrative when the Legislature has chosen to use the expression "shall be construed".

87. It has been observed that statutory provisions must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of a statutory provision produces a manifestly absurd and unjust result, the court might modify the language used by the Legislature or even do some violence to it so as to achieve the obvious intention of the Legislature and produce rational construction and just results. See in this connection the observations in the case of Bhag Mal v. Ch. Parbhu Ram ((1985) 1 SCC 61). Lord Denning in the case of Seaford Court Estates Ltd. v. Asher ((1949) 2 All ER 155, 164 : (1969) 2 KB 481 (CA)) has observed :

> ... if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A Judge must not alter the material of which the Act is woven but he can and should iron out the creases.

88. Ironing out the creases is possible but not rewriting the language to serve a notion of public policy held by the Judges. Legislature must have legislated for a purpose by Act 23 of 1973 and used the expression "shall be construed" in Explanation in the manner it did.

89. The fact that in interpreting the statutory language, Judges should avoid policy as an approach was emphasised by Lord Scarman in the decision of the House of Lords in the case of Regina v. Barnet London Borough Council Ex parte Nilish Shah ((1983) 2 WLR 16, 30). User of policy in interpretation of statutory language, Lord Scarman observed, was an impermissible approach to the interpretation of statutory language. Judges should not interpret statutes in the light of their own

views as to policy. They may, of course, adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy.

90. In the case of Carrington v. Therm-a-Stor Ltd. ((1983) 1 WLR 138, 142), the Master of the Rolls observed that

If regard is had solely to the apparent mischief and the need for a remedy, it is only too easy for a Judge to persuade himself that Parliament must have intended to provide the remedy which he would himself have decreed if he had legislative power. In fact Parliament may not have taken the same view of what is a mischief, may have decided as a matter of policy not to legislate for a legal remedy or may simply have failed to realise that the situation could ever arise. This is not to say that statutes are to be construed in blinkers or with narrow and legalistic literalness, but only that effect should be given to the intentions of Parliament as expressed in the statute, applying the normal canons of construction for resolving ambiguities or any lack of clarity.

91. In the aforesaid view of the matter, I would construe the expression 'wilful default' in the Explanation to proviso to sub-section (2) of Section 10 of the Act in the manner I have indicated. In that view of the matter, I would decide the appeals accordingly, that is to say, I would agree with my learned brethren in the order passed in those cases where eviction orders have been passed after two months' notice had been given and there was continuance of default by the tenant thereof. Appeals which have been disposed of on the basis of wilful default as understood in the manner indicated in the aforesaid observations of mine, I respectfully agree. Appeals which have been disposed of on wilful default other than in the manner I have indicated hereinbefore, I respectfully differ. The individual appeals are disposed of accordingly. There will be no order as to costs.

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