

PATNA HIGH COURT

Ram Nandan Sharma

Vs

Maya Devi

Civil Revn. Nos. 1314 of 1970 and 856 of 1971

(Untwalia, C.J., K.B.N. Singh and S.K. Jha, JJ.)

10.09.1974

JUDGEMENT

Untwalia, C.J.

1. These two Civil Revision Applications, in the first instance, came up for hearing before a learned Single Judge of this Court. He referred them for disposal by a Division Bench. When they were placed before two of us for hearing, we doubted the correctness of the Division Bench decision of this Court in *Sashadhar Das v. Harihar Prasad*¹ and desired constitution of a larger Bench for disposal of these two civil revision applications. Since the points involved in the two cases are common and identical, they were heard together and are being disposed of by this Judgment.

2. Civil Revision No. 856 of 1971 filed by the tenant-defendant proceeded to hearing *ex parte* as the plaintiffs-landlords-opposite party did not appear to contest it. The plaintiffs filed a suit on the 1st August, 1970 for eviction of the defendants out of whom the main contesting defendant is the petitioner. During the pendency of the suit, the plaintiffs filed an application on the 22nd May, 1971, under Section 11-A of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter called 'the Bihar Act') for a direction to the defendants to deposit arrears of rent due in respect of the suit premises with effect from the 1st April, 1964 till the date of institution of the suit, at the rate of Rs. 80 per month. It is somewhat unusual to find in this case that no prayer was made in the application under Section 11-A of the Bihar Act for deposit of rent which had accrued due during the pendency of the suit and rent month by month. It may be stated that no decree for arrears of rent for any period was asked for in the suit. The application was resisted by the petitioner on the short plea that he had taken the suit premises, namely, two shops, from the father of the plaintiffs on a monthly rental of Rs. 34 and not on a monthly rental of Rs. 40 each shop, as stated by the plaintiffs. The entire rent had been duly paid till the institution of the suit, but no receipt was granted either by the father of the plaintiffs or by the plaintiffs. The learned Munsif, prima facie, believed the case of the plaintiffs that the two shops were let out at Rs. 80 per month and rent was due with effect from the 1st April, 1964. Accordingly, he directed full arrears of rent to be deposited within fifteen days of the date of the order, from 1-4-1964 to 1-8-1970, at the rate of Rs. 80 per

month.

3. Mr. S. K. Mazumdar, learned counsel for the petitioner challenges this order on the following grounds :-

- (1) That no arrear of rent in respect of any period prior to the institution of the suit could be directed to be deposited under Section 11-A of the Bihar Act;
- (2) That the claim for arrears of rent prior to the institution of the suit was barred under Order 2, Rule 2 of the Code of Civil Procedure (hereinafter called 'the Code'), inasmuch as no decree in this respect having been asked for in the suit, recovery under Section 11-A of the Bihar Act was barred;
- (3) That in any view of the matter, no direction for deposit of rent in respect of a period beyond three years of the date of institution of the suit could be given under Section 11-A of the Bihar Act. In other words, direction could be given for deposit of arrears of rent only from 1-8-1967 and not from 1-4-1964.

In support of all the three points learned counsel relied upon the observations and decision of the Bench in Sashadhar Das's case. (AIR 1973 Patna 361) (supra).

4. The facts of Civil Revision No. 1314 of 1970 are as follows. The plaintiffs-opposite party instituted a suit against the defendant-petitioner on the 20th August, 1968 for his eviction on the ground of non-payment of rent, the rent of the suit premises being Rs. 7 per month. In the suit, a decree for arrears of rent to the tune of Rs. 252 was asked for, for the period 31-8-1965 to 31-8-1968 at the rate of Rs. 7 per month. The petitioner filed a written statement on the 22nd December, 1969 and contested the suit for eviction on several grounds. One of the grounds was a denial of the relationship of landlord and tenant. On the 8th April, 1970 the plaintiffs filed an application under Section 11-A of the Bihar Act claiming arrears of rent from 15-3-1957 to 31-3-1970, amounting to Rupees 1095/50 paise and also' for a direction to deposit rent month by month. In sub-Stance and effect the learned Munsif found that the denial of the relationship of landlord and tenant by the petitioner was not sustainable in view of the history of the prior litigation between the parties. It was without substance. He has directed the petitioner to deposit arrears of rent at the rate of Rs. 7 per month from 15-3-1957 to 30-6-1970 (the date of the order being 22-7-1970) amounting to Rs. 1116/50 paise within fifteen days from the date of the order and also to deposit current and future monthly rent at the rate aforesaid per month by the fifteenth of the following month.

5. Mr. Gupteshwar Prasad, learned counsel for the petitioner could not and did not advance any argument in regard to the view of the court below that the denial of relationship of landlord and tenant by the petitioner was not such as to fetter its hands in making an order under Section 11-A of the Bihar Act. The matter is squarely covered by the Full Bench decision of this Court in *Mahabir Ram v. Shiv Shankar Prasad*², to which two of us were parties. Learned counsel for the petitioner, however, adopted and argued all the points urged in the other case. Mr. Guneshwar Prasad resisted the rule on behalf of the landlords-opposite party and seriously combated all the points urged on behalf of the petitioner.

6. The Bihar Act was drastically amended by Bihar Act 16 of 1955. Prior to the amendment, the order of eviction could be made by the Controller on an application made to him in that regard. By the amending Act of 1955 proceedings for eviction of tenants have got to be initiated by institution of suits in Civil Court, in this background Section 11-A was introduced in the Bihar Act. It reads as follows :-

"11-A. Deposit of rent by tenants in suits for ejection.- If in a suit for recovery of possession of any building the tenant contests the suit, as regards claim for ejection, the landlord may make an application at any stage of the suit for order on the tenant to deposit month by month at a rate at which it was last paid and also the arrears of rent, if any; and the Court, after giving an opportunity to the parties to be heard, may make an order for deposit of rent at such rate as may be determined month by month and the arrears of rent, if any and on failure of the tenant to deposit the arrears of rent within fifteen days of the date of the order or the rent at such rate for any month by the fifteenth day of the next following month, the Court shall order the defense against ejection be struck out and the tenant to be placed in the same position as if he had not defended the claim to ejection. The landlord may also apply for permission to withdraw the deposited rent without prejudice to his right to claim decree for ejection and the Court may permit him to do so. The Court may further order recovery of cost of suit and such other compensation as may be determined by it from the tenant."

It would be noticed from the provision aforesaid that an application under Section 11-A can be made in a suit for recovery of possession of any building, if the tenant contests the suit as regards the claim for ejection. Such an application can be made by the landlord at any stage of the suit. The prayer in the application can be made for an order on the tenant to deposit rent month by month, that is to say, all current and future rent payable during the pendency of the suit. An order may also be sought for directing the tenant to deposit arrears of rent, if any. The serious question for consideration would be as to what is the meaning of the expression "arrears of rent" having regard to the place and context in which it occurs in Section 11-A of the Bihar Act. After hearing the parties, the Court may make an order for deposit of rent month by month and the arrears of rent, if any. The statute requires the tenant to deposit all arrears of rent within fifteen days of the date of the order. In numerous decisions of this Court a view has been taken that the Court has no power to extend this time. Rent for any month has also got to be deposited by the fifteenth day of the next following month. On failure of the tenant to deposit either arrears of rent for one month by the time specified in the statute, the Court has got to order the defense against ejection to be struck out and the tenant to be placed in the position as if he had not defended the claim to ejection. It has also been pointed out in several decisions of this Court that striking out defense is only in respect of the claim to ejection and not in regard to the claim for arrears of rent made in the suit and that striking out the defense to the claim to ejection is not tantamount to hearing of the suit *ex parte*. The tenant still has a right to take part in the hearing of the suit without there being his defense in the written statement in regard to the claim to ejection. The landlord may be permitted to withdraw the deposited rent without prejudice to his right to claim decree for ejection.

7. It would thus be seen that in a suit for ejection of the tenant either on the ground of personal necessity, non-payment of rent or any other ground envisaged under Section 11 of the Bihar Act,

a provision has been made to compel the tenant to pay all arrears of rent, current and arrears, falling due during the pendency of the suit. Although the main object of the Bihar Act as also of similar statutes in other States is to protect the tenant from unreasonable eviction, provisions have been made in almost all the State statutes in regard to deposit of rent so that a tenant may not go on lighting litigation without payment of rent. I shall presently show, with reference to various State statutes, that except in the Bihar Act, in the main, provisions have been made of two kinds- (1) payment of arrears of rent which fell due prior to the institution of the suit and (2) payment of arrears of rent or rent month by month falling due during the pendency of file suit. In some statutes in express language it has been provided that arrears of rent which were not recoverable on the date of the suit could not be directed to be deposited. In some there is no such provision and then, on the analogy of Section 114 of the Transfer of Property Act a view has been taken that arrears of rent would mean all arrears irrespective of the question whether their recovery was barred under the law of limitation on the date of the suit. But the significant difference between other State statutes and Section 11-A of the Bihar Act is that while in the former on payment of all arrears of rent the tenant is relieved of the order or decree for eviction on the ground of non-payment of rent, under Section 11-A of the Bihar Act, even if the tenant deposits arrears of rent, assuming for the time being that arrears of rent mean all arrears which had fallen due prior to the institution of the suit-all arrears irrespective of the question of limitation - the tenant is not relieved of the decree for eviction. Even after payment of all arrears, if clause (d) of sub-section (1) of Section 11 was attracted, decree for eviction will follow in spite of payment. The tenant has a right under the Code to defend the claim to ejection. On a very careful consideration of the matter, it seems to me that it is highly unjust to curtail the right of the tenant to defend the claim to ejection under the pain of striking out such defense, if the tenant does not pay all arrears of rent, irrespective of the question whether they accrued before the institution of the suit or after, and rent month by month. Ordinarily and generally, the contest in the suit by the tenant would be within a short period of, say, about six months on a year. The landlord at once thereafter may make an application under Section 11-A. Arrears of rent accruing due from the date of the institution of the suit till the making of the application or the date of the order will not be very high in comparison with the arrears of rent for the total period prior to the institution of the suit. In my opinion, the Legislature by providing the same period of fifteen days for deposit of rents in arrear as also rent month by month did envisage arrears of rent accruing due during the pendency of the suit only and not prior to it.

8. A landlord when he institutes a suit for eviction of the tenant is obliged to frame his suit under, Order 2, Rule 1 of the Code so as to afford grounds for final decision upon the subjects in dispute and to prevent further litigation concerning them. On the date of the suit he can claim recovery of such amount of arrears of rent under Article 52 of the Limitation Act, 1963 as had fallen due within three years of the institution of the suit and not beyond that. If he does not make any claim for any arrears in the suit on payment of the necessary court-fees, his second suit would be barred under Order 2, Rule 2 (2) of the Code. If he has already made claim for arrears of rent accruing due within a period of three years from the date of institution of the suit, there will be no necessity of institution of a second suit for claiming the same amount. Rather, the second suit will not be maintainable for the same relief on the same cause of action. In such a situation, is it possible or reasonable to take the view that Section 11-A of the Bihar Act, which merely permits the tenant to defend the claim to ejection and does not relieve him from that, was meant to be a remedy for the landlord to compel the tenant to pay all arrears of rent? If it is permissible to travel beyond the period of the suit for directing deposit of arrears of rent, then on a plain

meaning of the expression "arrears of rent" occurring in Section 11-A, I see no justification to stop at the period of arrears of rent for three years only prior to the institution of the suit, and not the entire arrears. It is a fundamental, well known and well established principle of law that the Statute of Limitation merely bars a particular remedy, but does not extinguish the debt or right to recover it by some other method. The debt remains lawfully payable. It may not be lawfully recoverable by action. Any amount of rent which is lawfully payable - whether it is barred by the Statute of Limitation or not - can be realized or recovered in any other manner. No tenant can be compelled to pay any amount of rent which is not law-fully payable by him. Nor Order 2, Rule 2 of the Code in terms will apply to an application under Section 11-A of the Bihar Act as it applies to a suit only. Merely because by a second suit the amount cannot be recovered, it cannot make the arrears of rent as not lawfully payable. It may not be lawfully recoverable by a suit. I am, therefore, of the view that the expression "arrears of rent" occurring in Section 11-A of the Bihar Act either must be allowed to have its full play covering all arrears of rent which had fallen due prior to the institution of the suit, whether barred by limitation or whether claimed in the suit or not; or, the expression must be confined to the period of pendency of the suit. I see no justification for striking out a *via media* and to take the view as taken by the Bench in *Sashadhar Das's case* (AIR 1973 Patna 361) (*supra*).

9. I now proceed to briefly refer to the relevant provisions of some other State statutes. In the Delhi Rent Control Act, 1958, an order for eviction can be made by the Controller on the ground of non-payment of rent under proviso (a) to Section 14. In such a case, under Section 15 (1) the Controller shall –

"Make an order directing the tenant to pay to the landlord or deposit with the Controller within a month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate."

It would thus be seen that arrears can be directed to be deposited only in respect of the period for which they are legally recoverable. Even so sub- section (6) of Section 15 of the Delhi Rent Control Act, 1958 provides-

"(6) If a tenant makes payment or deposits as required by sub-section (1) or sub-section (3), no order shall be made for the recovery of possession on the ground of default in the payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to the landlord."

Thus, on payment of all recoverable arrears of rent, the tenant is relieved of his liability to be evicted.

10. Under Section 13 (2) of the East Punjab Urban Rent Restriction Act, 1949, a landlord who seeks to evict his tenant has got to apply to the Controller for a direction in that behalf. Clause (1) of that section makes the tenant liable to be evicted if he has not paid or tendered the rent due by him in respect of the building as provided therein. The proviso to' clause (1) reads as follows :-

"Provided that if the tenant on the first hearing of the application for ejection after due service pays or tenders the arrears of rent and interest at six per cent. per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid." Thus, on payment of all arrears of rent, the tenant is relieved of his liability to be evicted on the ground of non-payment. In *Rullia Bam v. S. Fateh Singh*³, a Full Bench of the Punjab High Court took the view that the expression "arrears of rent" occurring in the proviso to Section 13 (2) (i) of the Act aforesaid is not limited only to those arrears the realisation of which is not barred by the law of limitation. The language of the Delhi Rent Control Act is different as pointed out by Mahajan, J. at page 259, column 2. The expression was given a wide meaning to include also arrears of rent recovery of which was barred by the law of limitation."

11. In Section 11 (1) of the Madras Buildings (Lease and Rent Control) Act, 1960 it has been provided –

"No tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under Section 23 against any order made by the Controller on the application, unless he has paid, or pays to the landlord or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building upto the date of payment or deposit and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate authority, as the Case may be." On failure of the tenant to pay or deposit rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building in accordance with sub-section (4) of the Section aforesaid. It would be noticed that the tenant is relieved of this rigour if he shows sufficient cause for his alleged failure. Under Section 11-A of the Bihar Act, in numerous decisions a view has been taken that, the Court cannot excuse the failure to deposit rent as per direction given in Section 11-A of the Act for any cause sufficient or otherwise. Moreover, it is significant to find under the proviso to sub-section (2) of Section 10 of the Madras Act-

"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." It would thus be seen that by rejecting the application for eviction of the tenant, the tenant is relieved of the liability to be evicted."

12. Section 13 (4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 says-

"In a suit for eviction on the ground set forth in clause (a) of sub-section (1). with or without any of the other grounds referred to in that sub-section, the tenant shall, on the first day of hearing or on or before such date as the court may, on an application made to it, fix in this behalf, or within such time, not exceeding two months, as may be extended by the court, deposit in court or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of six per cent, per annum from the date when any such amount was payable up to the date of deposit and shall thereafter continue to deposit or pay month by month, by the fifteenth of each succeeding month a sum equivalent to the rent at that rate."

Under sub-section (6) of that Section if the, tenant fails to deposit or pay any amount, referred to in sub-section (4) on the date or within the time specified therein, the Court shall order the defense against eviction to be struck out. But the significant thing to note is that if he pays, then sub- section (7) provides :

"no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the Court....."

Similar are the provisions in Section 17 (1) for deposit in the West Bengal Premises Tenancy Act, 1956. The defense is liable to be struck out under sub- section (3). But then, if deposit is made, no decree or order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant is to be made by the Court.

13. On a comparison of the relevant provisions of the various State Statutes aforesaid with that of Section 11-A. of the Bihar Act, it would be noticed that the Bihar provision stands in glaring contrast to similar provision in the other Acts. Even on payment of all arrears of rent it does not relieve the tenant from his liability to be evicted on the ground of non-payment of rent. I have, therefore, differing from my own judgment, to which I shall refer hereinafter, ventured to take the view - as I thought it was just and proper to do so - that the expression "arrears of rent" occurring in Section 11-A must be interpreted to mean arrears of rent falling due during the period of the suit, which expression, in certain circumstances, may mean period of appeal or appeals, on the basis of the well known principle that an appeal is a continuation of the suit. But, in my considered judgment, it will be highly unjust, unreasonable and incongruous in the context and the nature of the Bihar provision, to permit the expression to embrace within its ambit arrears of rent which had accrued due prior to the institution of the suit. A provision like Section 11-A of the Bihar Act was not brought to our notice occurring in any other State Statute.

14. In *Bholanath Tewary v. Kuer Rup Narain Singh Trust*⁴, sitting singly, I took the view, following several Madras decisions given with reference to Section 114 of the Transfer of Property Act, that-

"..... I do not think that the court is concerned with the law of limitation while making an order under Section 11-A of the Act. It does not fix any period for which a direction for deposit of arrears of rent can be made. Nor is the period for such a direction fixed under the Limitation Act. That being so, on the principle that the remedy to claim a decree for arrears of rent may be barred under the law of limitation, right of the landlord to get his dues is not extinguished; nothing unreasonable happens nor is any injustice done if a tenant who wants to contest the suit for ejection is asked to pay arrears of rent for whatever period they may be due before he is allowed to contest the suit on the pain of penalty of striking out his defense in case he does not obey the direction of court under Section 11-A of the Act. A tenants may choose not to pay the arrears due for such period in respect of which the claim is barred if he wants to take shelter under the law of limitation and then very likely the landlord will not be able to realise the amount from him. But if he wants to contest the suit for his ejection and remain in the building, the law obliges him to pay all dues due from him on account of arrears of rent-current and future rent. On a careful and deep study of the matter, I revise my opinion, specially on a comparison of the provisions of the Bihar Act with those of the other State Acts. If the period of arrears of rent under Section 11-A of the Bihar Act is cut down to that of the pendency of the suit, the difficulty of limitation would not arise at all. It is doubtful whether Article 137 of the Limitation Act, 1963 will govern the filing of an application under Section 11-A of the Act, more so when the section in terms permits filing of such an application at any stage of the suit. But that apart, it will not be necessary to examine whether any portion of the claim made under Section 11-A in regard to the arrears of rent was barred on the date of the suit. I respectfully agree with the distinction made by Shambhu Prasad Singh, J., in Sashadhar Das's case AIR 1973 Patna 361 between provisions like Section 11-A of the Bihar Act and Section 114 of the Transfer of Property Act; in the latter, on payment of the barred debts the tenant is relieved of forfeiture of the lease. I may, however, add that I do not accept as correct, and again I say so with utmost respect, that a barred debt is not lawfully payable. In the *Managing Committee v. Tripurary Charan Palit*⁵ sitting singly. I pointed out that an application under Section 11-A in regard to the claim of arrears of rent in respect of the period prior to the institution of the suit cannot be defeated on the ground of

Order 2, Rule 2 (2) of the Code, as the word in sub-rule (2) is "sue". Shambhu Prasad Singh, J., if I may say so with respect, is not correct in opining in Sashadhar Das's case AIR 1973 Patna 361 as also in *Akhauri Mukhteshwar Pd. Sinha v. Smt. Urmila Saran*⁶, sitting with Mukherji, J., that because of the bar of Order 2, Rule 2 (2) of the Code the amount will not be lawfully payable. My two decisions aforesaid given sitting singly as also the Bench decision of Shambhu Pd. Singh and Mukherji, JJ., did not lay down the correct law and must be overruled. If the expression "arrears of rent" occurring in Section 11-A of the Bihar Act is held to mean, as I am going to do in these cases, arrears of rent accruing due during the pendency of the suit, then the question of the claim being barred

under Order 2, Rule 2 (2) of the Code does not arise at all. A second suit would be maintainable obviously for realisation of arrears of rent accruing due during the pendency of the first suit. Thus, on penetrating into the matter deep. I have not only discovered the reasonableness and justice of the interpretation which I have ventured to give in these cases, but also found the difficulty of the bar of limitation and Order 2, Rule 2 (2) of the Code coming to an end."

15. In Sashadhar Das's case AIR 1973 Patna 361, Shambhu Prasad Singh, J. has referred to the debate on the floor of the Bihar Legislative Assembly at the time Section 11-A was introduced in the Bihar Act and has opined-

"It appears that the intention of the legislature in inserting Section 11-A was to give some relief to the landlord in respect of the rent-arrears or current - for the period of the pendency of the litigation. It was not intended that Section 11-A should apply to arrears of rent accrued due prior to the institution of the suit, even though it is not lawfully payable. Rather it can be contended that under Section 11-A no order at all can be passed in respect of rent accrued due prior to the institution of the suit even though claimed in the suit." But since learned counsel for the petitioner did not challenge that part of the order, on that ground the point was not decided. If I may say so with respect, the seed leading to the conclusion to which I have arrived in my judgment was wisely and rightly sown by Shambhu Pd. Singh, J. and I have endeavoured to nurture it to grow into a plant."

16. In Maxwell on the Interpretation of Statutes (12th Edition) it has been mentioned at page 86.

"For it is a canon of interpretation that all words, if they be general and not precise, are to be restricted to the fitness of the matter, that is, to be construed as particular if the intention be particular."

In Craies on Statute Law (7th Edition) at pages 85-86 there is a passage which I can justifiably press into service in support of my view. It reads thus-

"It is always proper to construe an ambiguous word or phrase in light of the mischief which the provision is obviously designed to prevent and in light of the reasonableness of the consequences which follow from giving it a particular construction."

At page 87 it has been said-

"Where there are two meanings, each adequately satisfying the meaning (of a statute), and great harshness (sic) is produced by one of them, that has a legitimate influence in inclining the mind to the other..... it is more probable that the legislature should have used the word ('evade') in that interpretation which least offends our sense of justice If the inconvenience is not only great but what I may call an absurd inconvenience, by

reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not in its ordinary sense, there would not be any inconvenience at all; there would be reason why you should not read it according to its ordinary grammatical meaning."

There is a catena of decisions in support of what has been said by Tek Chand, J. in *First National Bank v. Sant Lal*⁷, that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the rights. The learned Judge has pointed out, further, in the same paragraph-

"In all personal actions, the right subsists although the remedy is no longer available. If, therefore, a creditor, whose debt becomes statute barred, has any means of realizing and enforcing his claims by any method except by a suit, the Limitation Act does not prevent him from recovering his debt by such means. After a debt becomes barred, a person is still deemed to owe. In case he pays the amount after the expiration of the period of limitation, he cannot, after having paid his debt, claim to be entitled to recover it back, on the ground that the time barred debt was not 'money due' or 'owing'." The learned Judge has further pointed out-

"It is a well established proposition that payment of a time barred debt, is a valid consideration for transfer of property. Similarly, an agreement in writing undertaking to pay a time-barred debt is lawful and binding. Again, a creditor can adjust a payment made by a debtor who owes several debts, towards a debt which had become time-barred."

If a time-barred debt is not lawfully payable, then the propositions aforesaid will militate against it. Similarly, Mahajan, J. has also quoted a passage in Rullia Ram's case (AIR 1962 Punjab 256) (FB) (supra) (at page 258, paragraph 10) from Rustomji on Limitation, 6th Edition, at page 316, I may repeat the quotation :

"The Limitation Act with regard to personal actions merely bars the remedy by suit, but does not extinguish the debt or demand; and none of the Articles in the schedule, except those to which Section 28 can be applied, has an extinctive operation on primary rights. A debt does not cease to be a debt because its recovery is barred by the statute of limitation, limitation extinguishes the remedy, but except in the case covered by Section 28, does not destroy the right. Section 28 applies only to suits for possession of property and has no application to the case of a debt." In Halsbury's Laws of England (3rd Edition), Volume 24 it is stated at page 205, Article 369-

"Except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set-off; it leaves the right otherwise untouched, and, if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set-off, the Act does not prevent him from recovering by those means." In some cases, in India, even in regard to set-off, a departure has been made from the principle of law in England. But that apart it is clear that if the payment of a barred debt could not have been

lawfully payable, Section 23 of the Contract Act could have made a contract to pay the barred debt unlawful. Section 25 (3) is an exception to the principle that an agreement without consideration is void, but not an exception to Section 23."

17. In *Surat Borough Municipality v. Sarifa Karunnissa*⁸ Lokur, J. sitting singly, took the view that the right of the Municipality under Section 105 of the Bombay Municipal Boroughs Act is not lost by lapse of time as it does not prescribe any period of limitation. The periods of limitation prescribed for filing a suit under the Limitation Act govern the procedure in a Court of Law and the powers of the Municipality acting under the provisions of Sections 104 and 105 of the said Act are not governed by the Limitation Act. It is because of the principles aforesaid that in my earlier decision, sitting singly, I did not curtail the application of Section 11-A on the ground of limitation. In *Curwen v. Milburn*⁹, Cotton, L. J., sitting in the Court of Appeal, has said at page 434-

"Statute-barred debts are due, though payment of them cannot be enforced by action."

The decision of Lord Hanworth, Master of the Rolls, in *Allen v. Waters and Co*¹⁰, also changed my mind and compelled me to take a view which I have taken today. While interpreting the words of sub-section (2) of Section 16 of the Statute which was under consideration there, the learned Master of the Rolls said at pp. 210-211-

"I come, therefore, to look, as after all one must look, at the actual words of Section 16, sub-section (2). They are simple; 'Any expenses recoverable under this section shall, without prejudice to any other remedy, be recoverable' not 'recovered', but 'recoverable'- 'summarily as civil debt'. They may be recovered by suit in accordance with Section 16, sub-section (1), but they may, in addition, because that power is without prejudice to other remedies, be recovered summarily as a civil debt. There is no direction to proceed in one Court only, and the expenses may be recovered in whatever Court is chosen, and, having regard to the decisions to which I have referred, it appears to me that, if it is sought to recover them in the county court, that can be done free of the restrictions which belong to a recovery before justices, which, after all is a summary proceeding and in respect of which there is not the same facility for examination and discussion as is provided in the county court."

The earlier law which I had laid down was just the reverse. Recovery of arrears of rent by the summary procedure of Section 11-A in the suit was held to be not circumscribed by the period of Limitation while in a regular suit it would be so. Cave, J., as he then was, in *Re. Hepburn, Ex parte Smith* [(1884) 14 QBD 394] pointed out at pages 399-400-

"In the case of a debt the ordinary and universal remedy is by action against the debtor. There may, however, and sometimes does exist another remedy, not by action against the debtor, but arising out of the possession of property of the debtor which by law or contract may be detained by the creditor until the debt is paid. This latter remedy may exist, although the remedy by action is barred; and in that case the debt continues to exist so far

as is necessary for the enforcement of this right of lien but not for enforcing the remedy by action." If restricted meaning were not to be given to the expression "arrears of rent" occurring in Section 11-A of the Bihar Act, remedy by suit may be barred, but the remedy by Section 11-A will not be barred, resulting in great injustice to tenants and depriving them of their right to contest the suit for ejection under coercion of striking out their defense if all arrears, whether barred or not, are not paid."

18. During study and discussion of the point at issue a decision of the Privy Council in *Hansraj Gupta v. Official Liquidator of Dehra Dun etc. Company*¹¹ came to our notice. The Company had gone into liquidation in the year 1926. In the year 1928 the Official Liquidator filed an application under Section 186 of the Indian Companies Act, 1913 for recovery of three amounts of debts due from the contributory debtor. The question was, whether the debts could be recovered under the said provision of law, if their recovery by suit was barred in the year 1928. A suit in accordance with Section 179 of the Indian Companies Act would have been barred. Rejecting all arguments advanced on behalf of the debtor, ultimately the success was on the ground as mentioned by Lord Russell at page 1079 :

"Whether, in view of the particular terms of the Indian Limitation Act already referred to, such a case could happen in India depends upon the meaning to be attributed to the words in the section 'any money due from him or from the estate of the person whom he represents to the company'. And their Lordships are satisfied that the position in this respect is, in India, the same as in this country, for the reason that, in view of the place and context in which these words are found, they must be confined in their Lordships' judgment to money due and recoverable in a suit by the company, and they do not include any moneys which at the date of the application under the section could not have been so recovered."

Therefore, for the reason that in view of the place and context in which the expression "any money due" occurred, they were confined, in their Lordships' judgment, to money due and recoverable in a suit by the Company. Giving full expression to the words added by Lord Russell in the interpretation of the expression, I am inclined to take the view that the expression "arrears of rent", occurring in Section 11-A of the Bihar Act means arrears of rent recoverable in another suit by the landlord. It will thus be seen that if the money is already claimed in a suit, a second suit will not be maintainable. If it is not claimed, the second suit would be barred under Order 2, Rule 2 (2) of the Code. The question of limitation with regard to the claim for the period prior to the institution of the first suit will not be relevant. I, however, must hasten to add that I do not mean to suggest that if the claim for arrears of rent falling due during the pendency of the suit is not recoverable by institution of a second suit on the date when the application under Section 11-A of the Bihar Act is filed, then on the analogy of *Hansraj Gupta's case* ILR 54 Allahabad 1067 : (AIR 1933 PC 63) (supra) the money will not be recoverable, because here the expression is that such an application can be filed at any stage of the suit. I am aware that this decision of the Privy Council was distinguished in cases where a new statutory liability was created such as in respect of call money due from a contributory. But Section 11-A of the Bihar Act does not create any new statutory liability.

19. For the reasons stated above, I hold that no arrears of rent in respect of any period prior to the institution of the suit can be directed to be deposited under Section 11-A of the Bihar Act, and the contrary view expressed earlier in my decisions or in the Bench decision in Sashadhar Das's case AIR 1973 Patna 361 and the decision of the same Bench in Akhauri Mukhteshwar Prasad Sinha's case (AIR 1973 Patna 424) must be held to be bad law. In view of the answer aforesaid given to the first point urged on behalf of the defendant petitioner in both these cases, it is clear that no specific answer is called for to the second and third points urged on their behalf.

20. In the result, I allow Civil Revision No. 856 of 1971 and set aside the order dated the 17th June, 1971 of the court below directing the petitioner to deposit arrears of rent due from 1-4-1964 to 1-8-70. Civil Revision No. 1314 of 1970 is allowed in part and the direction given to the defendant to deposit arrears of rent in respect to any period prior to the institution of the suit, whether barred by the law of limitation or not is knocked down. There will be no order as to costs in any of the civil revision applications.

K.B.N. Singh, J.

21. I agree that no arrears in respect of any period prior to the institution of the suit can be directed to be deposited under Section 11-A of the Bihar Act. I also wish to add that filing of an application under Section 11-A of the Bihar Act is not circumscribed by any period of limitation, and all arrears of rent accruing during the pendency of the suit, which expression in certain circumstances may mean pendency of appeal or appeals, as observed by his Lordship the Chief Justice, can be ordered to be deposited. Such an application is not governed by Article 52 of the Limitation Act which applies to suits only, and an application under Section 11-A of the Bihar Act obviously is not a suit. The scope of Article 137 of the New Limitation Act (Act XXXVI of 1963) is not different from the scope of Article 181 of the Old Limitation Act (Act IX of 1908), to cover such an application, as observed by their Lordships of the Supreme Court in the cases of the *Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli*¹², and the *Management of the S. B. I., Hyderabad v. Vasudeva Anand*¹³, This question, however, has been left open in the case of *Nityanand M. Joshi v. The Life Insurance Corporation of India*¹⁴ Be that as it may, it was open to the Legislature to free an application under Section 11-A of the Bihar Act from the fetters of the law of limitation for giving relief to the landlord for whose benefit it was enacted. In my opinion, by providing for filing of an application under Section 11-A to be filed 'at any stage of the suit', the Bihar Legislature intended such an application to be not circumscribed by way of limitation. The Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1955 (Bihar Act III of 1955), which incorporated Section 11-A in the Bihar Act (Bihar Act III of 1947), having been assented to by the President of India under Article 254 (2) of the Constitution, its provisions will prevail, even if Article 137 of the Limitation Act were to cover such application.

S.K. Jha, J.

22. I entirely concur in all that has been said by my Lord the Chief Justice. In this case I believe that the question is a very short one and to my mind very plain. The whole question turns, in the first instance, upon what is the meaning of the words "the arrears of rent" in Section 11-A of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 [Bihar Act 3 of 1947]. It is clear

that the term is not free from ambiguity. Some decisions have taken the view that it means all arrears of rent lawfully payable, which in its turn includes even arrears the recovery of which is barred by the statute of limitation or otherwise. The cases of Bhola Nath Tiwary, 1967 BLJR 397 and the *Managing Committee v. Tripurari Charan Palit*¹⁵, are of this nature. Some other decisions have taken the view that arrears of rent lawfully payable connote only such arrears as are legally recoverable and, therefore, not barred by limitation and with regard to which a claim for recovery has been made in the suit itself. In such latter type of cases it has also been held that the absence of a relief for recovery of arrears of rent in the suit itself will preclude the plaintiff-landlord from claiming such arrears under Section 11-A of the Act, being barred by the principles of Order 2, Rule 2 of the Code of Civil Procedure. The cases of Sashadhar Das, AIR 1973 Patna 361 and Akhauri Mukhteshwar Prasad, AIR 1973 Patna 424 fall under this category, Yet, another point of view has faintly been suggested in the case of Sashadhar Das, AIR 1973 Patna 361 (supra) by Shambhu Prasad Sinha, J. that the term may possibly be said to mean such arrears as accrue and fall due during the pendency of the suit. Therefore, I must overrule the contention put forward by Mr. Guneshwar Prasad that the term is absolutely unequivocal. That is the starting point upon which I found my observations.

23. It is true that the Court which is to construe an Act of a legislature has to determine the intention as expressed by the words used and in order to understand those words it is material to enquire what the subject-matter is with respect to which they are used, and the object in view. As was observed by Lord Davey in the case of *Canada Sugar Refining Company v. R*¹⁶, and quoted with approval by Subba Rao, J. (as he then was) in a decision of the Supreme Court in *M. Pentiah v. Muddala Veeramallappa*¹⁷ at page 1111 :

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

And for such a construction the object of the particular statutory provision, the mischief sought to be remedied have to be ascertained. And for this purpose it will have to be seen as to what was the law immediately before the insertion of Section 11-A in the Act by the Bihar Act 16 of 1955. As Maxwell says in his *Interpretation of Statutes* (12th Edition) at page 64 :

"The course which legislation on a particular point has followed often provides as indication as to how the Act at present in force should be interpreted." The provisions of law engrafted in Section 11 before the aforesaid Amending Act of 1955 will also have to be taken into consideration in this context. Section 11 as it stood before the amendment of 1955 conferred a power on the Controller in very sweeping terms. It had entrusted the Controller with the jurisdiction including the jurisdiction to determine whether there was non-payment of rent or not as well as the jurisdiction to order eviction of a tenant on a finding that there was non-payment of rent. Even if the Controller had wrongly decided the question regarding the non-payment of rent, his order for eviction on the ground that there had been non-payment of rent could not be questioned in a Civil Court. (*C. F. Rai Brij Raj Krishna v. S. K. Shaw and Brothers*¹⁸). The application for eviction of tenants

under Section 11 of the Act as it stood before the amendment had to be made before the Controller on any of the grounds mentioned therein and the Controller's decision was not subject to review by the Civil Courts. The whole proceeding before the Controller was more or less of a summary nature, the disposal of which ordinarily and generally was not likely to consume even a small fraction of the time taken by competent Civil Courts for disposal of suits in the ordinary way. The Legislature had not, therefore, thought it fit at that time to provide for any interim relief to the landlord. As has already been observed by the learned Chief Justice, the Bihar Act 16 of 1955 brought about a radical change in the scheme of Section 11. After the amendment actions for eviction of tenants have to be brought in the ordinary Civil Courts and the tenant is not liable to eviction except in execution of a decree passed by the Court on one or more of the grounds mentioned in Section 11. Since such a litigation was in the very nature of things contemplated to be a rather protracted one, it would have been too harsh upon the landlord-plaintiff who sought to evict his tenant to remain deprived of his rent for all the period during which the action at law continued. Section 11-A was accordingly inserted in the statute book laying down that the tenant contesting the suit regarding claim for ejection shall, if the Court on an application made by the landlord orders for deposit of rent at such rate as may be determined by the Court month by month and the arrears of rent. The failure to deposit such arrears or rent month by month put the tenant-defendant to the jeopardy of his defense being struck out, but not relieving him of his liability to be finally evicted either for default in payment of rent within the meaning of Section 11 (1) (d) or any of the other grounds mentioned in that section."

24. It is in my view plain that the subject-matter of Section 11-A was the right or privilege theretofore not enjoyed by the landlord except by way of a protracted litigation for recovery of damages for use and occupation. It is equally clear that the object of Section 11-A was to confer on the landlord a right to enjoy the income of his building by a summary adjudication under Section 11-A while the course of litigation took its own time. And as observed by Craies on Statutes Law (7th Edition) at page 117 :

"In cases of doubt, Courts will lean to a construction that an enactment is not intended to impose a serious new obligation, but only to provide new or better means of enforcing the existing obligation."

Section 11-A imposes a new obligation on the tenant if he chooses to contest the claim for ejection. The other construction, namely, that all arrears of rent lawfully payable for howsoever long a period and irrespective of whether accrued before the institution of the suit or not would be to place upon the tenant an absurd inconvenience and palpable injustice, for even in spite of his depositing the arrears of rent for, say ten years, the corresponding privilege that he gets under Section 11-A is merely a relief from his defense being struck out-not making him immune from eviction even on payment of such arrears. It is for occasions arising as in the present case that it has been said by Craies on Statute Law (7th Edition) at page 87 :

"If too literal adherence to the words of the enactment appears to produce an absurdity or an injustice, it will be the duty of a Court of construction to consider the state of the law at the time the Act was passed, with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation, or where it may not be desirable to put upon the language used a secondary, or restricted meaning, or perhaps to adopt a construction not quite strictly grammatical."

If, therefore, we construe the term "arrears of rent" in Section 11-A as confined to the period after the institution of the suit and during the pendency of the action, which construction I think is the only proper construction, every abuse meant to be corrected can be corrected on the interpretation that we take. It is a right of the landlord which trenches upon the tenants' old freedom, and occurring as it does in a Statute providing relief to the tenant from undue harshness (sic) in the matter of his eviction, it certainly appears to me to be unreasonable in its nature as well as oppressive in its exercise, and unneeded for the legitimate prosecution of, the tenant's defense to the landlord's suit for eviction.

25. As may be noticed from the provisions of the other State Statutes relating to the subject-matter which has been elaborately discussed by my Lord the Chief Justice, most of such statutes have provided a relief against forfeiture on account of non-payment of rent on the part of the tenant- defendant in the event of his paying all arrears of rent, whether recoverable or not. Such provisions analogous to Section 114 of the Transfer of Property Act which afford relief to the tenants against forfeiture is in the very nature of things bound to embrace within its sweep all arrears of rent whatever lawfully payable though not legally recoverable. For, the quintessence of relief against forfeiture is the equitable principle being enforced both by Courts of equity and common law for long times. The true foundation of the relief in equity in all these cases is, that, as the penalty is designed as a mere security, if the party obtains his money, or his damages, he gets all that he expected, and all that, in justice, he is entitled to. In reason; in conscience, in natural equity, there is no ground to say, because a man has stipulated for a penalty in case of his omission to do a particular act (the real object of the parties being the performance of the Act), that, if he omits to do the act, he shall suffer an enormous loss, wholly disproportionate to the injury to the other party. If it be said, that it is his own folly to have made such a stipulation, it may equally well be said, that the folly of one man cannot authorise gross-oppression on the other side. Where a penalty or forfeiture is designed merely as a security to enforce the principal obligation, it is as such against conscience to allow any party to pervert it to a different and oppressive purpose, as it would be to allow him to substitute another for the principal obligation. The whole system of equity jurisprudence proceeds upon the ground, that a party having a legal right, shall not be permitted to avail himself of it for the purposes of injustice, or fraud, or oppression, or harsh and vindictive injury. Founded upon these principles, wherever relief against forfeiture is provided for it enures to the advantage and benefit of both the parties. While the tenant enjoys the immunity from eviction for default in the payment of rent, the landlord gets the corresponding benefit of recovering even such arrears as are not legally recoverable. The harshness is commensurate with the advantage that either party obtains in such a state of affairs.

26. This equitable doctrine either on the principles of Section 114 of the Transfer of Property Act or on the analogy of such statutory provisions in other State Statutes cannot be invoked for the purpose of construing Section 11-A of the Bihar Act. And the terms "arrears of rent" in that

section being confined to the period after the institution of and during the pendency of the litigation does not warrant the principles of Order 2, Rule 2 of the Code of Civil Procedure standing as a bar to the grant of such interim relief in cases where no claim for recovery of arrears of rent has been made in the suit itself.

C. R. 856 of 1971 allowed.

Cases Referred.

¹(AIR 1973 Pat 361)

²(AIR 1963 Pat 415) (FB)

³(AIR 1962 Punjab 256) (FB)

⁴(1967 BLJR 397)

⁵(AIR 1973 Pat 60)

⁶(AIR 1973 Pat 424)

⁷(AIR 1959 Pun 328 at p. 330 paragraph 12)

⁷(AIR 1939 Bom 494)

⁹(1889) 42 Ch D 424)

¹⁰(1935) 1 KB 200

¹¹ ILR 54 All 1067 : (AIR 1933 PC 63)

¹²(AIR 1969 SC 1335)

¹³(AIR 1970 SC 196)

¹⁴(AIR 1970 SC 209)

¹⁵ AIR 1973 Pat 60

¹⁶1898 AC 735

¹⁷(AIR 1961 SC 1107)

¹⁸1951 SCR 145. (AIR 1951 SC 115)