APPELLATE CIVIL

Before D. Falshaw, J.

FIRM BULAQI DASS-MADAN MOHAN AND ANOTHER,—*Appellants.*

versus

RAM SARUP,—*Respondent.*

Cvil Revision No. 304-D of 1958.

1959

Dec., 3rd

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—S. 13 (2) "arrears of rent then due"—Meaning of—Delhi Rent Control Act (LIX of 1958)—Ss. 14, 15 and 57—Effect of—Interpretation of Statutes—Act amended or repealed and superseded by another Act containing similar provisions—Effect of.

Held, that having regard to the proviso to sub-section (2) of section 57 of the Delhi Rent Control, 1958, the provisions of sub-sections (1) and (2) of section 14 and sub-section (1) of section 15 shall apply to the proceedings pending at the commencement of the said Act and not the corresponding provisions of the Delhi and Ajmer Rent Control Act, 1952. According to section 15(1) of 1958 Act the deposit of arrears of rent legally recoverable will enable the tenant to avoid his ejectment and consequently if at the commencement of the 1958 Act, proceedings were pending under the 1952 Act for the ejectment of a tenant on the ground that he had not deposited the arrears of rent which were time-barred, the landlord will not be entitled to a decree of ejectment as time-barred rent is not legally recoverable. After the coming into force of the 1958 Act "the arrears of rent then due" in section 13(2) of the 1952 Act will mean the arrears of rent which the landlord was then lawfully entitled to recover.

Held, that when an Act is amended or repealed and superseded by an Act in which essentially the same provisions are repeated in slightly changed form, the amendment of the provision in question is intended to give effect to and clarify what was all along the intention of the legislature and the amendment is introduced simply on account of the fact that the courts have not interpretted

the previous provisions as they were intended by the legislature to be interpretted.

Application under Section 35 of the Delhi and Ajmer Rent Control Act of 1952 and section 115 C.P.C. for revision of the decree of the Court of Shri Radhey Krishan Baweja, Senior Sub-Judge, Delhi, dated the 17th day of May, 1958, affirming that of Shri P. R. Aggarwal, Sub-Judge, 1st Class, Delhi, dated 31st October, 1957, decreeing the plaintiff's suit with costs.

V. P. JOSHI, for Appellant.

K. K. RAIZADA, for Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J.—This is a tenant's revision petition against a decree for ejectment passed by the trial Court and confirmed by the Court of Appeal.

The facts are that the petitioner took on lease a godown from the respondent landlord in 1947, at a rent of Rs. 50 per mensem. No rent seems to have been paid since July, 1948, and on the 20th of July, 1956, the landlord instituted a suit for ejectment on the ground of non-payment of rent claiming that Rs. 4,360 were due as arrears of rent.

At the time the suit was filed it appears that an appeal by the tenant was pending against an order of a Subordinate Judge fixing the standard rent of the premises at Rs. 40 per mensem, and the tenant applied for proceedings in the suit to be stayed pending the decision of that appeal. The trial Court refused to stay the proceedings and the tenant went in revision to this Court. The revision came before A. N. Bhandari, C.J., on the 25th of March, 1957, and he ordered the stay of proceedings in the suit pending the decision in the appeal regarding the standard rent, and at the

same time ordered that the tenant should deposit in the trial Court rent due at Rs. 40 per mensem for the period starting from the 16th of July, 1953, i.e., three years preceding the date of the institution of the suit.

The standard rent was eventually fixed in appeal at Rs. 35 per mensem with effect from the 14th of March, 1953.

It seems that the tenant complied with the order of the learned Chief Justice but his ejectment was ordered on the ground that the expression "arrears of rent then due" in section 13(2) of the Delhi and Ajmer Rent Control Act of 1952, included even rent which the landlord was debarred from claiming on the ground that the claim had become barred by time. This decision was upheld in appeal on the strength of the decision in *Ramrao Raoji Palker* v. *Amir Kasam Bhagwan* (1), in which it has been held as under:—

> "The word 'rent then due' in section 12(3) (b) (a similar provision) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, means all rent in arrears or outstanding, including rent which cannot be recovered through the process of the Court owing to the bar imposed by the Indian Limitation Act, 1908."

On behalf of the tenant it is contended that the decision of the Courts below is wrong in view of the order of the learned Chief Justice to which I have referred. It is, however, clear from that order that the provisions of section 13(2) of the Act were not under consideration at all, but only the questions whether the suit for ejectment should

(1) LVIII Bombay Law Reporter 284

Firm Bulaqi Dass-Madan Mohan and another *v.* Ram Sarup

Falshaw, J.

be stayed pending the final fixation of the standard rent, and what rent should be ordered to be deposited under the terms of section 13(5), which is applicable to all suits for ejectment and not merely to suits for ejectment on the ground of non-payment of rent. In the circumstances I consider that the order cannot be regarded as a final decision on the question whether section 13 (2) has been properly complied with.

It has, therefore, to be considered what is the meaning of words "arrears of rent then due" in sub-section (2) and there is no doubt that the view of the Courts below derives considerable support from the decision of a Division Bench of the Bombay High Court in which the meaning of similar words in a corresponding provision of a Bombay Act was under consideration. I must, however, say that, with due respect, I am doubtful whether this decision should be followed in the present case.

The Act of 1952, has been repealed and superseded by the Delhi Rent Control Act, 1958, which came into force early in 1959. Sub-section (2) of the Act of 1952 reads:—

> "No decree or order for recovery of possession shall be passed on the ground specified in clause (a) of the proviso to sub-section (1), if, on the first day of the hearing of the suit or within such further time as may be allowed by the court, the tenant pays in court the arrears of rent then due together with the cost of the suit."

The corresponding provisions in the new Act are contained in sections 14 and 15. Ground (a) for ejectment contained in section 14(1) reads:—

> "that the tenant has neither paid nor tendered the whole of the arrears of the

rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882"

The first part of sub-section (2) reads:—

"No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1), if the tenant makes payment or deposit as required by section 15."

Section 15(1) reads:—

"In every proceeding for the recovery of possession of any premises on the ground specified in clause (a) of the proviso to sub-section (1) of section 14, the Controller shall, after giving the parties an opportunity of being heard, make on order directing the tenant to pay to the landlord or deposit with the Controller within one 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."

Firm Bulaqi Dass-Madan Mohan and another
v.
Ram Sarup

Falshaw, J.

Section 57 reads :—

(1) The Delhi and Ajmer Rent Control Act, 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."

It certainly cannot be said that sub-section (2) of section 57 is a masterpiece of clear draftsmanship since it is evidently not easy to reconcile the provision that suits and other proceedings under the Act of 1952, should be continued and disposed of in accordance with the provisions of that Act as if it continued in force and the Act of 1958 had not been passed, with the proviso that in cases under the old Act relating to fixation of standard rent and eviction of tenants the Court shall have regard to the provisions of the new Act.

One of the provisions in the new Act relates to the right of the landlord to evict a tenant on the ground of *bona-fide* requirement of the leased premises for his own use. This right has been limited in the new Act by section 14(6) which provides :—

> "Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1) on the ground specified in clause (e) of the proviso thereto, unless a period of five years has elapsed from the date of the acquisition."

This is an altogether new provision nothing similar to which was included either in the Act of 1947 or of 1952. The question whether it could be applied to cases instituted under the Act of 1952 was considered by Bishan Narain, J., in the case of *Shri Krishna Aggarwal* v. *Satya Dev* (1), and he has held that it could not be applied to cases under the old Act. He has further held that the first proviso to section 57(2) is directory in character and not mandatory and that the Courts and authorities under the Act of 1952 are bound to decide a case in accordance with the provisions of that Act but by the proviso to sub-section (2) of section 57 discretion has been conferred on them to take into consideration the provisions of the new Act when it is considered necessary in a proper case and in the interest of justice, and that to this limited extent it can be said that the proviso has a retrospective effect.

On the whole I am inclined to agree with the view that the provisions of section 14(6) of the new Act could not possibly be applied retrospectively as they placed an altogether new

(1) LXI P.L.R. 574

Firm Bulaqi Dass-Madan Mohan and another
v.
Ram Sarup

Falshaw, J.

restriction on the right of landlords claiming eviction on account of requirement of the premises for their own use, but the same cannot be said of the provisions which are under consideration in this case, in which the principle that a tenant whose ejectment was claimed on the ground of non-payment of rent could avoid a decree for ejectment by depositing the arrears of rent then due at the outset of the suit was recognised in both the earlier Acts of 1947 and 1952, and this principle has merely been restated in slightly changed form in the new Act.

There is no doubt that when an Act is amended or repealed and superseded by an Act in which essentially the same provisions are repeated in slightly changed form, the amendment of the provisions in question is intended to give effect to and clarify what was all along the intention of the legislature, and the amendment is introduced simply on account of the fact that the Courts have not interpreted the previous provisions as they were intended by the legislature to be intepreted. In my opinion the restriction of the amount to be deposited by a tenant in order to avoid ejectment on the ground of non-payment of rent to the sum which the landlord is lawfully entitled to recover from him is an instance of this. In any case it is obvious that the proviso in sub-section (2) of section 57 was intended to have some meaning and force, and in my opinion it was intended that where the old provisions have been repeated with modifications of this kind the old Act should be interpreted in the light of the fresh provisions as long as it does not involve creating any new rights and liabilities. On this view of the matter the compliance by the tenant with the order of the learned Chief Justice must be held to amount to compliance with the provisions of sub-section (2)

of section 13 of the Act of 1952 and, therefore the decree for ejectment was wrongly passed. I accordingly accept the revision petition and dismiss the plaintiff's suit for ejectment but in the circumstances I consider that it is a fit case for leaving the parties to bear their own costs throughout.

B.R.T.

REVISIONAL CRIMINAL

Before I. D. Dua, J.

RAM NARAIN,—*Appellant*

versus

BISHAMBER NATH AND ANOTHER,—*Respondents.*

Criminal Revision No 923 of 1959

1959

Dec., 3rd

Code of Criminal Procedure (V of 1898)—S. 204 (IA) and (IB)—Object and nature of—Whether mandatory—Section 202—Inquiry under—Presence of accused—Whether necessary.—Interpretation of Statutes—Provisions of Statutes—Whether directory or mandatory—How to ascertain—Distinction between the two.

Held, that clauses (IA) and (IB) of section 204 of the Code of Criminal Procedure have been enacted in the interests and for the protection of the accused. They are intended to assure that no person is summoned to stand his trial in the dock without the Court first satisfying itself about the witnesses to be produced in support of the prosecution and also to supply the accused with a copy of the complaint against him along with the summonses. This provision is undoubtedly meant for the protection of the accused person and its disregard is likely to injuriously affect him.

Held, that the provisions of clause (IB) of section 204, Criminal Procedure Code, are merely directory in the sense that failure to attach a copy of the complaint with