Rajesh Mitra @ Rajesh Kumar Mitra vs Karnani Properties Limited on 20 September, 2024

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

2024 INSC 719 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 3593-3594 OF 2024

RAJESH MITRA
@RAJESH KUMAR MITRA & ANR. …APPELLANTS

VERSUS

KARNANI PROPERTIES LTD. …RESPONDENT

JUDGMENT

SUDHANSHU DHULIA, J.

1. The appellants (the defendants in the suit), are here in challenge to the judgement dated 08.12.2022 whereby their Appeal was dismissed by the Division Bench of Calcutta High Court, upholding the judgment of the learned Single Judge (which was a judgment on admission), dated 29.06.2022. While decreeing the suit, the Court had directed the appellants (tenant) to vacate the suit property and handover the vacant possession to the respondent-plaintiff, within sixty days!

2. filed by the respondent before the Calcutta High Court, inter alia, 17:57:33 IST Reason:

> praying for eviction of appellants from Room No.208, 2nd Floor, 25- A Park Street, Kolkata (hereafter referred as the "premises"). Even before the appellants could file a Written Statement, the plaintiff, without loosing any time, filed an application under Order XII Rule 61 Code of Civil Procedure ("CPC") seeking a 'judgment on admission' by relying on the deposition of defendant no.1 in another case where the defendant had admitted that the tenancy was in his mother's name. According to the plaintiff/respondent, since the mother of the defendants/appellants had admittedly died way back in the year 2009, they are not entitled to stay in the premises beyond the year 2014 in terms of section 2(g) of the 1997 Act, which protects the rights of the

children and dependents of a tenant only for a limited period of five years.

3. At the outset, we must state that both, the learned single- judge bench and to some extent even the Division Bench of the High Court, in the present case, ought not to have decreed the suit of the landlord on the basis of alleged "admission" by the appellant

6. Judgment on admissions.— (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

no.1 which was made in another unconnected matter, as to our mind, it does not pass muster the test of "admission" visualised in Order XII Rule 6 CPC. It is not that a court cannot pass a judgment on the basis of an admission made in some other case. All the same, what has to be kept in mind is that Order XII Rule 6 is an enabling provision conferring wide discretionary powers on the courts which cannot be claimed by any party as a matter of right. Courts can invoke Order XII Rule 6 only in cases where admissions are unconditional, unequivocal and unambiguous or when admission is based upon undisputed inferences. (See: Charanjit Lal Mehra & Ors. v. Kamal Saroj Mahajan (Smt) And Anr. (2005) 11 SCC 279, Raveesh Chand Jain v. Raj Rani Jain (2015) 8 SCC 428, Uttam Singh Duggal & Co. Ltd. v. United Bank of India And Ors. (2000) 7 SCC 120) Here, we would like to reproduce that portion of the cross- examination of appellant no. 1, as quoted by the Single Judge of the High Court, which is alleged to be an admission on part of the appellant no.1 to deny him the right of occupying the disputed premises. It is as follows:

"33. Flat No.208 in respect whereof you are an occupant- is it a tenancy?

Yes, it is in my mother's name.

34. Your mother is Usha Mitra- am I right?

Yes, Late Usha Mitra.

35. When did Usha Mitra expire?

On 3rd November, 2009" This deposition is the so called 'admission' on which the respondent-landlord relies to claim that only the mother (Usha Mitra) of the appellants was the tenant and not the appellants. The appellant no.1 had admitted that the tenancy was in the name of his mother.

We have perused the examination-in-chief and cross- examination of appellant no.1 made in that 'other case' where this statement was made. Such questions and their answers are common place in

depositions before courts, but every such statement cannot be considered as an 'admission' to invoke Order XII Rule 6 of CPC. It is for the courts to see whether any statement in the pleadings or otherwise amounts to an admission of such a nature as to inspire the confidence of the court to pass judgment on admission under Order XII Rule 6 of CPC. It will depend upon the content and kind of statement/admission which may vary from case to case. In other words, it would depend upon the totality of facts and circumstances of a particular given case. In the present case, here, it is not a 'clear admission' as is being made out. Moreover, where the question and its answer are both a mixed question of fact and law, as in the present case, a so called 'admission' against the law can never be an "admission" as visualised under Order XII Rule 6. However, more on this later.

Order XII Rule 6 is meant for speedy disposal of the suits in some cases but on the risk of repetition, we would like to caution that unless there is a clear, unambiguous, unequivocal and unconditional admission, courts should not exercise their discretion under the Rule because judgment on admissions is without a trial which may even preclude a party to challenge the matter on merits in the court of appeal. The provision of law, which is meant for the expeditious disposal of appropriate cases, should therefore be cautiously exercised and it should never come in the way of any defendant denying him the valuable right of contesting the claim. (See: Himani Alloys Ltd. v. Tata Steel Ltd. (2011) 15 SCC 273, Hari Steel & General Industries Ltd. v. Diljit Singh (2019) 20 SCC 425)

4. We will have to go briefly on the facts of the case in order to have a perspective of what we have before us. The premises was originally let out to one Sri S.K. Mitra. Subsequent to his death in 1970, as per section 2(h) of the West Bengal Premises Tenancy Act, 1956 (hereafter referred to as "1956 Act" or the "old Act"), the tenancy devolved on his legal heirs who were ordinarily residing with him. Section 2(h) of the old Act defined the 'tenant' as follows:

> "(h) "tenant" [means any person] by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and [includes any person continuing in possession after the termination of his tenancy or in the event or such person's death, such of his heirs as were ordinarily residing with him at the time of his death,] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction." (emphasis supplied) In other words, in the event of the death of the tenant the tenancy devolved on the legal heirs of the tenant 'who ordinarily resided with him'. In the case at hand, therefore, the tenancy devolved on SK Mitra's widow and the appellants, who were his children aged 2 and 5 years, at the time of his death.
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> Subsequently, the new act, i.e., the West Bengal Tenancy Premises Act, 1997 (hereafter "1997 Act") came into force with effect from 10.07.2001. Under the 1997 Act, the tenancy would devolve to the legal heirs of the tenant as specified under section 2(g), but for a limited period of five years. The spouse of the tenant though is excluded from the time limit provided she meets the criteria as laid therein. Section 2(g) of the 1997 Act reads as follows:

> "(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:
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> Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises, Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose." (emphasis supplied)

5. The landlord's case is that after the death of Sh. S.K. Mitra in 1970 his wife Smt. Usha Mitra had become the tenant as per section 2(h) of the 1956 Act. There is also a mention that she gave an undertaking to the landlord that only she succeeds on the property as a tenant and it was her who continued to pay rent after the death of her husband. When Smt. Usha Mitra died in 2009, the appellants would be considered tenants only till 03.11.2014 (five years after the death of Usha Mitra on 03.11.2009), as per section 2(g) of the 1997 Act. As we have already referred earlier, the main thrust of the landlord's case was that the appellant/defendant had admitted, in his deposition in a different matter, that his mother was the tenant on the property who had passed away in 2009. Hence, their tenancy had expired long back in 2014 as per his own admission.

In their Written Statements, appellants did not deny the deposition made by appellant no.1 as a "witness" in another case but submitted that this cannot be used as an admission under Order XII Rule 6. Further, it was asserted that it was not just their mother who had become a tenant after the death of his father in the year 1970, but both appellants had also become tenants as the tenancy was heritable as per section 2(h) of the 1956 Act, which was then in force.

6. The Single Judge of the High Court, however, did not accept this contention. What was relied upon were the rent receipts in the name of Smt. Usha Mitra (the mother of the present appellant),

for the period between 1970 and 2009 and an affidavit attested by Smt. Usha Mitra, showing that she was the sole tenant of the premises while dismissing the claim of the defendants.

Undisputedly, Smt. Usha Mitra had become a tenant under section 2(h) of the 1956 Act. However, when these facts were considered along with the deposition of appellant no. 1, it was held by the Single Judge of the High Court that after the death of Smt. Usha Mitra in 2009, the appellants would be tenants under section 2(g) of the 1997 Act only for a period of five years which would be calculated from the date of Usha Mitra's death due to the words "whichever is later" appearing in section 2(g). Five years got completed on 02.11.2014, after which the appellants had no right to remain on the premises. As we have already stated above, the learned Single Judge was not correct in decreeing the suit on this so called "admission". Looking at the facts of the case and the position of law, it was not proper for the Court to give a judgment on admission simply because there cannot be an admission against law and in any case, it is not an unambiguous admission as is being made out.

In view of the discussion above, the legal question to be determined by us is whether the appellants had also became tenants upon the death of their father, by virtue of section 2(h) of the old Act. Further, what effect would the enforcement of the new Act have on their tenancy.

This goes to the root of the controversy and involves a question of law and thus, the learned single Judge erred in passing the judgment under Order XII Rule 6. What has been given to the appellants under law cannot be taken away on the basis of an unclear deposition. In short, there cannot be an admission against law. Whether a particular statement amounts to an "admission" will depend on the fact of each case. In the case at hand, we are of the opinion that it is not an admission as visualised under Order XII Rule 6.

7. The appellants filed an appeal against this order before the Division Bench of the High Court which was dismissed, vide order dated 08.12.2022, which is presently under challenge before us. The Division Bench held that under section 2(g), the legislature intended that where the original tenant has died before the coming into force of the 1997 Act, his legal heirs would be protected for five years from the date of coming into force of the act. Otherwise, the latter phrase in section 2(g) "from the date of coming into force of this Act, whichever is later" would stand frustrated. This is what the High Court held:

> "What can be logically deduced therefrom that the heritability of the estate of the tenant was restricted for a period of five years from the date of the death in case the tenant died after promulgation of the said Act to the other heirs excluding the spouse who have been kept in the exception (provided the conditions imposed therein are duly fulfilled and/or satisfied). A striking feature may further be noticed from the definition of tenant under 1997 Act in relation to the fixation of the time limit fixed therein which, if lost sight of, shall frustrate the legislative intent. The son, daughter and parents shall not be entitled to take protection under the aforesaid definition, if the tenant dies prior to the promulgation of the said Act and the aforesaid period would be reckoned from the date of coming into force of the said Act. Otherwise, the

> expression "from the date of coming into force of this Act, whichever is later" shall be redundant and meaningless. What can be legally deduced therefrom is that even if the tenant dies when the Act of 1956 was in vogue, yet the heirs other than the spouse would not get any protection in relation to a time limit under the definition of the tenant in the Act of 1997 and, therefore, the concept of "devolution" of the tenancy right under the 1956 Act cannot be said to be inflexible. The legislatures can restrict the heritability of the tenanted estate which does not offend the constitutional ethos nor can be impinge (sic: impinged) on the ground of restricting the succession in relation to our tenanted property. What can be culled out from the aforesaid discussion that the heirs other than the spouse, even if they satisfy the other conditions laid down in the definition provision, loses their right as a tenant nor protected under the provisions thereof after the expiration of five years from the date of death and in the event the death occurs after coming into force of the said Act or upon expiration of five years from the date of coming into force of the Act or 1997, whichever is later." The entire case here rests upon the interpretation of "tenant" as defined in the new Act. In case, the defendants i.e., the present appellants come under the definition of "tenant" the order impugned has to be set aside. However, if the case is that the appellant does not come under the definition of "tenant" as referred above, this appeal would fail.

8. On behalf of the appellants, we have heard learned counsel Ms. Rashi Bansal, who relies on the decision of the Single Judge of the Calcutta High Court (Goutam Dey v. Jyotsna Chatterjee reported in 2012 SCC OnLine Cal 642). In the above cited case, the original tenant had died prior to the enforcement of the1997 Act. He was survived by his daughter and her husband, Goutam Dey. Subsequently, the daughter of the original tenant also died in 2011, after which the respondent-landlord filed a suit for eviction against Goutam which was decreed. By virtue of section 2(h) of the 1956 Act, it was held that a vested right had accrued in favour of the daughter of the original tenant, which could not be abrogated by the enactment of the 1997 Act. It was further held that if section 2(g) of the 1997 Act was interpreted literally, it would mean that all inherited tenancies under the 1956 Act would expire on 09.07.2006 (five years after the coming into force of the 1997 Act). This is a position which cannot be tenable in law according to the learned Single Judge in the above case. It was held that the phrase "or from the date of coming into force of the act, whichever is later" was wrongly drafted by the legislature, and it is in fact redundant. This is what was said:

> "19. Even otherwise, I am of the further view that portion of section 2(g), as extracted in the preceding paragraph starting from "or" and ending with "later", and on which Mr. Bhattacharya laid emphasis, if read literally would produce absurd results and, therefore, the provision must be so read so as to make it meaningful. Law is well settled that in exceptional circumstances, it would be proper for the Court to depart from the literal rule and such rule of interpretation could be adopted that is just, reasonable and sensible, and does not offend the sense of justice. In the context, one may possibly conceive either of three inevitable situations, - death of a tenant (i) before July 10, 2001; (ii) after July 10, 2001; and (iii) on July 10, 2001. Regarding

situation (i) i.e. death of a tenant before July 10, 2001 and the case with which I am concerned (Sunil died on May 4, 1997), undoubtedly it was the Act of 1956 that was in force and had a tenant governed by the provisions of the Act of 1956 died on July 9, 2001 or even previous to that date, the tenancy would be governed by that Act meaning thereby that the tenancy being heritable, the heirs would be justified in claiming tenancy right subject to fulfilment of the residence requirement in section 2(h) of the Act of 1956 but unfettered by the other two conditions newly inserted and the stipulation of five years in section 2(g) of the Act of 1997. Law appears to be settled that provisions of a new statute which touch a right in existence at the date it is enforced are not to be applied retrospectively in the absence of express provision or necessary intendment. The Act of 1997 has not been given retrospective effect so as to bring within its coverage death of tenants occurring prior to July 10, 2001 and a different intention does not appear on a reading of the Act of 1997 so as to affect any right or privilege that has been acquired or has accrued in favour of the specified heirs of the deceased tenant under the Act of 1956, since repealed. Having regard to section 8(c) of the Bengal General Clauses Act, 1899, a vested right that accrued in favour of an heir like Subhra on the death of the tenant i.e. Sunil cannot be abrogated. There is a presumption against curtailment of or washing away a vested right by a repealing legislation, and a construction involving such curtailment of or washing away the right accrued ought not to be adopted unless a contrary intention clearly appears in the repealing legislation. It could not have been and it does not seem to be the intention of the legislature to fix July 9, 2006 as the last date fill which tenancy of an heir of a deceased tenant would continue (assuming all the other conditions were fulfilled), no matter when he died prior to July 10, 2001. The absurd result that the aforesaid extract of section 2(g) of the Act of 1997 has the potential of producing is best illustrated by the facts of the present case and needs no further elaboration. Insofar as situations (ii) and (iii) are concerned, it is obvious that the definition of tenant in section 2(g) of the Act of 1997 shall apply and for achieving the purpose that it seeks to achieve, it was not necessary to insert the phrase “or from the date of coming into force of this Act, whichever is later”. The period of five years mentioned in section 2(g) automatically would have application only in respect of death of tenants occurring on and from July 10, 2001 and in such case the portion extracted above, is in my considered view, a piece of loose drafting and ought to be considered redundant unless in a given case, which I have been unable to perceive, the same is shown to have application. I hasten to record here that the above observation regarding redundancy has been made by me despite my best effort to make the statute effective with all the words that have been used by the legislature and conscious of the principle that legislature is presumed not to waste words.” Relying upon the above Judgment of Calcutta High Court, the counsel for the appellants would submit that similarly the tenancy in the present case had in fact devolved in favour of the present appellants way back in the year 1970 on the death of their father, who was the original tenant. This could not be undone by applying the provisions of the 1997 Act which was a subsequent legislation.

> In other words, in 1970, the tenancy was heritable and thus the appellants along with their mother had become tenants on the property/premises.
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> 9. On the other hand, learned counsel Mr. Sabyasachi Chowdhary appearing on behalf of the respondent-landlord would rely on the findings given by the High Court, in the present case, and in addition, he would rely upon two judgments of the Calcutta High Court Sri. Sushil Kumar Jain & Ors. v. Pilani Properties Limited, 2017 SCC OnLine CAL 18807 and Satyanarayana More v. Milagrina Rose Correia, 2020 SCC OnLine CAL 957, which are both Division Bench judgments laying down a law contrary to the judgment in Goutam Dey (supra).

The Division Bench of the Calcutta High Court in Sushil Kumar (supra) had in fact overruled the judgment of the Single Judge in Goutam Dey (supra). It relied on the statement of objects and reasons of the 1997 Act and its purpose which was to do away with the heritability of tenancy. The relevant paragraphs have been reproduced below:

> "20. The underlying logic of the judgment in Goutam Dey is that if a right vests in a person under a statute, the same cannot be undone. As a proposition of law it may sound attractive, but it will not hold good in all cases. While it is true that certain rights if they vest under a predecessor statute cannot be undone by a successor statute, the purpose of the statutes, the nature of the rights and the extent of the vesting of such rights are relevant considerations.
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> 21. The 1956 Act provided for a degree of protection to certain classes of tenants in this State. In course of time, the legislative wisdom provided for a relaxation in the norms such that the protection was limited to a smaller class of persons and in certain specified situations by the Act of 1997. It cannot be said, for instance, that merely because a tenancy had been created prior to the 1997 Act, the protection enjoyed under the 1956 Act would continue even after the 1997 Act has come into operation. The 1997 Act does not admit of such a situation... * * *
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> 23. It must also be added that courts ought to be very cautious before finding words used in the statute to be otiose or meaningless. The intention of Section 2(g) of the 1997 Act is to regard heirs of the original tenant who were dependent on him and were residing with him at the time of his death as tenants for a period of five years. That would imply that for a period of five years from the death of the original tenant, the heirs of the original tenant who were dependent on the original tenant and were residing with him will be entitled to the same protection under Section 6 of the 1997 Act as the original tenant. However, such umbrella of protection is removed upon the conclusion of the fifth year from the date of death of the original tenant, in case the original tenant died after the 1997 Act came into effect. For the similar heirs of the original tenants who had died prior to the 1997 Act coming into force, a period of five years was counted from the date of the 1997 Act coming into operation.

> 24. It was a policy decision taken by the legislature to afford a five-year period for the dependents of the original tenant who ordinarily resided with him at the time of his death to make alternative arrangements. To ensure that all such heirs of the original tenant had the same time period to make alternative arrangements, the clause "whichever is later" was introduced in Section 2(g) of the 1997 Act so that the heirs of the original tenant who had died prior to the 1997 Act coming into force did not have a shorter time to make such alternative arrangements. That is the meaning and purpose of the expression, "whichever is later", in Section 2(g) of the Act." Thus, the counsel for the respondent/landlord would argue that even if the appellants claim tenancy under the 1956 Act, then also their tenancy would expire on 09.07.2006, i.e., five years after the 1997 Act came into force. This logic is based on the interpretation of the term "whichever is later". In other words, protection is only for five years, even for the one who had inherited 'tenancy' when the old Act was in force, as it say five years from the death of the tenant or five years from the enforcement of the Act, "whichever is later". Since the new Act came into force in 2001, therefore, although the tenant (and in this case it would be the father of the appellant i.e., the original tenant) died in the year 1970 but five years will be counted from 2001. In other words, the language of the statute suggests that its purpose was to cover even the death of a tenant which occurred during the subsistence of the old Act. But such an interpretation would depend upon whether the new Act has a retrospective application!

10. Whether the 1997 Act would cover such tenants who were protected under the 1956 Act is the question? The High Court has held that the legislature by virtue of section 2(g) of the 1997 Act, intended to extinguish the tenancy of all such legal heirs, who inherited it on the death of their predecessor-in-interest before the enforcement of the 1997 Act. Such rights would expire after five years from the commencement of Act.

To understand the intention of the legislature, we will have to examine the provisions of the 1956 Act and also the 1997 Act.

11. The West Bengal Premises Tenancy Act, 1997 received assent from the President of India on 28.11.1998 and as per notification dated 09.07.2001, the provisions of the 1997 Act came into force on 10.07.2001. The Object and Reasons of the 1997 Act are also important, the portion relevant for our examination is reproduced below:

> "The National Housing Policy approved by the Central Government recommended that appropriate amendment in existing laws and regulations be carried out for creating enabling atmosphere for housing activities in the country. A number of export bodies such as the Economic Administration Reform Commission and the National Commission on Urbanisation have recommended reforming the rent legislation in a way that balances the interests of both the landlords and the tenants and also that stimulates future construction to meet the growing demands for housing.

> On the basis of the various recommendations of the experts and also after a series of consultations with the State Governments, the Ministry of Urban Development of India prepared a Model Rent Control Legislation, and sent to the States for consideration."

12. The entire issue revolves around the interpretation of the phrase "for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later" used in section 2(g) of the 1997 Act. There is no ambiguity in case the original tenant passes away after the commencement of 1997 Act, as in such a case, it is clear that the specified heirs will get a limited protection of five years only. The difficulty is in enforcing the above provision of section 2(g) of 1997 Act in a situation where the original tenant had died before the commencement of 1997 Act i.e., prior to July 10, 2001. The matter at hand falls in the latter.

The Single Judge in Goutam Dey (supra) observed that a literal reading of 'or from the date of coming into force of this Act, whichever is later' would lead to absurd results as all tenancies devolved under the 1956 Act, would end together on the same day (July 9, 2006), i.e., five years after the enforcement of the 1997 Act! Thus, the Single Judge held the aforesaid phrase to be redundant and a piece of loose drafting by the State Legislature.

13. Subsequently, the Calcutta High Court considered this issue in Prabir Kumar Jalan v. Laxmi Narayan Jalan, 2012 SCC OnLine Cal 1313 where another Bench of a learned Single Judge did assign meaning to the phrase, which was referred to as a piece of loose drafting in Gautam Dey (supra). In Prabir Kumar (supra), the High Court decreed the suit for eviction against the respondent-defendant therein and observed that if the Legislature intended to apply section 2(g) of 1997 Act only to the deaths which would have occurred after the commencement of the new Act, then legislature was not required to use the phrase "or from the date of coming into force of this Act, whichever is later". This is what was said:

> "21. Now, if Ms. Doshi's argument that the rights of the original tenant vested in the defendants on his death on 25th December, 1999 was true, then there would be no occasion for the legislature to enact that the status of a tenant would cease on expiry of five years from the date of the Act or five years after the death whichever was later. If the legislature had intended to protect the heirs of a tenant under the 1956 Rent Act, the tenant having died before coming into force of the new Rent Act, the legislature would have only prescribed five years from the date of death which must occur on or after coming into force of the new Act. Or better still it could have said five years from the death and no more. The legislature need not have said any more..." But to our mind, the Single Judge bench while deciding this case did not consider the observations made in Goutam Dey (supra). Eventually, this issue came before a Division Bench of the Calcutta High Court.

14. In Sushil Kumar Jain (supra), the Division Bench, in its effort to give meaning to the words of sec. 2(g) of the 1997 Act, held that there appears to be 'a different intention' on the part of the legislature, which was to dilute the rights of the tenant given under the old Act. A challenge against

this decision was also made before this Court, which came to be dismissed without issuance of notice at the admission stage itself with the following order:2 "We see no reason to interfere with the impugned order passed by the High Court at Calcutta.

SLP(C) No.2750/2018, decided on 07.02.2018.

The Special Leave Petition is, accordingly, dismissed.

However, as prayed for, one month's time is granted to vacate the suit premises subject to filing usual undertaking in the Registry of this Court within two weeks from today, stating that the petitioners shall not create any third party rights, will clear all the rent/dues/occupational charges in the meanwhile and will peacefully vacate the suit premises concerned at the end of one month positively." Here, we want to pause for a while to note that this dismissal of SLP is no bar on us to decide the issue at hand. The dismissal of an SLP at the admission stage before issuance of notice, with a non-speaking order, does not mean that this Court has affirmed the law laid down by impugned order. [See: P.Singaravelan v. District Collector, Tiruppur (2020) 1 SCC (L&S) 453; Palam Gas Service v. CIT (2017) 7 SCC 613; Kunhayammed v. State of Kerala (2000) 6 SCC 359]

15. Subsequently, the view taken in Sushil Kumar Jain (supra) by the Calcutta High Court, was reiterated by another Division Bench in Satyanarayan More v. Milagrina Rose Correia, 2020 SCC OnLine Cal 957. Both these judgments have put much emphasis on the object behind the promulgation of the 1997 Act. According to them, the new Act aims to free the landlords from the clutches of the 1956 Act by creating a balance between the rights of tenants and interest of the landlord. We agree with the view so far as it says that the purpose of the 1997 Act was to create a balance between the interests of tenants and landlords but we doubt that it can be extended to say that legislature intended to extinguish the rights of legal heirs (who had become tenants under the old Act after the death of their predecessor-in-interest) on a particular date.

16. The current position of law as it seems from the decision of the Calcutta High Court is that the 1997 Act represents a shift of legislative intent. While the 1956 Act approached tenancy as a heritable right that can be claimed by legal heirs of an original tenant, this position was changed by the 1997 Act, to provide a limited protection of five years to the specific heirs of an original tenant and, as per the High Court, in cases where original tenant had died during the existence of old Act, five years shall be counted from the commencement of the new Act.

17. In our considered opinion, the above view of the Calcutta High Court cannot be sustained. The High Court in the case of Goutam Dey (supra) has held that the new statute which touches upon the existing rights cannot be retrospective, without an express provision or necessary implication expressing the clear intent of the Legislature. Goutam Dey (supra) relied upon Section 8(c) of the West Bengal General Clauses Act to say that a new statute does not affect existing rights. Section 45 of the 1997 Act repealed the 1956 Act but that cannot mean that rights accrued under the old Act are extinguished altogether with the enforcement of the new Act.

The enforcement of a new statute ipso facto will not take away the rights already accrued under a repealed statute, unless this intention is reflected in the new statute.

This Court in CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1 reiterated the general principles concerning retrospectivity of statutes. This is what was said:

> "28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.
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> 29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita- Shinnihon Steamship Co. Ltd. [(1994) 1 AC 486 : (1994)

2 WLR 39 : (1994) 1 All ER 20 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation." (emphasis supplied)

18. It is to be kept in mind that Courts can, and must, differ from the literal meaning of words if the reading of any provision provides absurd results.

There are specific grounds under which a landlord can seek eviction of the tenant. There are provisions as well for immediate recovery of possession for certain classes of landlords. But Section 2(g) of the 1997 Act cannot be interpreted in the manner it has been done by the Calcutta High Court in Sushil Kumar (supra) and Satyanarayan More (supra).

19. We are of the view that the phrase "or from the date of coming into force of this Act, whichever is later", used in section 2(g) of 1997 Act, was rightly held to be superfluous in Goutam Dey (supra). We do not doubt the wisdom of the legislature but we are constrained to hold that the case at hand reflects loose drafting, as it seems to have created more problems than it sought to resolve. Francis

Bennion, who has been quoted by Krishna Iyer, J. in State of Karnataka v. Ranganatha Reddy (1977) 4 SCC 471 while dealing with Karnataka Contract Carriages (Acquisition) Act, 1976, had said the following words about the Renton Committee Report (Report on Preparation of Legislation):

> "The Renton Committee points out that the problem of obscure statute law is important to every citizen.
>
> There is hardly any part of our national life or of our personal lives that is not affected by one statute or another. The affairs of local authorities, nationalised industries, public corporations and private commerce are regulated by legislation. The life of the ordinary citizen is affected by various provisions of the statute book from cradle to grave.
>
> The committee might have added that the rule of law and parliamentary democracy itself are imperilled if laws are incomprehensible. They did say that it is of fundamental importance in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights. It is also needlessly expensive and wasteful. Reed Dicerson, the famous American draftsman, said it cost the Government and the public 'many millions of dollars annually." Justice Iyer in State of Karnataka v. Ranganatha Reddy, (1977) 4 SCC 471 further observes that "our draftsmen handle foreign know-how meant for different circumstances, and without full grasp of the economic regulation or the leisure and facilities for such study". He went on to further state that:
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> "In a country where the people are, by and large, illiterate, where a social revolution is being pushed through by enormous volume and variety of legislation and where new economic adventures requiring unorthodox jural techniques are necessitous, if legal drafting is to be equal to the challenge of change, a radicalisation of its methodology and philosophy and an ability for the legislative manpower to express themselves in streamlined, simple, project-oriented fashion is essential. In the hope that a role- conscious court communicates to a responsive Cabinet, we make this observation." (Para 49) Ambiguous drafting leads to manifold problems and generates lengthy litigations, as it has evidently done in the case at hand. There is no clarity in the 1997 Act to suggest that it extinguishes the rights of all tenants (who inherited tenancy rights under Old Act) retrospectively.

20. This is also not the first occasion where Section 2(g) of the 1997 Act has been under consideration by this Court. In Nasimi Naqi v. Todi Tea Company Ltd. & Ors. (CA No.9052/2019, decided on 26.11.2019) the second proviso to the same section was held to contain an inadvertent omission as the spouse was not given the right of preference for tenancy in case of a fresh agreement, which was given to certain other specified heirs. This is what was said:

> "The exclusion of a spouse of a deceased tenant is without rationale, discriminatory and deprives the surviving spouse of a valuable entitlement granted to the other

> heirs. There is a valid justification for amending the provision so as to bring the widow within the ambit of the second proviso. This is a matter which, in our view, deserves to be considered by the legislature. Having due regard to the object and purpose underlying the recognition of a right of preference under the second proviso and the social welfare purpose underlying the enactment of the legislation, it would be appropriate if this aspect is considered... There would appear to be no justification for not considering the grant of such a protection on the spouse of the original tenant. We hope and trust that this aspect of the omission in the second provisio will engage the attention of the law makers so as to fulfill the salutary purpose of the provision."

21. It is true that legislature can restrict heritability by amending or repealing the law, as the case might be. The Division Bench's finding (in the impugned judgment dated 08.12.2022), is that since legislature can restrict the heritability it has done precisely that in the 1997 Act, by adding the words "five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later". Hence, as per the Division Bench of the Calcutta High Court, the death of SK Mitra in 1970 also stands covered under new Act. In other words, the 1997 Act changes "heritable rights" retrospectively according to the Division Bench of the Calcutta High Court. Although, the actual date when eviction would happen is post the new Act but it does have a retrospective application as well in as much as it is applicable retrospectively to an earlier date (1970 in the present case) and had taken away a right of the appellants, given to them under the old statute.

Statutory laws operate from the date of their enforcement i.e., prospectively. In case the legislature intends to make a law retrospective then such an intention of the legislature must be shown clearly and unambiguously in the statute itself. The Division Bench's mere interpretation of a statutory provision will not make the law retrospective and take away the heritable rights of a tenant.

22. In view of the above, we hold that Smt. Usha Mitra and the appellants jointly inherited the tenancy from Sh. S.K. Mitra, in the year 1970. Thus, the impugned judgment is liable to be set aside as appellants' tenancy did not expire in the year 2006, by the introduction of 1997 Act, in the absence of a clear and unequivocal intention in the 1997 Act to have a retrospective operation.

23. Accordingly, these appeals are allowed. Orders dated 29.06.2022 and 08.12.2022 of the Single Judge and the Division Bench respectively are set aside.

24. Pending application(s), if any, shall stand disposed of.

25. Interim order(s), if any, shall stand vacated.

.....J. [SUDHANSHU DHULIA] .....J. [PRASANNA B. VARALE] New Delhi.

September 20, 2024.