Suresh Chand

Vs

Gulam Chisti

Civil Appeal No. 10234 of 1983

(CJI Sabyasachi Mukharji, K. Jagannatha Shetty, A.M. Ahmadi JJ)

31.01.1990

JUDGMENT

AHMADI, J. -

1. The short question which arises for our consideration in this appeal by special leave is whether a tenant of a premises constructed in 1967 is entitled to the protection of Section 39 of the U.P. Urban Buildings (Regulation of Letting, Rent, and Eviction) Act, 1972 (Act 13 of 1972 as amended by Act 17 of 1985), hereinafter called 'the Act' in the eviction suit instituted before the commencement of the Act. The Act came into force w.e.f. July 15, 1972 by virtue of the notification issued by the State Government in exercise of power conferred by sub-section (4) of Section 1 of the Act, vide Notification No. 3409/XXIX-59-72 dated June 27, 1972 published in the U.P. Government Gazette, Extra, dated July 1, 1972. The Act was enacted for inter alia regulation of letting and eviction of tenants from certain classes of buildings situate in urban areas specified in sub-section (3) of Section 1 and Section 2 indicates the buildings to which the Act shall not apply. We are concerned with sub-section (2) of Section 2, the relevant part whereof reads as under :

> "Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, sub-section (2) of Section 24, Sections 24-A, 24-B, 24-C or sub-section (3) of Section 29, nothing in this Act shall apply to building during a period of ten years from the date on which its construction is completed".

Since it is not disputed before us that the construction of the suit property was completed in 1967, we need not ser out the provisos and the explanations to the sun-section.

2. Section 3 defines the various expressions used in the Act. Under clause (a) 'tenant' in relation to a building means a person by whom its rent is payable and 'building' according to clause (i) means a residential or non-residential roofed structure including any land, garages and out houses appurtenant thereto. Any person to whom rent is or if the building were let, would be, payable, including his agent or attorney or such person, is a landlord within the meaning of clause (j) of that section. It would thus seem that but for the exemption granted by Section 2(2), the provisions of the Act would thus seem that but for the exemption granted by Section 2(2), the provisions of the Act would have applied to the letting of the suit premises. The scheme of Section 2 is that buildings referred to in clauses (a) to (f) are exempt from the operation of the Act for all times (subject of course to legislative changes) whereas the exemption granted by Section 2(2) is for a period of ten years from the date of completion of construction.

3. Chapter III regulates letting. Section 11 provides that no person shall let any building except in

pursuance of an allotment order issued by the District Magistrate under Section 16. Chapter IV regulates eviction. Section 20 inter alia prohibits the institution of a suit for eviction of a tenant from any building except on the grounds catalogued in clauses (a) to (g) of sub-section (2) thereof. Section 21 provides for the eviction of a tenant if the building is bona fide required by the landlord for his own use or the use of any of his family members. The scheme of chapters III and IV clearly shows that both the letting of an eviction from the buildings to which the Act applies are regulated by the provisions of the Act.

4. Section 39 of the Act with which we are mainly concerned finds its place in chapter VII entitled Miscellaneous and Transitional Provisions. That Section reads as under :

> "39. Pending suits for eviction relating to building brought under regulation for the first time. - In any suit for eviction of a tenant from any building to which the old Act did not apply, pending on the date of commencement of this Act, where the tenant within one month from such a date of commencement or from the date of his knowledge of the pendency of the suit, whichever be later, deposits in the court before which the suit is pending, the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of 9 per cent per annum and the landlord's full of the grounds mentioned in the proviso to sub-section (1) or in clauses (b) to (g) of sub-section (2) of Section 20, and parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary."

This section carried an explanation which came to be omitted by Section 8(iv) (and be deemed always to have been omitted) of the Civil Laws Amendment Act, Section 40 lays down that where an appeal or revision arising out of a suit for eviction of a tenant from any building to which the old act did not apply is pending on the date of commencement of this Act, it shall be disposed of in accordance with the provisions of Section 39, which shall mutatis mutandis apply.

5. The plain reading of Section 39 makes it clear that the said section obliges the court to refuse to pass a decree for eviction, except on any of the grounds mentioned in the proviso to sub-section (1) or in clauses (b) to (g) of sub-section (2) of Section 20, if the following four requirements are satisfied :

> (i) the building is one to which the old Act [the U.P. (Temporary) Control of Rent and Eviction Act, 1947 - U.P. Act 3 of 1947] did not apply;
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> (ii) the eviction suit must be pending on the date of commencement of the Act i.e. July 15, 1972;
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> (iii) the tenant deposits in court the entire amount of rent/damages for the use and occupation of the building together with interest at 9 percent per annum and the landlords full cost of the suit; and
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> (iv) such deposit is made within one month from the date of commencement of the Act or from the date of knowledge of the pendency of the eviction suit, whichever is later.

The benefit of Section 39 is extended mutatis mutandis to an appeal or revision arising out of an

eviction suit to which the old Act did not apply provided the said appeal or revision was pending on the date of commencement of the Act.

6. On a plain reading Section 39 it becomes clear that in a suit for eviction to which the said provisions applies, the court trying the suit is precluded from passing a decree for eviction if the tenant deposits in court the entire amount of rent and damages together with interest at 9 per cent per annum and the landlord's full cost of the suit within the time allowed but this embargo does not apply if eviction is sought on the ground or grounds mentioned in the proviso to sub-section (1) or in clauses (b) to (g) of sub-section (2) of Section 20. The ground mentioned in the proviso to sub-section (1) of Section 20 is determination of tenancy by efflux of time where the duration of tenancy is fixed under a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding which is recorded in court or is otherwise reduced to writing and signed by the tenant, Sub-section (2) of Section 20 enumerates the grounds in clauses (a) to (g) on which an eviction suit can be founded against a tenant. Clause (a) permits the institution of a suit for eviction if the tenant is in arrears of rent for not less than four months and has failed to pay the same within one month from the date of service of a notice of demand upon him. The grounds in clauses (b) to (g) are other than arrears of rent. From the fact that a suit founded on any one or more of the grounds set out in the proviso to sub-section (1) and clauses (b) to (g) of sub-section (2) of Section 20 is exempt from the operation of Section 39, it would seem that the legislature desired to grant protection from eviction where the same is sought on the sole ground of arrears of rent. That is why in the exemption clause contained in Section 39, clause (a) to sub-section (2) of Section 20 which permits eviction on the ground of arrears of rent is deliberately and intentionally excluded and an embargo is created against the passing of an eviction decree if the tenant deposits in court within the time allowed the entire arrears of rent together with interest and costs. If the suit is on any one or more of the exempted grounds, the landlord is permitted to proceed with the same, if necessary by effecting an amendment in the pleadings and by adducing additional evidence. Such a suit may be continued and if the ground or grounds pleaded is/are proved, the court is entitled to grant eviction. It, therefore, seems clear to us that the legislature intended to protect eviction of a tenant on the ground of arrears of rent if the tenant complied with the conditions of Section 39.

7. In the present proceedings it is not disputed that the construction of the demised premises was completed in 1967 and the letting had taken place in the same year. It is also not disputed that immediately on the completion of ten years the tenant deposited on September 2, 1977 an amount of Rs. 4005 being the arrears of rent inclusive of interest and cost. It is not disputed that this payment was made within one month after the expiry of the period of ten years stipulated in Section 2(2) of the Act to take advantage of Section 39 of the Act. The eviction suit was admittedly filed on May 27, 1972 i.e. before the commencement of the Act i.e. July 15, 1972. There is also no dispute that the provisions of the old Act did not apply to the suit. On these undisputed facts the trial court gave the benefit of Section 39 and refused to order ejectment of the Second Additional District Judge, Bulandshahr, on July 15, 1978. The High Court rejected the landlords further revision application on the ground that the question was concluded by the decision in R. D. Ramnath & Co. v. Girdhari Lal (1975 All LJ 1). It is against the said decision that the present appeal is preferred. The question then is whether or to the provision of Section 39 of the Act is attracted in the backdrop of the above facts.

8. We may now consider the case law on the point to which our attention was called. In Ram Swaroop Rai v. Lilavathi ((1980) 3 SCC 452 : (1980) 3 SCR 1034) this Court while construing Section 2(2) of the Act observed that the burden is on the landlord to show that his case falls within the exemption engrafted in the said sub-section. In the present case, since the facts are not in dispute

the question of onus recedes in the background. In Om Prakash Gupta v. Dig Vijendrapal Gupta ((1982) 2 SCC 61 : (1982) 3 SCR 491) a three Judge bench had to consider the effect of Section 2(2) read with section 39 of the Act. In that case, an eviction suit was filed against the appellant-tenant on the ground that the provisions of the Act did not apply to the demised shop and the tenant was therefore liable to be evicted. The trial court decreed the suit on the finding that the construction of the suit shop was completed in 1967 and since 10 years had not elapsed from the date of completion of the construction the provisions of the Act had no application. The tenant carried the matter in revision but the judgment and decree of trial court was substantially maintained. The tenant thereupon moved the High Court under Section 115 CPC. The learned Single Judge who heard the revision remitted the matter to the trail court for recording a finding as to on what date the meaning of Section 2(2) read with Explanation I(a) thereto. The trial court returned a finding to the effect that the construction of the disputed shop must be taken to have been completed on the date of the first assessment, i.e. April 1, 1968, within the meaning of the said provision. The tenant challenged the finding on the ground that the date of construction and not the date of the first assessment. The Division Bench to which the case was referred concluded that the construction of the shop must be deemed to have been completed on April 1, 1968 i.e the date of the first assessment and not at the date of actual occupation and hence the provisions of the Act had not application to the building till the date of the decision of the revision application on March 23, 1978 as the period of 10 years expired later on March 31, 1978. This Court upheld the finding that the date of construction must be taken as the date of first assessment i.e. April 1, 1968 and not the date of actual occupation. To overcome this difficulty it was contended on behalf of the tenant that on a correct reading of Section 2(2) the exemption engrafted therein would not embrace buildings constructed prior to the enforcement of the Act. This Court construing the language of Section 2(2) of the Act; to so interpret it would tantamount to adding words in it which was permissible. This Court, therefore, negatived the contention that the exemption under the sub-section did not embrace buildings constructed before the Act came into force. As pointed out earlier the revision application was decided on March 23, 1978 whereas the period of 10 years from the date of completion of the construction i.e. April 1, 1968 was to end on March 31, 1978 i.e. a week later. Section 39 of the Act, therefore, cleary did not apply in the facts of that case. Secondly, it was found that the suit was instituted on March 23, 1974 long after the commencement of the Act and was therefore not pending on July 15, 1972 to attract the application of Section 39 of the Act. For theses reasons, this Court came to the conclusion that the appellant Om Prakash was not entitled to the protection of Section 39 of the Act. Two features which distinguish this case from the case in hand are : (i) that the revision application was disposed of by the High Court before the expiry of the moratorium period of 10 years granted by Section 2(2) of the Act; and (ii) the suit having been filed long after the commencement of the Act on July 15, 1972 could not be said to be pending at the date of the commencement of the Act to enable the tenant to seek redress under Section 39 of the Act.

9. In Vineet Kumar v. Mangal Sain Wadhera ((1984) 3 SCC 352) an eviction suit was filed on the ground of arrears of rent and damages for use and occupation of the demised premises pendente lite. The tenant was inducted in the building stated to have been constructed in 1971 on February 7, 1972, on a monthly rent of Rs. 250. the building in suit was assessed to house and water tax on October 1, 1971. The tenant defaulted in the payment of rent despite service of notice dated March 24, 1977. Admittedly, the suit was filed after the commencement of the Act. The point for consideration was whether the building which was not 10 years old on the date of the suit and was therefore exempted from the operation of the Act, would be governed by it on the expiry of the period-of 10 years pendente lite. Dealing with this contention this Court observed in paragraph 13 of the judgment as under. (SCC p. 359, 13).

> "The moment a building becomes 10 years old to be reckoned from the date of completion, the new Rent Act would become applicable."

10. The decision in Om Prakash Gupta Case ((1982) 2 SCC 61 : (1982) 3 SCR 491) was rightly distinguished on the ground that it was not necessary in that case to deal with the question whether the tenant would be entitled to the benefit of Section 39 as the building had not become 10 years old when the revision was disposed of by the High Court on March 23, 1978.

11. Dealing next with the contention that the court had to decide the case on the basis of the cause of action that had accrued before the institution of the suit and not on a new cause of action, this Court, relying on the observations to the effect that subsequent developments can be looked into made in paragraph 14 of the decision in Pasupuleti Venkateswarlu v. Motor and General Traders ((1975) 1 SCC 770) observed as under : (SCC p. 360, para 16)

> "Normally amendment is not allowed if it changes the cause of action. But it is well recognised that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation. The question in the present case is whether by seeking the benefit of Section 39 of the new Act there is a change in the cause of action."

After referring to the case of A. K. Gupta and Sons v. Damodar Valley Corporation ((1966) 1 SCR 796 : AIR 1967 SC 96) this Court further observed : (SCC p. 361, para 17)

> "The appellant in the present case only seeks the protection of the new Rent Act which became applicable to the premises in question during the pendency of the litigation. We see no reason why the benefit of the new Rent Act be not given to the appellant. Section 20 of the new Rent act provides a bar to a suit for eviction of a tenant except on the specified grounds as provided in the section. Sub-section (4) of Section 20 stipulates that in any suit for eviction on the grounds mentioned in clause (a) to sub-section (2), viz. the arrears of rent, if at the first hearing of the suit the tenant in default pays all arrears of rent to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from him, such damages for use and occupation being calculated at the same rate as rent together with interest thereon at the rate of 9 per cent per annum and the landlord's cost of the suit in respect thereof after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground. Sections 39 and 40 of the new Rent Act also indicate that the benefit of the new Act will be given to the tenant if the conditions contemplated in those sections are satisfied. Section 39 also indicates that the parties are entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary."

On this line of reasoning this Court set aside the judgment and decree of the High Court insofar as it related to eviction.

12. We find, with respect, that their Lordships committed an error in overlooking the text of Section 39 of the Act. That section in terms says that the suit must be pending at the commencement of the

Act to seek the benefit of that provision. Admittedly, the suit in question was filed after the commencement of the Act and hence the tenant was not entitled to the benefit of Section 39 of the Act. But that apart, in a sub-sequent decision of this Court in and Kishore Marwah v. Samundri Devi ((1987) 4 SCC 382), this Court dissented from the view in Vineet Kumar case ((1984) 3 SCC 352) on the ground that the attention of the court was not drawn to Om Prakash Gupta case ((1982) 2 SCC 61 : (1982) 3 SCR 491) which specifically considered the provisions of the Act and in particular the language of Section 39 of the Act to point out that in order to attract that provision it must be shown that the suit was pending at the commencement of the Act i.e. on July 15, 1975. Referring to Section 20 of the Act, which bars institution of a suit for eviction of a tenant except on grounds specified in clauses (a) to (g) this Court observed as under : (SCC pp. 390-91, para 14)

> "This clearly indicates that the restriction put under Section 20 is to the institution of the suit itself and therefore it is clear that if the provisions of this Act applies then no suit for eviction can be instituted except on the grounds specified in the sub-sections of this section. Keeping in view the language of this section if we examine the provisions contained in sub-section (2) of Section 2 it will be clear that for a newly constructed building the provisions of this Act will not apply for 10 years and therefore so far as the restriction under Section 20 is concerned they will not apply and therefore it is clear that within 10 years as provided for in sub-section (2) of Section 2 restriction on the institution of suit as provided for in Section 20 sub-section (1) quoted above will not be applicable and it is thus clear that during the pendency of the litigation even if 10 years expired the restriction will not be attracted as the suit has been instituted within 10 years and therefore restriction as provided for in Section 20 cannot be attracted."

It may, with respect, be pointed out that the comment that the court's attention was not drawn to Om Prakash Gupta case ((1982) 2 SCC 61 : (1982) 3 SCR 491) is not correct as this case is specifically mentioned in paragraph 14 of the judgment in that case.

13. Lastly, in Atma Ram Mittal v. Ishwar Singh Punia ((1988) 4 SCC 284) the appellant-landlord had filed an eviction suit in respect of a shop which had been rented to the respondent in 1978. The suit was filed on the ground that the tenant was in arrears of rent from December 1, 1981 to May 31, 1982 and the tenancy had been duly terminated by a notice. The suit was filed under sub-section (3) of Section 1 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. That sub-section provided that "nothing in the Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of 10 years from the date of its completion". Section 13(1) enumerated the usual grounds on which possession of a building or land could be obtained from a tenant. In November 1984, the tenant applied for dismissal of the suit on the ground that the moratorium period of 10 years expired in June 1984 since admittedly the demised shop was constructed some time in June 1974. Quoting the following passage from Ram Swaroop Rai case ((1980) 3 SCC 452 : (1980) 3 SCR 1034) (SCC p. 453, para 1 quoted at SCC p. 288, para 7)

> "The legislature found that rent control law had a chilling effect on new building construction, and so, to encourage more building operations, amended the statute to release, from the shackles of legislative restriction, 'new constructions' for a period of 10 years. So much so, a landlord who had let out his new building could recover possession without impediment if he instituted such proceeding within 10 years of completion."

this Court held as under : (SCC pp. 288-89, para 8)

> "It is well settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit" - an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the 10, years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within 10 years and even then within that time it may not be disposed of. That will make the 10 years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."

Proceeding further, this Court said : (SCC pp. 289-90, para 9)

> "We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law. If the immunity from the operation of the Rent Act is made and depended upon the ultimate disposal of the case within the period of exemption of 10 years which is in reality an impossibility, then there would be empty reasons. In our opinion, bearing in mind the well settled principles that the rights of the parties crystallise to (sic on) the date of the institution of the suit as enunciated by this Court in Om Prakash Gupta v. Digvijendrapal Gupta, ((1982) 2 SCC 61 : (1982) 3 SCR 491) the meaningful construction must be that the exemption would apply for a period of 10 years and will continue to be available until suit is disposed of or adjudicated. Such suit or proceeding must be instituted within, the stipulated period of 10 years. Once rights crystallise the adjudication must be in accordance with law."

14. In order to appreciate the controversy in the correct perspective it would not be out of place to notice the legislative changes. During the Second World War certain orders were issued under the Defence of India Rules, 1939, relating to the control and letting of accommodations to cope with the paucity of accommodation. This was followed by an ordinance promulgated in 1946 which was repealed by the U.P. (Temporary) Control of Rent and Eviction Act, 1947 described as the old Act by Section 3(h) of the Act. The measure which was intended to be of a temporary character only continued till the passing of the Act in 1972. When the old Act replaced the 1946 Ordinance, the expectation was that the acute shortage of accommodation was only a temporary feature and would disappear with the passage of time. The hope was belied and the stringent restrictions placed not he landlord's rights in the matter of fixation and recovery of rent and eviction from the rented premises had to be continued indefinitely. These restrictions discouraged building activity which added to the already serious housing problem. There was an urgent need to provide incentives and thereby encourage new constructions. With that in view Section 2(2) provided that nothing in the Act shall apply to a building during a period of 10 years from the date on which its construction is completed. In other words the legislature has relieved the owner of a new building from the restrictive provisions relating to rent, etc. contained in Sections 4 to 9 of the Act. So also such owners are granted a holiday or recess of 10 years from the restrictive provisions regulating letting (chapter III) and eviction (chapter IV) contained in the Act. This freedom from the operation of the Act for 10 years is given for the obvious purpose of encouraging building activity to ease the problem of scarcity of accommodation. The provisions of the Act in this behalf must, therefore, be understood

in this background.

15. Section 2(2) in terms says that the provisions of the Act will not apply to new constructions for a period of 10 years from the date of completion of the construction. Read positively it means that the Act will apply to such buildings on the expiry of the recess period. But how are suits already filed during the recess period to be dealt with ? Does the Act offer any clue in this behalf ? In this connection the only provisions which come to mind are Sections 39 and 40 of the Act. Section 39 deals with suits pending on the date of commencement of the Act. Section 40 extends protection to an appeal or revision pending on the date of commencement of the Act provided it has arisen out of an eviction suit filed against a tenant to which the old Act did not apply. Such an appeal or revision has to be disposed of in the same manner as the suit is required to be dealt with under Section 39 of the Act. In order to secure the benefit of Section 39 or 40 it must be shown that the suit, appeal or revision was pending on the date of commencement of the Act. Secondly, if the suit is founded on the allegation of non-payment of rent, the tenant must, within one month from the date of commencement of the Act or from the date of knowledge of the pendency of the suit, deposit in court the entire amount of rent and damages for use and occupation of the building with interest as prescribed and landlord's entire cost of the suit, to take the benefit of the said provision. If both these conditions are satisfied, the law, Section 39, mandates that no decree for eviction shall be passed except on any of the grounds specified in the proviso to sub-section (1) or clauses (b) to (g) of sub-section (2) of Section 20 of the Act. Similarly Section 40 lays down that if an appeal or revision (arising out of a suit for eviction of a tenant from any building to which the old Act does not apply) is pending on the date of commencement of the Act, the benefit of Section 39 will be available to the tenant. What these two provisions emphasise is that in order to avail of the benefit engrafted therein, the proceedings i.e. the suit, appeal or revision application must be pending at the date of commencement of the Act, i.e. July 15, 1972, and the tenant must have deposited the arrears of rent and damages together with interest and full cost of the landlord in the court within one month from the date of such commencement. Once the four conditions of Section 39 set out in the earlier part of this judgment are satisfied, the court is debarred from passing a decree in ejectment except on any of the grounds mentioned in the proviso to sub-section (1) or in clauses (b) to (g) of sub-section (2) of Section 20 of the Act. Therefore, even in a suit, appeal or revision application pending at the date of commencement of the exemption clause of Section 39 notwithstanding the fact that the tenant has deposited the full amount of arrears of rent and damages together with interest and cost as required by that section. It, therefore, seems clear to us on the plain language of Section 39 of the Act that the legislature desired to grant protection from eviction where the same was sought on the sole ground of arrears of rent. In cases falling within the exemption clause of that section, the legislature has itself permitted the landlord to proceed with the suit and claim eviction on any of the grounds enumerated in the proviso to sub-section (1) or in clauses (b) to (g) of sub-section (2) of Section 20 of the Act, if necessary by making the required amendment in the pleadings and by adducing additional evidence where necessary.

16. It therefore seems to us that the legislature desired to limit the scope of the application of Sections 39 and 40 to suits, appeals and revisions pending on the date of commencement of the Act, i.e. July 15, 1972, relating to buildings to which the old Act did not apply and to which the new Act was to apply forthwith and not at a later date. This is clear from the fact that the section contemplates deposit of arrears of rent and damages together with interest and cost within one month from 'such date of commencement' meaning the date of commencement of the Act. To put it differently the section expects the tenant to make the deposit within one month from July 15, 1972. This may not be possible unless the Act is to apply to the building forthwith. Of course the benefit of an extended date is given to those cases where the knowledge about the pendency of the

proceedings is gained after July 15, 1972. For example where a suit is actually filed before the commencement of the Act but the summons of the suit is served in October 1972, the tenant would be entitled to make the deposit within one month from the service of the summons to avail of the benefit of this provision. So also it can apply to cases where the tenant had died before the Act came into force or before the expiry of one month from he date of commencement of the Act and the landlord took time to bring the legal representative on record; in which case the legal representative would be entitled to seek the benefit from the date of knowledge. Of course this benefit would not be available where the tenant dies after the expiry of the period within which the right is to be exercised. The same would be the case in the case of an appeal or revision application. It seems to us that the legislature intended to give the benefit of Sections 39 and 40 to suits, appeals or revisions which were pending on July 15, 972 and in which the deposit came to be made within one month from that date. The expression 'such' preceding the word 'commencement' is clearly suggestive of the fact that it has reference to the date of commencement of the Act and the payment must be made within one month from such commencement. Unless we give such a restricted meaning to the section we would not be able to advance the legislative intent to relieve the landlords of new buildings from the rigors of the Act. This interpretation is also in tune with the ratio in Ram Swaroop Rai case ((1980) 3 SCC 452 : (1980) 3 SCR 1034).

17. It was argued that the words 'commencement of this Act' should be construed to mean the date on which the moratorium period expired and the Act became applicable to the demised building. Such a view would require this Court to give different meanings to the same expression appearing at two places in the same section. The words 'on the date of commencement of this Act' in relation to the pendency of the suit would mean July 15, 1972 as held in Om Prakash Gupta ((1982) 2 SCC 61 : (1982) 3 SCR 491) but the words 'from such date of commencement' appearing immediately thereafter in relation to the deposit to be made would have to be construed as the date of actual application of the Act at a date subsequent to July 15, 1972. Ordinarily the rule of construction is that the same expression where it appears more than once in the same statute, more so in the same provision, must receive the same meaning unless the context suggests otherwise. Besides, such an interpretation would render the use of prefix 'such' before the word 'commencement' redundant. Thirdly such an interpretation would run counter to the view taken by this Court in Atma Ram Mittal case ((1988) 4 SCC 284) wherein it was held that no man can be made to suffer because of the court's fault or court's delay in the disposal of the suit. To put it different if the suit could be disposed of within the period of 10 years, the tenant would not be entitled to the protection of Section 39 but if the suit is prolonged beyond 10 years the tenant would be entitled to such protection. Such an interpretation would encourage the tenant to protract the litigation and if he succeeds in delaying the disposal of the suit till the expiry of 10 years he would secure the benefit of Section 39, otherwise not. We are, therefore, of the opinion that it is not possible to uphold the argument.

18. In the above view of the matter we are of the opinion that the courts below committed an error in giving the benefit of Section 39 of the Act to the tenant since admittedly the tenant could not and had not made the deposit within one month from the date of commencement of the Act on July 15, 1972 but had made the deposit within a month after the moratorium period expired in 1977. As stated above the legislature intended to limit the application of Sections 39 and 40 of the Act to cases where the Act became applicable immediately and the deposit could be made within one month from its applicability and not to cases where the moratorium period was to expire long thereafter.

19. For the reasons stated above we think the courts below were wrong in the view they took. We,

therefore, set aside the judgment and decree of the courts below by allowing this appeal. Having regard to the fact that the respondent will have to look for alternative accommodation we give him a year's time to vacate on condition that he pays all the arrears of rent and damages, if due, within one month and files an under-taking in the usual from within even time. In the circumstance of the case we think the parties may be left to bear their own costs.

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