BOMBAY HIGH COURT

Nilkanth Ramchandra Chandole

Vs

Rasiklal Mulchand Gujar

(M Chagla, C.J. Gajendragadkar and Tendolakar, J.)

07.10.1948

JUDGMENT

M.C. Chagla, C.J.

1. This second appeal arises from a suit filed by the plaintiff, a landlord, to eject the defendant, his tenant, who is the appellant before us. Both the lower Courts took the view that the defendant was in arrears of rent to the extent of five months and that therefore he was not ready and willing to pay the rent, and passed a decree for ejectment in favour of the plaintiff. In this second appeal it has not been contended before us that the decree passed by the two lower Courts was not a proper decree. What has been contended before us is that in the events that have happened the decree can no longer stand and the same must be set aside.

2. The decree of the trial Court was passed on November 14, 1946. Act LVII of 1947 came into operation on February 13, 1948, and it is urged before us that the rights of the parties are to be determined by the provisions of that Act and not of the Act which was in force when the suit was filed and the decree passed in favour of the plaintiff. Now, it is a well established canon of construction of every statute that ordinarily every legislation is prospective in its effect and it does not affect vested rights. But it is always competent to the Legislature to make any piece of legislation retrospective. But if the Legislature intends to do so it must do so by a clear intention or by necessary implication. In order to decide whether the new statute is retrospective, and if so, to what extent, we must look at the relevant sections. Now the most material section in this connection is Section 50 of the Act which repeals the earlier Bombay Rent Restriction Act, 1939, and the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944. Then the section goes on to provide that all suits and proceedings (other than execution proceedings and appeals between a landlord and a tenant) relating to the recovery or fixing of rent or possession of any premises to which the provisions of Part II apply and other suits and proceedings which are therein described and to which Part III applies, which are pending in any Court, shall be transferred to and continued before the Courts which would have jurisdiction to try such suits and proceedings under the Act. It may be noted that this new Act gives jurisdiction to certain Courts

to try proceedings under this new piece of legislation. Then the section goes on to say that "thereupon all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings." Therefore it is clear that in terms the provisions of the new Act and the rules made thereunder are made to apply only to such suits and proceedings which are transferred under the provisions of this section. There are two provisos to this section which provide that the orders passed or acts done by Controllers are deemed to have been passed or done under the provisions of the new Act and also all proceedings pending before the Controllers shall be transferred to and continued before the Controllers appointed under the new Act, as if they were proceedings instituted under the new Act before the Controllers. Therefore the retrospective effect of this new Act is clearly confined to what is expressly stated in Section 50 ' of the Act. Apart from the question of Controllers with which we, are not concerned, as far as suits and proceedings are concerned, the provisions of the new Act are made to apply only to those suits and procedings which are transferred and it is also expressly provided that execution proceedings and appeals are not to be transferred. Then we turn to Section 12 of the Act which provides that a landlord shall not be entitled to recovery of possession of any premises as long as the tenant pays, or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Act, Then Sub-clauses (2) and (3) give special concessions to the tenant which he did not have under the old Act. Sub-clause (2) provides that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent and permitted increases due until the expiration of one month next after a notice in writing of the demand of the standard rent and permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882. Sub-section (3) precludes a Court from passing a decree for eviction even where a notice has been served under Sub-section (2) if the tenant pays or tenders in Court the said rent together with the costs of the suit. It is the provisions of this section that the appellant relies on and contends that if he pays or tenders in Court the arrears of rent a decree for eviction cannot be passed against him.

3. In our opinion this section is in terms prospective and not retrospective. Sub-section (2) clearly relates to suits which may be instituted after the Act has come into force. It cannot even by straining the language apply to suits which were already pending when the Act was put on the statute book, and Sub-section (3) which gives the right to the tenant to pay or tender the rent at the hearing of the suit only applies to those suits which may be instituted after the Act comes into operation because it in terms states "in such suit" and not "in any suit". "Such suit" can only be a suit referred to in Sub-sections (2) and (3) of Section 12.

4. Attention may also be drawn to Section 7 of the Bombay General Clauses Act which deals with the effect of the repeal of a Bombay Act and it provides that unless a different intention appears, a repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. So that no pending legal proceedings can be affected by a repeal unless

there is a different intention in the statute itself. Therefore when we are asked to apply the new Section 12 to the decree which was passed by the trial Court, we must find in the new Act a clear intention which constitutes a departure from the principle of law laid down and enunciated in Section 7 of the General Clauses Act, and far from finding any such different intention, we find that under Section 50 of the new Act the Legislature has expressly and in terms made the statute retrospective only in those restricted cases referred to in that section. It has been suggested that placing this narrow construction upon Section 50 would lead to anomalies and difficulties not contemplated by the Legislature. It is perfectly true that a Court of law must always see to it as far as possible that the obvious intention of the Legislature is not defeated by a construction which it puts upon a statute passed by the Legislature. But on the other hand it is equally clear that a Court of law should not put itself in the shoes of the Legislature. If the language of the statute is plain and clear then the intention of the Legislature can only be judged from the words and expressions it has used in the Act which it has passed. If there be any ambiguity, and if more than one construction be possible, certainly the Court would lean in favour of that construction which gives effect to the Legislature's intention rather than that which leads to difficulties and anomalies.

5. It is pointed out that this construction results in this, that the pending proceedings, which are not transferred under Section 50, and which the Court before whom they are pending are competent to deal with, would not be governed by the provisions of the new Act. Therefore, this extraordinary result will follow that to the proceedings which are so transferred under Section 50, and are continued in the Courts which are given jurisdiction to try them under the new Act, provisions of the new Act will apply, but to the suits and proceedings which are not transferred, and which, continue in the Courts which are competent to try them, provisions of the old Act will apply. We agree that it is indeed a curious and unexpected result and we are certain that the Legislature never intended that only proceedings which are transferred should be governed by the provisions of the new Act. It is obviously a case where the Legislature has failed to make its intention clear by using proper language. We also realise that serious injustice may result to the tenants whose cases are pending before different Courts in the District, who will not be able to get the benefit and advantages of this new legislation. We would, therefore, draw the attention of the Legislature to this anomaly that appears in the statute and we are certain that the Legislature will take the necessary steps to get right this omission which we are certain was never intended by it.

6. There is a decision of a division bench (Weston and Dixit JJ.) which has taken the view contrary to the one we have formed of the correct view of the law. The view taken by that bench was that the whole Act was intended to be retrospective and that all pending litigation was intended to come within the ambit of the new Act. And inasmuch as an appeal is a continuation of a suit, the mere fact that a decree has been passed would not preclude a Court of appeal from applying the provisions of the new statute to the appeal when it came before it, treating the appeal as the re-hearing of the suit, and passing a decree in accordance with the law as it applied

to the parties at that date. With very great respect to these two learned Judges we entirely agree with the principles of law to which they have given expression. It is perfectly true that if the Legislature retrospectively affects pending proceedings, then it would be the duty of the Court of appeal to apply the law prevailing at the date of appeal which was pending before the Court. It is also perfectly true that the mere passing of the decree does not preclude a Court of appeal from taking into consideration the change in the law effected after the passing of the decree. But all these principles of law proceed on the assumption that the legislation which the Court is considering has been made retrospective by the Legislature. Before we apply these principles of law which are well settled and beyond dispute we must first find in the legislation itself some provision which makes it retrospective, and we do not agree, with very great respect to the two learned Judges, that merely because Section 50 makes certain provisions retrospective, it is possible for the Court to draw an inference that the Legislature did not intend that only certain proceedings should be affected by the new legislation but that the intention was to make all pending proceedings irrespective of the provisions of Section 50 to come within the ambit of the new statute. In this particular case reading Sections 50 and 12 together, if at all, a contrary intention appears to have been entertained by the Legislature, Weston J. also in a concurring judgment in that case felt great difficulty in construing Section 50. According to that learned Judge it was impossible to hold that the applicability of the Act to a pending suit should depend upon an accident of a transfer under Section 50 being necessary. We agree with him that Section 50 has not been very happily drafted and that it does not clearly carry out the intention of the Legislature. But as I have already pointed out it is not for the Court to speculate as to what the Legislature intended, in order to make good any flaw or lacuna which may unfortunately appear in a piece of legislation. With very great respect therefore we are of the opinion that the case decided by Weston and Dixit JJ. (*Surjitlal Ladhamal Chhabda v. Chandrasirih Manibhai*[1] was not correctly decided. We, therefore, hold that the new Act is retrospective only to the extent clearly provided in Section 50 of the Act. As this is the only point that survives in this second appeal and as we are of the opinion that the decree was rightly passed by both the lower Courts and that it is not open to us to take into consideration subsequent alterations in the law, the appeal must fail and is dismissed with costs.

7. On the appellant agreeing to hand over quiet and peaceful possession of the premises in suit on or before February 28, 1949, and deposit in Court in the first week of each month the rent due the respondent agrees not to execute the decree until then.

1(1948) First Appeal No. 365 of 1947, Weston and Dixit JJ., on April 1, 1948 (Unrep.)