REVISIONAL CIVIL

Before Bishan Narain, J.

SHRI KRISHNA AGGARWAL.—*Petitioner.*

versus

SATYA DEV,—*Respondent*

Civil Revision No. 426 of 1958

1959

May, 12th

Delhi Rent Control Act (LIX of 1958)—Section 57—Scope and effect of—Whether applies to suits only or to appeals and revisions as well—Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Proceedings for fixation of fair rent and for eviction of tenants pending under—Whether affected by Act, LIX of 1958—Interpretation of Statutes—purpose and principles of—Proviso—Purpose and construction of.

Held, that Section 57(2) of the Delhi Rent Control, Act, 1958, specifically lays down that cases and proceedings filed before the new Act came into force must be decided in accordance with the old Act, as if the old Act had not been repealed and the new Act had not been enacted. The consequence of enacting section 57(2) is that the 1958 Act must be applied prospectively and not retrospectively. The first proviso to section 57(2) is directory in character and not mandatory. Reading section 57(2) and the first proviso together, the conclusion is that the courts and the authorities under the old Act are bound to decide the case in accordance with the provisions of that Act but discretion has been conferred on them to take into consideration the provisions of the new Act when it considers it necessary in a proper case and in the interests of justice. To this limited extent it can be said that the proviso has a retrospective effect.

Held, that it is well-established that a statute is not to be so construed as to give it greater retrospective operation than its language renders necessary. The first proviso to section 57(2) of the Delhi Rent Control, Act, 1958, is limited to suits or proceedings and does not extend to appeals which have been specifically provided in the second proviso. There is no reason whatever for extending the scope of the

first proviso to appeals or revisions. There is a reason why the legislature did not intend to extend its scope to appeals or revisions. At the stage of trial, the Court may call upon the parties to establish the right claimed under the new Act, mould its proceedings and examine the evidence of the parties in accordance with the provisions of the Act whenever the Court considers it proper or necessary to do so in the interest of Justice. At the stage of appeal such a course would necessitate a remand and further delay in the disposal of the case. This argument of convenience cannot be ignored. It may also be pointed out that the legislature has used the word "appeal" in the second proviso in its generic sense and includes revisions because it would be absurd to hold that the second proviso applies to appeals and not to revisions.

Held, that the purpose of construing a statute is primarily to ascertain the intention of the legislature and it should be so construed as to bring out that intention. It is well-settled that in construing a statute every part and every word thereof must be given effect to if at all possible. A proviso to a section stands in no different position. Generally, though not invariably, the primary purpose of a proviso is to limit or qualify the operation of the principal section or enactment to which it is attached. It follows that the proviso should be so construed as to be in harmony with the principal section whenever possible, The Courts must lean against construing a proviso so as to completely destroy the operation of its principal clause because after all it cannot be assumed that the legislature intended to enact a provision only to change its mind immediately after and to repeal it by enacting a proviso thereto. Therefore, the principal clause and the proviso must be read and construed together.

Petition under Section 35 of Act XXXVIII of 1952 for revision of the order of Shri Pritam Singh, Additional Senior Sub-Judge, Delhi, dated the 27th May, 1958, confirming that of Shri Dev Raj Khanna, Sub-Judge, II Class, dated the 20th August, 1957, dismissing the appeal with costs, and accepting the cross-objections filed by the respondent-plantiff and the condition attached by the trial Court, that the plaintiff would be entitled to obtain ejectment if he filed affidavits of himself, of his father and the proposed father-in-law that his marriage would take place

within the next three months, is set aside and the decree of the trial court is modified to that extent.

GURBACHAN SINGH, for Petitioner.

S. N. CHOPRA and ADADH BEHARI, for Respondent.

JUDGMENT

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BISHAN NARAIN, J.—The premises known as 2 Todar Mal Lane, New Delhi belonged at one time to Lakhmi Chand. He let the same to Sri Krishan Aggarwal for purposes of residence on a monthly rent of Rs. 38-3-0. Lakhmi Chand gifted the premises to his son Satya Dev on 19th June, 1956. The donee filed the present suit for eviction of the tenant on 27th August, 1956, on the ground that he required the premises *bona fide* for his residence and that he had no other suitable place for this purpose. The tenant *inter alia* pleaded (1) that there was no relationship of landlord and tenant between the parties and (2) that the plaintiff did not *bona fide* require the premises for his residence. The trial Court rejected both these defences but made the ejectment decree conditional on the filing of an affidavit that the plaintiff's mariage would take place within the next three months. The tenant appealed against the ejectment decree while the landlord filed cross-objections to get the condition set aside. The Additional Senior Sub-Judge, Delhi dismissed the tenant's appeal and accepted the cross-objections. The tenant has filed his revision petition under section 35 of the Rent Control Act, 1952, and has challenged the decision of the lower Court on both points.

Now Lakhmi Chand was possessed of family property and also acquired property. He has three sons. The family resided in a Joint Family

house situated on Panchkuin Road, New Delhi. On 8th December, 1954, the Joint Family property was partitioned and this house at Panchkuin Road fell to the share of Arjan Dev, another son of Lakhmi Chand. In the partition-deed the house in dispute was described as the acquired property of Lakhmi Chand and was not partitioned. The family, however, according to the tenant's counsel continued residing in the Panchkuin Road house. On 19th of June, 1956; the house now in dispute was gifted to the plaintiff and the possession was duly delivered to him. In these circumstances the lower courts rightly held that the petitioner became the tenant of Satya Dev by operation of law.

Admittedly the Panchkuin Road house consists of three rooms and a *Barsati.* Arjan Dev has a wife and three minor cridren. His parents are also staying with him. There is, therfore, no accommodation for the plaintiff who is 24 years old in the Panchkuin Road house particularly when he is anxious to get married. It has been found that he has no other suitable accommodation for his residence. In these circumstances both the lower courts have held that the plaintiff's requirement is *bona fide.* No cogent reason has been advanced before me for setting aside this finding of fact. I, therefore, hold that the plaintiff is entitled to evict the tenant under section 13(1) (e) of the Delhi and Ajmer Rent Control Act, 1952.

The learned Counsel then raised a new point which requires consideration. The Delhi Rent Control Act (No. 59) of 1958, came into force on 9th February. 1959, during the pendency of the present revision and after the suit and the appeal had been decided. Section 13 of the 1952 Act lays down the grounds on which a tenant can be

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evicted while 1958 Act deals with this subject in Section 14. Under Section 14(6) of the 1958 Act a landlord who acquires the premises by transfer cannot get a tenant evicted on the ground that he wanted *bona fide* the premises for his own or his family's residence unless five years have elapsed from the date of acquisition. This limitation on landlord's rights did not exist in the 1952 Act. It is urged on behalf of the tenant that in the present case five years have not elapsed since acquisition and therefore Satya Dev is not entitled to a decree for eviction. The learned counsel requested me to mould the decree so as to bring it in consonance with the provisions of Section 14(6) of the 1958 Act and for this purpose relied on the first proviso to section 57(2) of the Act. Section 57 reads:—

> "57. Repeal and Savings. (1) The Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), in so far as it is applicable to the Union territory of Delhi, is hereby repealed.
>
> 2. Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed:
>
> Provided that in any such suit or proceeding for the fixation of standard rent or for the eviction of a tenant from any premises to which section 54 does not apply, the court or other authority shall have regard to the provisions of this Act:

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

Section 54 of the new Act does not apply to the present case as the property is neither evacuee property nor is situated in the Slum Area. The Delhi Tenants (Temporary Protection) Act has no application to a case in which eviction is sought on the ground of landlord's *bona fide* requirement. It is therefore necessary to consider the effect of the proviso to section 57(2) of the new Act on the present case.

Now the Rent Control Act of 1958 lays down the rights and liabilities of landlords and tenants and the power of enforcing them. Its provisions materially alter and modify these rights and also the procedure laid down in 1952 Act. The nature of evidence required for fixation of standard rent and for eviction of a tenant under the New Act is materially different from that required under the old Act. Section 57(1) repeals the old Act in its entirety. However the rights and liabilities acquired by virtue of the 1952 Act are not taken away by this repeal. This is clear from section 6 of the General Clauses Act. In the present case the legislature has inserted sub-clause (2) to Section 57 to make it abundantly clear that cases pending on the day that the new Act came into force shall be decided according to the substantive rights and procedure prescribed by the old Act. The position thus far is clear. The legislature then proceeds to enact the first proviso which lays down that Court or other Authority concerned in such cases shall have regard to the provisions of the 1958 Act so far as they relate to fixation of standard rent and to eviction of a tenant.

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Relying on this proviso Shri Gurbachan Singh on behalf of the tenant has argued that this proviso is mandatory in character and the Courts are bound to apply the provisions of 1958 Act when deciding a suit or proceedings filed under the old (1952) Act and also at the stage of appeal and revision. The learned counsel particularly relied on the word "shall" in the phrase "shall" have regard to the provisions of this Act".

Now the purpose of construing a statute is primarily to ascertain the intention of the legislature and it should be so construed as to bring out that intention. It is well-settled that in construing a statute every part and every word thereof must be given effect to if at all possible. A proviso to a section stands in no different position. Generally, though not invariably, the primary purpose of a proviso is to limit or qualify the operation of the principal section or enactment to which it is attached. It follows that the proviso should be so construed as to be in harmony with the principal section whenever possible. The Courts must lean against construing a proviso so as to completely destroy the operation of its principal clause because after all it cannot be assumed that the legislature intended to enact a provision only to change its mind immediately after and to repeal it by enacting a proviso thereto. Therefore the principal clause and the proviso must be read and construed together. As observed by Lord Wright in *Jennings and another* v. *Kelly* (1), "the proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest. I do not think that there is any other rule even in the case of a proviso in the strictest or narrowest sense."

(1) 1940 A.C. 206 at p. 229

Bearing these rules of construction in mind it is clear that the contention of Shri Gurbachan Singh is not sound. Section 57(2) specifically lays down that cases and proceedings filed before the new Act came into force must be decided in accordance with the old Act, as if the old Act had not been repealed and the new Act had not been enacted. The consequences of enacting section 57(2) is that the 1958 Act must be applied prospectively and not retrospectively. If the proviso is held to be mandatory then it must be held that the New Act is retrospective in effect and all pending cases must be decided in accordance with the later Act. If the legislature intended to make the new Act retrospective it would have said so in clear express terms. It would not have done so in this round-about way. A statute involving substantive rights and affecting vested rights under the old Act should not be given retrospective effect unless expressly or by necessary implication such a result is inevitable and cannot be avoided. The legislature has used no such words in the present case. Moreover if the proviso is held to be mandatory in character then it would be completely destructive of sub-clause (2) which is the principal Clause and it will not be a sound principle of construction to bring about such a result without compelling reasons. There are no such compelling words in the proviso in the present case. I am, herefore, of the view that the first proviso to section 57(2) is directory in character and not mandatory.

This conclusion is supported by the phraseology used by the legislature. The phrase "shall have regard to the provisions of this Act" only indicates that the Court shall take the provisions of the new Act into account in regulating its decision. This phrase cannot mean that the Courts

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are bound to enforce the provisions of the New Act. Reading Section 57(2) and the first proviso together. I am of the opinion that the Courts and the authorities under the old Act are bound to decide the case in accordance with the provisions of that Act but discretion has been conferred on them to take into consideration the provisions of the new Act when it considers it necessary in a proper case and in the interests of justice. To this limited extent it can be said that the proviso has a retrospective effect.

Shri Gurbachan Singh then argued that in any case this Court on the revision side may exercise its discretion and decide the present case in accordance with the provisions of the new Act particularly when admittedly the transfer had been made only a few months before the present suit was filed. His contention is that the proviso is applicable at the stage of appeal and revision also. I think not. I have already held that the proviso is to a certain extent retrospective in effect. It is, however, well-established that a statute is not to be so construed as to give it greater retrospective operation than its language renders necessary. Section 57(2) lays down that suits and other proceedings pending at the commencement of the 1958 Act shall be disposed of under the old Act. The proviso then says that provisions of the new Act may be taken into consideration in a suit or proceedings for fixation of standard rent or for eviction of a tenant. The second proviso then says that appeals from suits or proceedings so disposed of shall be according to the provisions of the old Act. In this context the legislature has specifically and separately provided for appeals and has not treated appeals as mere continuation of suits or proceedings. If this be so then the first proviso is limited to suits or proceedings and does not extend to appeals.

There is no reason whatever for extending its scope to appeals or revisions. In my view there is a reason why the legislature did not intend to extend its scope to appeals or revisions. At the stage of trial, the Court may call upon the parties to establish the right claimed under the new Act, mould its proceedings and examine the evidence of the parties in accordance with the provisions of the Act whenever the Court considers it proper or necessary to do so in the interest of Justice. At the stage of appeal such a course would necessitate a remand and further delay in the disposal of the case. This argument of convenience cannot be ignored. I may say here that the legislature has used the word "appeal" in the second proviso in its generic sense and includes revisions because it would be absurd to hold that the second proviso applies to appeals and not to revisions. I am of the view that the provisions of the first proviso do not apply to an appeal or revision. That being so section 14(6) of the new Act has no application to the present case and the contention of the learned Counsel for the tenant fails.

For these reasons I see no force in this revision and dismiss it with costs.

Parties agree that the petitioner be given two months' time from today to vacate the premises i.e., the petitioner must vacate the premises on or before 12th July, 1959. I order accordingly.

B.R.T.

CIVIL WRIT

Before G. L. Chopra, J.

M. P. BAKSHI,—*Petitioner.*

versus

LIFE INSURANCE CORPORATION OF *INDIA*,—

Respondent

Civil Writ No. 841 of 1958

1959

May, 12th

Constitution of India (1950)—Article 226—High Court—Whether has jurisdiction to set aside an order of an authority located in another State when the order takes effect in the territory of the High Court.