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the power of the company to compel its Director to appear in Court. In the circumstances, I am of the opinion that the Court resorted to the right measure in dealing with the situation with which it was confronted. It was observed by a Division Bench of Somayya and Rajamannar, JJ., in *Ramayya Servai* v. *Sama Ayyar* (3). that it is very doubtful whether section 151 would apply to a case where the defence was struck off under the provisions of Order 11, rule 21, which deals with non-compliance with the order for discovery. The ruling of this decision, however, cannot be construed to mean that the Court in the exercise of its jurisdiction under section 151 is devoid of the power to make an order for striking out the defence in suitable cases. Moreover, the exercise of jurisdiction under section 115 of the Code of Civil Procedure is discretionary and the High Court is not bound to interfere merely because the order passed by the subordinate Court is erroneous.

I would, therefore, dismiss this petition for revision with costs.

## LETTERS PATENT APPEAL

*Before D. Falshaw, Chief Justice and Mehar Singh, J.*

HIRA SINGH AND OTHERS,—*Appellants*

*versus*

MST. GAURAN AND OTHERS,—*Respondents*

**Letters Patent Appeal No. 127 of 1961.**

1965

August, 30th

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 7—Suit for ejectment filed by landlord against tenant on ground of non-payment of rent in 1955—Amendment adding proviso to S. 7 coming into force in 1956 and the suit decided by Assistant Collector in 1958—Tenant—Whether entitled to the benefit of the proviso.*

*Held*, that the proviso to section 7 of the Pepsu Tenancy and Agricultural Lands Act, 1955, which was added in 1956 was applicable to the suit filed by a landlord against his tenant for ejectment on the ground of non-payment of rent and the tenant was entitled to its benefit. After the date on which the proviso came into force, no tenant could be ejected in proceedings based on non-payment of rent unless and until the amount due on account of rent had been determined by the court and the tenant had been allowed six months from the date of such determination to pay the arrears, and the proviso was certainly applicable to pending cases.

(3) A.I.R. 1947 Mad. 92.

*Letters Patent Appeal under Clause X of the Letters Patent of the Punjab High Court against the Judgment of the Hon'ble Mr. Justice D. K. Mahajan, dated 27th March,* 1961, *passed in Civil Writ No.* 1347 *of* 1960, *re*: Mst. Gauran *v.* The Financial Commissioner and others.

T. S. MANGAT, ADVOCATE, for the Appellants.

B. R. AGGARWAL, ADVOCATE, for the Respondents.

JUDGMENT

Falshaw, C.J.

FALSHAW, C.J.—This is an appeal filed under clause 10 of the Letters Patent against the order of a Single Judge allowing a petition filed under Article 226 of the Constitution and setting aside an order of the Financial Commissioner and restoring that of an Assistant Collector.

The case of the original petitioner, a widow named Shrimati Gauran, who has since died, was that on consolidation re-partition proceedings she was placed in possession of two pieces (*taks*) of land, but the present appellants who are apparently collaterals of her deceased husband, had forcibly occupied these lands, as a result of which she prosecuted them under section 447, Indian Penal Code. According to her allegations the criminal proceedings were compromised on the undertaking that the appellants would remain in possession of the land until June, 1954, and would pay *batai* rent for the period of their occupation. In spite of this undertaking they neither vacated the land nor paid any rent and sometime in 1955 she instituted proceedings in the Court of an Assistant Collector for their ejectment on the ground of non-payment of rent.

In that suit the Assistant Collector passed a decree on the 7th of November, 1958, for the ejectment of the appellants, who were described as tenants, from a portion of the land in suit it being held that they could not be ejected from a portion of the land which was under the mortgage with them until the plaintiff redeemed the mortgage. This order was upheld in appeal by the Collector on the 16th of February, 1959.

The appellants then went in revision to the Commissioner who was of the opinion that the appellants were entitled to the protection of section 7 of the Pepsu Tenancy and Agricultural Lands Act of 1955, as amended in

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1956, and he accordingly forwarded the case to the Financial Commissioner with the recommendation that the decree be set aside and the case sent back to the Assistant Collector for decision in accordance with the provisions of section 7 of the Act. This recommendation was accepted by the Financial Commissioner after hearing the parties and his order was impugned in the present writ petition by Shrimati Gauran.

Since the latter had gone to the revenue Court and fought out the case up to the Court of the Financial Commissioner on the basis that the appellants were her tenants and were liable to ejectment for non-payment of rent, although they denied that they were her tenants and an issue on this point was framed by the trial Court and decided in the plaintiffs favour, and, moreover, in the writ petition this position was maintained by the petitioner, whose whole attack on the impugned order was based on the position that the amended provisions of section 7 of the Act ought not to have been applied in a suit which was instituted before the amendment was introduced, it is rather surprising to find that the main basis of the decision of the learned Single Judge is a finding that the appellants were not tenants at all, but mere trespassers after June, 1954, when they had undertaken to vacate the land, and that consequently the petitioner's suit ought to have been brought in the civil and not in the revenue Court and that this position could be regularised by the application of section 100 of the Tenancy Act. He also went on to hold that the amended provisions of section 7 could not be applied by the Financial Commissioner since the parties' rights crystalised in June, 1954. The relevant provisions of section 7 of the Pepsu Act read—

> "No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely:—
>
> (a) ..........................
>
> (b) that the tenant has failed to pay rent within a period of six months after it falls due."

The amendment, which came into force in May, 1956, is in the form of a proviso which reads—

> "Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the

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decree or order directing his ejectment and he has failed to pay such arrears during that period."

Although on the facts of the case one may feel some sympathy for the widow whose husband's collaterals have been found to have acted in a high-handed manner, this sympathy cannot possibly be made a ground for deciding a writ petition on a plea which was never made in the petition itself, and indeed is directly contrary to the position adopted throughout by the petitioner in the litigation which led to the passing of the impugned order, and in my opinion the writ petition must be decided on the basis that the appellants were in fact the tenants of the petitioner. Thus the only proper question for decision by this Court is whether the appellants were entitled to the benefit of the proviso which had come into force two and a half years before the suit was decided by the Assistant Collector. On a plain reading of the proviso I have no hesitation in holding that it was applicable in the present case. The position might possibly have been different if the suit had been decided by the Assistant Collector before the amendment came into force, but it is not necessary to decide in the present case whether in such a case the proviso could have been applied at the stage of appeal or revision. As far as I can see after the date on which the proviso came into force, no tenant could be ejected in proceedings based on non-payment of rent unless and until the amount due on account of rent had been determined by the Court and the tenant had been allowed six months from the date of such determination to pay the arrears, and the proviso was certainly applicable to pending cases.

In holding to the contrary the learned Single Judge has relied on the decision in *Moti Ram* v. *Suraj Bhan and others* (1), but in my opinion that decision is not applicable. The facts in that case are that an ejectment application was filed under section 13 of the East Punjab Urban Rent Restriction Act on the 28th of August, 1956, one of the grounds being based on the provisions of section 13(3) (a) (iii) which were to the effect that the landlord may apply to the Controller for an order directing the tenant to put the landlord in possession in the case of any building "if he requires it for the reconstruction of that building or for its replacement by another building or for the

(1) A.I.R. 1960 S.C. 655.

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erection of other buildings." This was amended soon after the institution of the proceedings, the following being substituted:—

> "In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or Local Authority or any Improvement Trust under some improvement or development scheme or it has become unsafe or unfit for human habitation."

The Rent Controller and the Appellate Authority decided on all the points in the case against the landlord, but in revision the High Court upheld the ground of eviction based on the provisions of section 13(3) (iii). The question then arose in the Supreme Court whether, after the amendment of this sub-section, the landlord's case, not being covered by any of the grounds therein, the tenant's ejectment could be ordered on the landlord's plea based on the original provisions of the sub-section, and it was held that it is well-settled that where an amendment affects vested rights, the amendment would operate prospectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication and the amending Act obviously does not make the provisions in section 13(1) (a) (iii) retrospective in terms and the retrospective operation of the relevant provision cannot be spelt out as a matter of necessary implication. Obviously if a landlord institutes ejectment proceedings on a ground which existed in the Act at the time of his suit, but is later deleted as a result of an amendment, his right to pursue the suit cannot be taken away unless the amending Act makes this intention perfectly plain. This is something different from the conferment by an amending Act on a tenant of a right not to be ejected on the ground of non-payment of rent unless, when the extent of the arrears has been determined, he has been given an opportunity to pay the arrears within six months. The landlord's vested right to eject the tenant for non-payment of rent remains intact and all that the Act does is to give the tenant who is in arrears a *locus poenitentiae* to remedy his omission, and in my opinion such a provision cannot be regarded as retrospective if it is applied to cases pending on the date of the introduction of the amendment. Indeed in my opinion if pending cases were to be excluded

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from the scope of the amendment it would be necessary to make this intention plain. The result is that I would accept the appeal and dismiss the writ petition and I would restore the order of the Financial Commissioner for the case to be remanded to the Court of the Assistant Collector to be decided in accordance with law. It would be befitting in my opinion if the parties are left to bear their own costs throughout.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

*B.R.T.*

CIVIL MISCELLANEOUS

*Before A. N. Grover and Jindra Lal, JJ.*

RAM GOPAL AND OTHERS,—*Petitioners*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 802 of 1964

1965

August, 30th

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L 1948)—Sections 16A and 32—Scheme of Consolidation—Whether can provide for partition of joint land in respect of which dispute as to title* inter se *between the joint owners exists—Course to be adopted in such an event indicated—Punjab Land Revenue Act (XVI of 1887)—S. 117—Effect of.*

*Held*, that a Consolidation Officer is given the power to make provision in the Scheme of Consolidation for partition of Joint Khata between the joint holders in the eventualities contained in section 16A(2) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Instead of any partition being effected according to the procedure laid down in Chapter IX of the Punjab Land Revenue Act, 1887, the partition has to be effected by the consolidation authorities in case the shares of the joint owners can be ascertained with certainty from the Record-of-rights or there is no disagreement between them in respect of it or it has been settled by a decree of a competent Court. There is, however, an important exception embodied in sub-section (1) of Section 16-A which relates to the provisions of section 117 of the Punjab Land Revenue Act. The word "may" in this section has been construed to mean "must", when a question of title is raised in any of the properties of which partition is sought. When a scheme for consolidation is prepared and a question of title is raised with regard to joint property the Consolidation Officer must stay his hands with regard to making any provision for partition until the question of title is decided by a competent Court because section 117 of the Punjab Land Revenue Act constitutes an exception to the provision in sectio