Karnataka High Court Mercury Press vs Ameen Shacoor And Ors. on 5 April, 2002 Equivalent citations: ILR 2002 KAR 2304, 2003 (3) KarLJ 505 Author: R Raveendran Bench: R Raveendran, K Manjunath ORDER R.V. Raveendran, J. 1. Respondents 1 to 6 were the petitioners and petitioners 1 and 2 were respondents 1(1) and 1(5) in HRC No. 10568 of 1994, on the file of the Court of Small Causes, Bangalore. Respondents 7 to 13 herein were the respondents 1(2), 1(3), 1(4), 1(7), 1(8), 1(9) and 1(10) respectively in the said eviction petition. For convenience, respondents 1 to 6 will be referred to as 'landlords' and the petitioners 1 and 2 and respondents 7 to 13 will together be referred as 'tenants'. 2. The said eviction petition was filed by the landlords against the tenants (the L.Rs of A. Rajagopai who was running Mercury Press in the petition schedule premises) under Section 21(1) proviso (h) of the Karnataka Rent Control Act, 1961 (for short, the 'old HRC Act' or 'old Act'). The petition schedule premises is a non-residential premises, measuring more than 14 sq. nits. The said petition was allowed by order dated 17-11-2001 under proviso (h) to Section 21(1) of the said Act. Feeling aggrieved, the respondents 1 and 5 in the eviction petition, representing 'Mercury Press', have filed this revision petition under Section 50(1) of the old Act, on 4-2-2002. 3. When the revision petition came up for admission, the respondents 1 to 6 (landlords) contended that the revision petition was liable to be either dismissed as not maintainable or treated as having abated, having regard to the provisions of Section 70(3) of the Karnataka Rent Act, 1999 ('new Rent Act' or 'new Act', for short), relying on the decision in Saptagiri Complex, Bangalore and Ors. v. Bhupathi Naidu, 2002(2) Kar. L.J. 159. On the other hand, the petitioners contended that the revision petition was maintainable relying on the decision in Jain Cloth Stores, Bangalore v. M. Kewalchand (deceased) by L.Rs., 2003(2) Kar. L.J. 276 : ILR 2002 Kar. 1694 In view of the divergent views, Farooq, J., by order dated 1-3-2002 has referred this matter to a Division Bench. 4. Several other cases which were referred to the Division Bench, are also listed with this case. In view of the common question involved, we have heard the Counsels in those cases also in regard to the effect of Section 70 of the new Act on the pending proceedings. For convenience, we have considered all the contentions in this case. 5. The Karnataka Rent Control Act, 1961, a temporary enactment which came into force on 31-12-1961 and extended from time to time was to remain in force upto and inclusive of thirty-first day of December, 2001. It is replaced by Karnataka Rent Act, 1999 which received the assent of President on 22-11-2001 and published in the Karnataka Gazette, dated 27-11-2001. Sections 1, 3 and 6 of the new Act came into force on 5-12-2001 and the remaining provisions of the new Act came into force on 31-12-2001. The petition premises was governed by the old Act. The new Act is inapplicable to it in view of Section 2(3)(g) of the new Act which provides that nothing in the new Act shall apply to any premises used for non-residential purposes (excluding premises having a plinth area of not exceeding fourteen sq. mts. used for commercial purposes). 6. Section 70 of the new Act, relating to repeals and savings, is extracted below: "70. Repeal and savings.–(1) The Karnataka Rent Control Act, 1961 (Karnataka Act 32 of 1961), is hereby repealed. (2) Notwithstanding such repeal and subject

to the provisions of Section 69.– (a) all proceedings in execution of any decree or order passed under the repealed Act, and pending at the commencement of this Act, in any Court shall be continued and disposed of by such Court as if the said enactment had not been repealed; (b) all cases and proceedings other than those referred to in Clause (a) pending at the commencement of this Act before the Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority, as the case may be in respect of the premises to which this Act applies shall be continued and disposed of by such Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority in accordance with the provisions of this Act; (c) all other cases and proceedings pending in respect of premises to which this Act does not apply shall as from the date of commencement of the Act stand abated. (3) Except as otherwise provided in Section 69 and in Sub-section (2) of this section, provisions of Section 6 of the Karnataka General Clauses Act, 1899 (Karnataka Act III of 1899), shall so far as may be applicable in respect of repeal of the said enactment, and Sections 8 and 24 of the said Act shall be applicable as if the said enactment had been repealed and re-enacted by this Act". 6.1 Section 69 of the new Act referred to in Section 70(3) of the new Act provides for transfer of pending cases relating to premises to which the new Act applies, from Court to Controller where Controller has jurisdiction and from Controller to Court, where Court has jurisdiction. 6.2 Section 6 of the Karnataka General Clauses Act, 1899 ('GC Act', for short), referred to in Section 70(3), dealing with repeals, reads thus: "6. Effect of repeal.–Where this Act or any Mysore Act made after the commencement of this Act, repeals any enactment hitherto made or thereafter to be made, then, unless a different intention appears, the repeal shall not– (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed". 7. The petitioners-tenants contend that the revision petition is maintainable having regard to Section 6 of the GC Act and has to be decided in accordance with the provisions of the old Act, as if it has not been repealed. Alternatively, it is contended that the entire proceedings for eviction, that is the order of eviction and the revision petition therefrom stand abated and the landlord will have to initiate fresh action under the Transfer of Property Act, 1882, for eviction/possession of tenancy. The petitioners-tenants have based their contentions on the following reasoning: 7.1 The order of eviction was passed under the old Act in regard to a premises to which that Act applied. The period of limitation for filing a revision had not expired as on 31-12-2001 when

the old Act was repealed. The matter did not fall under Section 70(2) of the new Act, for the reasons stated in the decision of this Court in Jain Cloth Stores case, supra. Therefore, having regard to Section 70(3) of the new Act, read with Section 6(c) and (e) of the GG Act, the petitioners-tenants became entitled to enforce the remedy against the order of eviction by filing a revision petition, under Section 50 of the old Act as if the repealing Act had not been passed. Therefore, the revision petition is maintainable. Alternatively, 7.2 As the old Act, under which the eviction proceedings were initiated ending with an order of eviction, has been repealed, and as Sub-section (2)(c) of Section 70 of the new Act provides that "all 'cases and proceedings' pending in regard to premises to which the new Act did not apply shall stand abated as from 31-12-2001", the entire proceedings, that is, not only the pending revision, but the order of eviction under the old Act from which such revision petition arises, stands abated and therefore the order of eviction become non est. 8. On the other hand, the landlords contended that no revision petition under Section 50 of the old Act could be filed, on or after 31-12-2001 having regard to the repeal of the old Act and therefore the revision petition is liable to be dismissed as not maintainable. Alternatively, any revision petition filed under Section 50 of the old Act after 31-12-2001 would also stand abated, leaving the order of eviction intact, having regard to Section 70(2)(c) of the new Act. Elaborating the said submissions, the landlords contended as follows: 8.1 The order of eviction was passed under the old Act on 17-11-2001. The old Act which was a temporary enactment, was repealed on 31-12-2001. Section 6 of the GC Act is inapplicable to temporary enactments. As a consequence no revision petition could be filed under the provisions of Section 50 of the repealed old Act after 31-12-2001. Alternatively, 8.2 The order of eviction was passed under the old Act on 17-11-2001. The old Act was repealed with effect from 31-12-2001. But such repeal did not affect the orders of eviction already passed under the old Act having regard to Section 70(3) of the new Act read with Section 6(c) and (e) of the General Clauses Act. Any revision petition filed by the tenants under Section 50 of the old Act, either before 31-12-2001 or on or after 31-12-2001 would stand abated having regard to the provisions of Section 70(2)(c) of the new Act. Consequently, the order of eviction has become final and conclusive and the landlords are entitled to enforce the said order of eviction, as if the repealed Act has not been passed. 9. A learned Single Judge of this Court (Manjula Chellur, J.) in Saptagiri Complex case, supra, considered the effect of Section 70 of the new Act, on pending matters. In that case, an order of eviction had been sought on several grounds in regard to non-residential premises, the plinth area of which was more than 14 sq. mts. The Court allowed the petition under Section 21(1) proviso (j), but dismissed the petition under provisos (a), (h) and (p). Feeling aggrieved by the rejection of petition under provisos (a), (h) and (p) the landlords had filed a revision petition; and feeling aggrieved by the order of eviction under proviso (j), the tenant had filed n revision petition. The learned Single Judge disposed of both the revision petitions, as having abated under Section 70(2)(c) of the new Act, with an observation that the landlords are at liberty to pursue their action in appropriate forum. 10. Subsequently, the effect of Section 70 of

the new Act came up for consideration before another learned Single Judge of this Court (Gopala Gowda, J.) in Jain Cloth Stores case, supra. He held that the decision in Sapthagiri Complex case, supra, was per incuriam as it had not noticed the decision of the Supreme Court in the case of Karam Singh Sobti and Anr. v. Pratap Chand and Anr., AIR 1964 SC 1305 He held that in spite of repeal of the old Act, having regard to the saving provision in Section 70(3) of the new Act, all proceedings initiated under the repealed old Act will have to be continued and disposed of, as if, the repealed old Act continues to be in force and as if the new Act has not been passed. In other words, he held that no proceedings - either original proceedings for eviction before the Court of first instance or revisional proceedings before this Court or District Courts initiated under the old Act in regard to a premises to which the new Act does not apply, and pending as on the date of commencement of the new Act (31-12-2001) will not abate, in spite of Section 70(2)(c) of the new Act and that all such proceedings will have to be proceeded with and decided in accordance with the provisions of the old Act itself. 11. On the contentions urged, the following two questions arise for consideration: (i) What is the effect of repeal of Karnataka Rent Control Act, 1961 on the pending proceedings initiated under that Act, in regard to premises to which the Karnataka Rent Act, 1999 does not apply? (ii) What is the effect of repeal of the Karnataka Rent Control Act, 1961 in regard to orders of eviction passed under the said Act before such repeal? 12. The general principles with reference to effect of repeal were stated in State of Punjab v. Mohar Singh Pratap Singh, AIR 1955 SC 84 : (1955)1 SCR 893 : 1955 Cri. L.J. 254 (SC) thus: "Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But, when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. The Court cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving Clause is by itself not material. The provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute, which is of a temporary nature automatically expires by efflux of time". Therefore, if any Act is repealed, without specifying the consequences of the repeal, Section 6

of the General Clauses Act will apply and the repeal will not affect any legal proceedings or remedy in respect of any right, privilege, obligation and liability acquired, accrued or incurred under the repealed Act and any legal proceedings or remedy may be instituted, continued or enforced as if the repealing Act has not been passed. But, where the repeal is accompanied by fresh legislation on the same subject, the provisions of the new Act will have to be looked into to determine whether and how far the new Act evinces a contrary intention affecting the operation of Section 6 of the Karnataka General Clauses Act (vide Gajraj Singh v. The State Transport Appellate Tribunal and Ors., AIR 1997 SC 412 : (1997)1 SCC 650 and Ambalal Sarabhai Enterprises Limited v. Amrit Lal and Company and Anr., (2001)8 SCC 397). 13. In S. Krishnan and Ors. v. State of Madras and Anr., AIR 1951 SC 301 : 1951 SC.) 458 : 1951 SCR 621 it was held that the consequences of repeal of an enactment, provided under Section 6 of GC Act do not follow when a temporary enactment expires and in the absence of special provision to the contrary, any proceedings initiated under such an enactment will ipso facto terminate as soon as the statute expires. The old HRC Act was enacted in 1961 as a temporary enactment and was extended from time to time, upto and inclusive of 31-12-2001. Section 1(4) of the old Act specifically provided that on the expiry of the said Act, Section 6 of the GC Act, 1899 shall apply as if the said Act was a permanent Karnataka Act and had been repealed by a Karnataka Act immediately before its expiry. The new Act repealed the old Act on the last day of its operation and specifically provided for applicability of Section 6 of the GC Act, except to the extent provided for in Section 70(2). The effect of Section 1(4) of the old Act when read with Section 70 of the new Act is that any proceedings initiated under old Act will not ipso facto terminate on the repeal of the old Act, and the provisions of Section 6 of the GC Act will apply, subject to the extent of contrary intention expressed by Section 70(2) of the new Act. 14. Several doubts and divergent views have been canvassed by the learned Counsel in regard to the effect of repeal of the old HRC Act and enactment of new Rent Act on proceedings relating to premises to which the old Act applied but new Act does not apply, in different situations; (a) Where the original proceedings initiated under any of the provisos to Section 21(1) of the old Act is pending before a Court as on 31-12-2001;

(b) Where an order has been passed in an eviction petition, either allowing or dismissing it, but no revision petition had been filed under the old Act on or before 30-12-2001 and time for filing a revision had not yet expired as on 31-12-2001;

(c) Where an eviction petition has been allowed or dismissed and a revision petition filed under Section 50 of the old Act against such order is pending as on 31-12-2001;

(d) Where a second revision under Section 115 of the CPC filed by the landlord or the tenant, is pending against a revisional order passed by a District Court under Section 50 of the old Act;

(e) Where an eviction petition has been allowed and attained finality on or before 30-12-2001, but remained unexecuted as on 31-12-2001;

(f) Where an execution proceedings is pending for execution on an order of eviction, which has become final before 31-12-2001.

15. The answer will necessarily depend on how far Section 6 of the GC Act is applicable to the repeal, and to what extent Section 70 of the new Act has evinced a contrary intention affecting the operation of Section 6 of the GC Act in its entirety. We may therefore begin by referring to the principles relating to interpretation of statutes.

15.1 In Mahadeolal Kanodia v. The Administrator General of West Bengal, AIR 1960 SC 936 : (1960)1 SCJ 15 : (1960)3 SCR 578 the Supreme Court referred to the following four well-settled principles of interpretation of statutes:

(1) `Statutory provisions which create or take away substantive rights are ordinarily prospe`

(2) The intention of the Legislature has to be gathered from the words used by it, giving them their plain, normal, grammatical meaning;

(3) If any provision of a legislation, the purpose of which is to benefit a particular class of persons is ambiguous so that it is capable of two meanings, the meaning which preserves the benefits should be adopted;

(4) If the strict grammatical interpretation gives rise to an absurdity or inconsistency, such interpretation should be discarded and an interpretation which will give effect to the purpose will be put on the words, if necessary, even by modification of the language used.

The Supreme Court has however added a rider by warning that while applying the third rule of interpretation relating to ambiguity, the Courts in their anxiety to advance the beneficent purpose of legislation, must not however yield to the temptation of seeking ambiguity where there is none.

15.2 In Commissioner of Income-tax, Madras v. Indian Bank Limited, the Supreme Court reiterated:

"In our opinion, in construing the Act, we must adhere closely to the language of the Act, If there is ambiguity in the terms of a provision, recourse must naturally be had to well-established principles of construction, but it is not permissible first to create an artificial ambiguity and then try to resolve the ambiguity by resort to some general principle".

(emphasis supplied)

15.3 The principles are also succinctly stated in American Jurisprudence (2nd Edition, Volume 73, page 434, para 366), quoted with approval in S.R. Bommai

and Ors. v. Union of India and Ors., AIR 1994 SC 1918 : (1994)3 SCC 1 : JT 1994(2) SC 215:

"While it has been held that it is duty of the Courts to interpret a statute as they find it without reference to whether its provisions are expedient or unexpedient. It has also been recognised that where a statute is ambiguous and subject to more than one interpretation, the expediency of one construction or the other is properly considered. Indeed, where the arguments are nicely balanced, expediency may trip the scales in favour of a particular construction. It is not the function of a Court in the interpretation of statutes, to vindicate the wisdom of law. The mere fact that the statute leads to unwise results is not sufficient to justify the Court in rejecting the plain meaning of unambiguous words or in giving to a statute a meaning of which its language is not susceptible, or in restricting the scope of a statute. By the same token an omission or failure to provide for contingencies, which it may seem wise to have provided for specifically, does not justify any judicial addition to the language of the statute. To the contrary, it is the duty of the Courts to interpret a statute as they find it without reference to whether its provisions are wise or unwise, necessary or unnecessary, appropriate or inappropriate, or well or ill-conceived". (emphasis supplied) 15.4 Rules of interpretation are meant to ascertain the true intent and purpose of the enactment and to set right any anomaly, inconsistency or ambiguity, while giving effect to it. The several rules of interpretation when juxtapositioned may give an impression that they are inconsistent with each other. Further, the same provision, when interpreted with reference to different rules of interpretation may lead to different results. This is because the rules of interpretation are meant to set right different types of defects. It is not possible to apply all rules of interpretation together, to a provision of law. An appropriate rule of interpretation should be chosen as a tool depending upon the nature of the defect in drafting which has to be set right. The rules of interpretation are to be applied in interpreting the statutes, only if there is ambiguity, inconsistency, absurdity or redundancy. Where the words are clear and unambiguous, there is little need to open the tool kit of interpretation. 16. The wording of Section 70 of the new Act are clear and unambiguous. There is no inconsistency or absurdity in its provisions. Sub-section (1) repeals the Karnataka Rent Control Act, 1961. Sub-section (2) clearly shows the legislative intent to exclude the operation of Section 6 of the GC Act to all pending proceedings under the old Act and make specific and special provisions as to what should happen to the pending proceedings. Sub-section (3) makes the provisions of Section 6 of the Karnataka General Clauses Act, applicable to the repeal of the Karnataka Rent Control Act, 1961, where Section 70(2) is not applicable. 16.1 If Section 70 had contained only Sub-section (1) repealing the old Act and nothing more, the provisions of Section 6 of the Karnataka General Clauses Act, 1899 in its entirety would have applied. But, applicability of Section 6 of the GC Act is subject to any different intention appearing in the repealing Act. The Legislature has expressed a clear different intention in regard to pending proceedings under the old Act, by enacting Sub-section (2) of Section 70. But,

for the Sub-section (2), all pending proceedings would have also been governed by Section 6 of the GC Act and would have been continued and disposed of in accordance with the old Act, as if the repealing Act had not been passed. No pending proceedings under the old Act could escape from the provisions of Section 70(2) and all pending proceedings will have to be decided as per Section 70(2) and not as per the provisions of Section 6 of the General Clauses Act. 17. Let us now read the provisions of Sub-section (2) of Section 70 as it is, by applying the natural and grammatical meaning to the words in the said section. Sub-section (2) divides all pending proceedings arising under the old Act into three categories: (a) Proceedings in execution;

(b) Proceedings (other than execution) relating to premises to which new Act applies;

(c) Proceedings (other than execution) relating to premises to which the new Act does not apply.

Having regard to the scheme of Section 70(2) of the new Act, when a proceeding under the old Act is pending as on 31-12-2001, the Court will have to first examine whether it is a proceeding in execution. If it is found to be so, it will have to proceed under Clause (a). If it is not a proceeding in execution, then the Court will have to examine whether the proceeding relates to a premises to which the new Act applies, with reference to Section 2 of the new Act. If the premises is found to be one to which the new Act applies, then the Court will have to proceed with the matter (subject to transfers provided for in Section 69) and dispose of such matter in accordance with the provisions of the new Act. If the Court finds that the premises is one to which the new Act does not apply, then the Court will have to close the proceedings as having abated as from 31-12-2001. 18. We may now consider the true and natural meaning and effect of Clauses (a) to (c) of Section 70(2) in more detail. 18.1 Clause (a) applies to all proceedings in execution of any decree or order passed under the old Act and pending as on 31-12-2001. It provides that such execution proceedings shall be continued and disposed of by the Court where such execution proceedings are pending, as if the old Act has not been repealed. For purpose of Clause (a), no distinction is made between the premises to which both old and new Acts apply and premises to which only the old Act applied but new Act does not apply. 18.2 Clause (b) applies to all pending cases and proceedings under the old Act relating to premises to which the new Act also applies. It provides that all cases and proceedings (other than the execution proceedings referred to in Section 70(2)(a) of the new Act), which are pending as on 31-12-2001, before any Court (original proceedings under Sections 19, 21, 21-B, 21-C, 24, 25, 26, 43 and 44 etc.) or District Courts or High Court (revision proceedings under Section 50) or Controller (proceedings tinder Section 14 etc.) or Deputy Commissioner (proceedings relating to hotels and lodging-houses) or Divisional Commissioners (appeals under Section 41) will have to be continued by the Court or the authority concerned in accordance with the provisions of the new

Act. In other words, all pending proceedings which arose under the old Act, relating to premises to which the new Act applies, will be governed by the provisions of the new Act from 31-12-2001 and not the old Act, 18.3 Clause (c) is the residuary provision under Sub-section (2), which applies to all other cases and proceedings (that is proceedings other than execution proceedings and proceedings covered by Clause (b) of Sub-section (2) of Section 70) pending in respect, of any premises to which the Act does not apply. It provides that such case or proceedings relating to a premises to which the Act does not apply, shall stand abated as from 31-12-2001. This would mean all original proceedings or revisional proceedings or appeals as the case may be, arising under the old Act and pending as on 31-12-2001, in regard to a premises to which the new Act does not apply, will stand abated. If what was pending is a revision or appeal, what will abate is only such revisional or appellate proceedings and not the order in the original proceedings from which the appeal or revision arose. 19. Sub-section (3) of Section 70 of the new Act provides that on the repeal of the old Act, the provisions of Section 6 of the Karnataka General Clauses Act applies in respect of the repeal, except in regard to cases and proceedings covered by Section 70(2), As a consequence any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act will also not be affected and it will be possible to enforce any such right or liability. 20. The old Act was merely intended to extend certain protection to the tenants against the unbridled power of the landlord to evict a tenant under the general law of the land. But such protection cannot be construed as creating any vested right in favour of the tenant (vide decision of the Supreme Court in Ambalal Sarabhai Enterprises Limited's case, supra). The effect of any Rent Act, which is a special enactment, is that the rights and remedies available to the landlord under the general law will remain suspended during the period when the Rent Act is in force. But the moment such protection is withdrawn, the landlord's normal vested right to evict a tenant reappears which could be enforced by him. Therefore, the moment the rent control law ceased to apply to a premises (as in the case of non-residential premises the plinth area of which measures more than 14 sq. mts. to which the old Act applied the new Act does not apply), the landlord becomes entitled to sue for possession/eviction of the tenant under the general law. Though the old Act did not confer any rights on a landlord but only restricted the absolute right of the landlord under the provisions of the Transfer of Property Act, if an order of eviction has already been passed under the old Act, then the right to evict the tenant has been acquired by the landlord and a corresponding obligation or liability had been incurred by the tenant to vacate the premises or be evicted from the premises, under the order of eviction. Such right/liability acquired or incurred under the order of eviction passed under the old Act on or before 30-12-2001 remains unaffected by the repeal having regard to Section 6 of the General Clauses Act and as a consequence, the landlord becomes entitled to enforce such order of eviction by executing it, subject to any remedy to which the tenant will be entitled under law. 21. The petitioners-tenants also urged that in this case, as no proceedings were pending under the old Act as on 31-12-2001, Section 70(2) of the new Act

did not apply and consequently the matter was governed by Section 70(3) and attracted Section 6 of the General Clauses Act. It is contended that Section 6 not only saved any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, but also saved any legal proceeding or remedy either to enforce or challenge such right, obligation or liability; and therefore a tenant, aggrieved by an order of eviction passed under the old Act, prior to 31-12-2001, will be entitled to challenge the same by filing a revision petition under Section 50 of the old Act, as if the new Act has not been passed. It is, therefore, contended that the present revision petition filed after the new Act came into force, is valid and the petitioners are entitled to pursue the same. Petitioners contend that what will abate under Section 70(2)(c) are only those proceedings under the old Act, pending as on 31-12-2001, and not proceedings which are yet to be instituted. 22. On the other hand, the landlords point out that in regard to the order of eviction, passed on 17-11-2001, if a revision petition had been filed prior to 31-12-2001, that would have abated on 31-12-2001, in view of Section 70(2)(c) of the new Act; and if it were to be held that a revision could be validly filed on or after 31-12-2001 against the very same order of eviction dated 17-11-2001, then it will lead to absurd results. It is contended that the effect of Section 70(2)(c) is that not only revision petitions pending as on 31-12-2001 abated, but any revision petition filed on or after 31-12-2001 would also stand abated. 23. The object and intention of the Act is clear. While the old Act extended protection to a larger number of class of tenants, the new Act has restricted the protection to a smaller class of tenants. The new Act is also clear that all pending proceedings in regard to premises to which the old Act applied but the new Act does not apply, should abate. It also makes it clear that where the proceedings had already culminated in orders of eviction, then such orders are saved and any revisions against the same will abate. Therefore, the effect of Section 70(2)(c) of the new Act, is not only abatement of revision petitions which are pending as on 31-12-2001 but also any revision petitions filed on or after 31-12-2001. The use of the words 'shall as from the date of commencement of the Act, stand abated' in Clause (c) makes this position clear. Any proceedings pending as on 31-12-2001 or which will become pending on account of institution on or after 31-12-2001 would stand abated. 24. If the interpretation put forth by the petitioners-tenants should be accepted then it would lead to an incongruous situation. It would mean that any revision petition, if filed before 31-12-2001 would stand abated but if the same revision petition is filed on or after 31-12-2001 would be maintainable. An interpretation leading to such incongruity or anomaly should be avoided. 25. It is true that in regard to those cases which were initiated under the old Act and where the orders of eviction were passed, Section 70(2)(c) has the effect of taking away the statutory remedy of revision under Section 50 of the old Act. But, Section 70(2)(c) of the new Act is a provision consciously made by the Legislature in the new Act. The reason is obvious. When the new Act becomes inapplicable to a premises, the tenant has no protection against eviction and the landlord will be entitled to evict the tenant under the provisions of the Transfer of Property Act without any restrictions. The Legislature obviously thought

that when the landlord can get the remedy of eviction without any restrictions, after the repeal, why deny him the benefit of a remedy (eviction order) which he secured even when his right was restricted or abridged. Therefore, denial of the right of revision under the old Act, to tenants of premises to which the new Act does not apply, in regard to orders of eviction passed under the old Act, cannot be said to lead to unreasonable and arbitrary results, requiring an interpretation other than the plain and direct meaning of Section 70(2)(c). It is also possible that the Legislature might have thought that it was not proper to deny to the landlords, the benefit of decrees of eviction obtained by them after undergoing a lengthy litigation, and make them undergo one more round of litigation, in regard to premises to which the protection under Rent Act has been withdrawn. Whatever be the reason, the fact remains that the Legislature has in its wisdom has used clear and unambiguous words and deprived the benefit of revision to those class of tenants who are no longer entitled to the protection under the Rent Act. 26. A contention similar to what is urged by the tenants in this case was considered by the Supreme Court in Mahadeolal Kanodia's case, supra, while considering the effect of an amendment to Calcutta Thika Tenancy Act, 1949 by Thika Tenancy Amendment Act, 1943. Section 28 of the unamended Act provided that even where a decree or order for recovery of possession had been obtained by a landlord against a thika tenant, Courts will have the power to reopen the matter and if it is of the opinion that the decree or order was not in conformity with the provisions of the said Act, then either to rescind or vary the decree or order in such a manner as the Court may think fit for the purpose of giving effect to the provisions of the Act and bring the decree or order so varied, into conformity with the Act. By Amendment Act, 1953, the said Section 28 was omitted. The question that arose for consideration before the Supreme Court was whether the tenant who had applied for relief under Section 28, when said section was in force, was entitled to have his application disposed of in accordance with the provisions of that section though it remained undisposed of on the date of Amendment Act came into force. It was not disputed that the provisions of Section 8 of the Bengal General Clauses Act (corresponding to Section 6 of the General Clauses Act) would have applied to such proceedings unless a contrary intention was expressed by the Legislature in the Amendment Act in which event, such contrary intention would prevail. The question was whether the Legislature expressed an intention that no relief under Section 28 of the original Act shall be given in such pending cases. The Supreme Court, while upholding the view that after the 1953 amendment, the benefit of Section 28 was not available to the proceedings commenced by the tenants, observed thus: "It is helpful to remember in this connection the fact that while Section 28 of the original Act was giving certain tenants a right to relief which they would have had if the beneficent provisions of the new Act were available to them during the disposal of the suits, the manner in which the right is given is by conferring on Courts a power to rescind or vary decrees or orders to bring them into conformity with the provisions of the Act. As soon as Section 28 was omitted the Courts ceased to have any such power. The effect of the proviso in its strict grammatical meaning is that the Courts shall be deemed never to

have had this power in respect of applications which were still pending. The inevitable result is that the Court having been deprived of the power to give relief even in respect of applications made at a time when the power could have been exercised, was bound to dismiss the applications. There can be no doubt that this is an unfortunate result. It may very well be true that if as a result of the Amendment Act, many tenants are deprived of the benefit of Section 28, this will be mainly because of the Court's inability to dispose of the applications before the Amendment Act came into force and not for any default on their part. Mr. Pathak has repeatedly stressed this and has asked us to construe Section 1(2) in a way that would retain the benefits of Section 28 to tenants whose applications remained to be disposed of on the crucial date. . . It will be incongruous, he argued, that while all tenants stand to benefit by the amending legislation only those whose applications under Section 28 have, for no fault of theirs, remained pending would be deprived of the benefit they would have had but for the omission in the Amending Act of Section 28. It is difficult not to feel sympathy for these tenants. As we have already mentioned it is a sound rule of interpretation of beneficent legislation that in cases of ambiguity the construction which advances the beneficent purpose should be accepted in preference ta the one which defeats that purpose. In their anxiety to advance the beneficent purpose of legislation Courts must not however yield to the emptation of seeking ambiguity when there is none. On a careful consideration of the language used by the Legislature in Section 1(2) we are unable to see that there is any such ambiguity. The language used here has one meaning only and that is that the Act in its new shape with the added benevolent provisions, and minus the former benevolent provisions in Section 28 has to be applied to all pending proceedings, including execution proceedings and the proceedings pending under Section 28 of the original Act on October 21, 1952. There is therefore no scope for applying in this case the principles of interpretation which are applicable in cases of ambiguity". (emphasis supplied) 27. Learned Counsel for the petitioners-tenants alternatively contended that the words 'all other cases and proceedings pending in respect of premises to which this Act does not apply shall stand abated' in Section 70(2)(c) would mean where a revision proceedings, is pending, not only the revision but also the order against which the revision is filed would stand abated. He contended that if a petition for eviction had been filed and had been allowed by a Trial Court, the same does not attain finality unless the time for filing revision expires or where a revision is filed until it is finally decided; that an appeal or revision should normally be treated as a continuation of the original proceedings; and that therefore what would abate is the entire proceedings for eviction including the order of eviction and not merely the pending revision petition. Reliance is placed on the decision of the Supreme Court in Mst Bibi Rahmani Khatoon and Ors. v. Harkoo Gope and Ors., AIR 1981 SC 1450 : (1981)3 SCC 173 wherein, the Supreme Court considered the effect of Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, which reads as under: "4. Effect of notification under Section 3(1) of the Act.–Upon the publication of the notification under Sub-section (1) of Section 3 in the Official Gazette the consequences, as hereinafter

set forth, shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification relates namely.– xxx xxx xxx (c) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceedings is pending, stand abated". After referring to the purpose of the Consolidation Act, the Supreme Court held thus: "Therefore, the Legislature intended that not only the appeal or revision would abate but the judgment, order or decree against which the appeal is pending would also become non est as they would also abate and this would leave consolidation authority free to adjudicate the claims of title or other rights or interest in land involved in consolidation". The learned Counsel for the tenants submitted that the above observations would apply to this case. We are afraid that the said principle stated with reference to a consolidating Act and with reference to the wording of the section under consideration therein, cannot be made applicable to this case. There is a marked difference in regard to interpretation of consolidating statutes, codifying statutes and statutes replacing an existing law. While what was considered by the Supreme Court was a consolidating statute, what is under consideration in our case is a statute replacing an existing law. Secondly, the words considered by the Supreme Court are "every proceeding and every suit... whether of the first instance or of appeal, reference or revision shall, . . stand abated". But the words employed in Section 70(2)(c) is "all other cases and proceedings pending in respect of premises to which this Act does not apply shall. . . stand abated". If the intention of the Legislature was to abate even the orders from which the revisions arose, the Legislature would have used the words "any proceeding pending, either before the Court of first instance or in revision, in respect of a premises to which this Act does not apply, shall stand abated as from the date of commencement of the Act". In fact in the very decision, the Supreme Court has pointed out the difference between an abatement as known to civil law and abatement as considered under consolidating statutes. We extract the relevant portion hereunder: "The concept of abatement is known to civil law. If a party to a proceeding either in the Trial Court or any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates, it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final". (emphasis supplied) The above principle squarely apply to Section 70(2)(c) of the new Act. We may also refer to the reasons which persuaded the Supreme Court not to apply the concept of abatement as

known to civil law, to Section 4 of the Consolidation Act. The reasons given are: "Here, if the abatement as is conceptually understood in the Code of Civil Procedure is imported, it will do irreparable harm. To illustrate, if an appeal abates rendering either the Trial Court judgment or the judgment in first appeal final and binding the consolidation authorities would also be bound by it and the party whose appeal or revision abated would lose its chance of persuading the Appellate or Revisional Authority to accept its case which may result in interfering with or setting aside the judgment, order or decree in appeal. Such was not and could not be the intention of Section 4. This becomes manifestly clear from the proviso to Clause (c) of Section 4 extracted hereinabove which shows that such abatement shall be without prejudice to the rights of the person affected to agitate the rights or interest in dispute in the suit or proceeding before the appropriate consolidation authorities under and in accordance with the provisions of the Act. No one would therefore stand to suffer on account of the abatement because there is a special forum carved out for adjudication of the rights which were involved in proceedings which would abate as a consequence of the notification under Section 3. If the construction as canvassed for were to be adopted it would result in irreparable harm and would be counterproductive. The consolidation work would be wholly hampered and a party whose appeal is pending would lose the chance of convincing the Appellate Court which, if successful would turn the tables against the other party in whose favour the judgment, decree or order would become final or abatement of the appeal". Thus the principle of abatement that applies to Section 70(2)(c) is the principles of abatement under civil law and not the principle of abatement as modified for application to a consolidating statute. 28. We will now analyse the effect of the repealed Act, with reference to the provisions of Section 70 of the new Act and Section 6 of the General Clauses Act: (a) Matters pending in execution.–Where an order of eviction has already been passed under the old Act and is pending in execution, irrespective of whether the order was in regard to premises to which the new Act applies or not, such execution proceedings can be continued and disposed of by Executing Court as if the old Act had not been repealed. Orders of eviction passed under the old Act which have become final and conclusive on or before 30-12-2001 in regard to which no execution was levied on or before 30-12-2001, can also be executed thereafter as if the old Act has not been repealed. (b) Pending cases and proceedings under the old Act, in regard to a premises to which the new Act applies.–If any case or proceedings (other than execution proceedings) initiated under the old Act is pending in regard to a premises to which the new Act applies, such case or proceeding either original or appellate or revisional, shall have to be continued and disposed of in accordance with the provisions of the new Act, though they were initiated under the old Act. (c) Pending cases and proceedings under the old Act in regard to a premises to which the new Act does not apply.– (i) Any proceedings initiated under the old Act, pending either before the Court of first instance, or Controller or Deputy Commissioner stand abated as from 31-12-2001;

(ii) `Any revision proceedings initiated under Section 50 of the old Act and pending before t`

(iii) The proceeding that get abated under Section 70(2)(c) are only proceedings initiated un

(iv) Any order of eviction passed by the Court of first instance under the old Act prior to

29. We will now consider whether the decision in Jain Cloth Stores case, supra, is rightly decided in holding that all original proceedings for eviction pending before a Court or any revisional proceedings pending before the District Court or High Court, will have to be continued, as if there is no repeal. At the outset such an interpretation would render Clause (c) of Sub-section (2) of Section 70 of the new Act nugatory and meaningless. It is well-settled that no interpretation which has the effect of rendering a provision of law ineffective, otiose or redundant should be adopted.

30. We will next consider whether the decision of the Supreme Court in Karam Singh Sobti's case, supra, relied on in Jain Cloth Stores case, supra, has any relevance to the issue. In that case the Supreme Court considered Section 57 relating to repeal in Delhi Rent Control Act, 1958. The said section reads as follows: "57(1) The Delhi and Ajmer Rent Control Act, 1952, insofar 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 Delhi Act referred to in Section 57 reads as follows:"Section 54. Savings of operation of certain enactments.– Nothing in this section shall affect the provisions of the Administration of Evacuees Property Act, 1950 (31 of 1950) or Slum Areas (Clearance) Act, 1956 (96 of 1956) or Delhi Tenants' Temporary Protection Act, 1956 (97 of 1956)". The Supreme Court, interpreting the said provisions held as follows:"It is clear beyond dispute that had Sub-section (2) of Section 57 stood by itself, then the present case would be governed by the provisions of the Control Act of 1952, assuming that an application in revision is a 'proceeding' within the meaning of the sub-section. There are however two provisos to Sub-section (2) of Section 57. It is the interpretation of these two provisos which has caused much difficulty in the present case. The first question is, what is the true scope and effect of the first proviso, with particular reference to the expression "shall have regard to the provisions of this Act" occurring therein? ... "10. Let us now consider Section 57 of the Control Act of 1958 against the background of the scheme of the

two Control Acts, as stated above. The first sub-section of Section 57 repeals the Control Act of 1952 insofar as it is applicable to the Union territory of Delhi. If the repeal stood by itself the provisions of the General Clauses Act (X of 1897), would have applied with regard to the effect of the repeal and the repeal would not affect the previous operation of any enactment repealed or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The provisions of the General Clauses Act will not, however, apply where a different intention appears from the repealing enactment. Such an intention is clear from Sub-section (2) of Section 57 which contains the saving clause. It states in express terms that notwithstanding the repeal of the Control Act of 1952, all suits and proceedings under the Control Act of 1952 pending before any Court or other authority at the commencement of the Control Act of 1958, shall be continued and disposed of in accordance with the provisions of the Control Act of 1952, as if the Control Act of 1952 had continued in force and the Control Act of 1958 had not been passed. Nothing can be more emphatic in the matter of a saving clause than what is contained in Sub-section (2) of Section 57. We had said earlier that had Sub-section (2) of Section 57 stood by itself without the provisos, then the incontestable position would have been that the present case would be governed by the provisions of the Control Act of 1952. The question before us is, does the first proviso to Sub-section (2) make a change in the position and if so, to what extent? The first proviso states inter alia that in the matter of 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 the Control Act of 1958. Section 54 need not be considered by us as it merely saves the operation of certain enactments which do not apply to the premises under our consideration. What is the meaning of the expression"shall have regard to the provisions of this Act" (meaning the Control Act of 1958)? Does it mean that the proviso takes away what is given by Sub-section (2), except in the matter of jurisdiction of the Civil Court to deal with an eviction matter which was pending before the Control Act of 1958 came into force? We are unable to agree that such is the meaning of the first proviso. We think that the first proviso must be read harmoniously with the substantive provision contained in Sub-section (2) and the only way of harmonising the two is to accept the view which the Punjab High Court has accepted, namely, that the words "shall have regard to the provisions of this Act" merely mean that "where the new Act has slightly modified or clarified the previous provisions, these modifications and clarifications should be applied". We see no other way of harmonising Sub-section (2) with the first proviso thereto". (emphasis supplied) The view of the Punjab High Court in Jhabar Mal Chokhani v. Jinendra Pershad, 1965 Pun. L.H. 469 referred with approval by the Supreme Court is as follows :". . . the proviso to Section 57, Sub-section (2), does not demand that a suit for the eviction of a tenant filed under the

previous Act of 1952 must be governed entirely by the provisions of the new Act but that, on the other hand, the provisions applicable continue to be the provisions of the old Act with this addition that, where the new Act has slightly modified or clarified the previous provisions, those modifications and clarifications should be applied, but where entirely new rights and new liabilities have been created, the new provisions must not be allowed to override the provisions of the previous Act and nearly all the cases have been decided on that basis". 30.1 Referring to the above observations the learned Single Judge in Jain Cloth Stores case, supra, has held that the Supreme Court has laid down a proposition that all suits and proceedings pending at the commencement of the new Act (Karnataka Rent Act, 1999) will have to be continued and dealt in accordance with the provisions of the old Act (Karnataka Rent Control Act, 1961). But, the Supreme Court did not lay down any such general proposition nor does the observations of the Supreme Court, support such a view. The observations relating to harmonious construction were made with reference to the conflict between the wording of Section 57(2) of the Delhi Act and the first provision thereto. 30.2 Both Section 57(2) of the Delhi Act and Section 70(2) of the new Act indicate a definite intention different to the provisions of Section 6 of the General Clauses Act. But such 'different' intention disclosed by the two Acts are completely different. Section 57(2) of the Delhi Act, required that all pending matters should be decided in accordance with the provisions of the old 1952 Act. On the other hand, Section 70(2)(b) of the Karnataka Rent Act, 1999 requires all pending cases relating to a premises which fell under the new Act to be continued and disposed of in terms of the new Act; and Section 70(2)(c) provides that all pending cases and proceedings under the old Act in respect of premises to which the new Act does not apply shall stand abated. Therefore, the observations made by the Supreme Court with reference to Section 57(2) of the Delhi Act cannot apply to interpret Section 70(2) and (3) of the Karnataka Rent Act, 1999. 30.3 Further, there was a clear conflict between the Section 57(2) of the Delhi Act and the proviso thereto. While Section 57(2) of the Delhi Act required that the pending matters should be decided in accordance with the provisions of the old 1952 Act, the first proviso thereto required the Courts to also have due regard to the provisions of new 1958 Act. In view of it, the Supreme Court held that there was a need to read the said two provisions, that is Section 57(2) of the Delhi Act and the first proviso thereto, in a harmonious manner. This was done by a reading the words"shall have regard to the provisions of this Act" occurring in the first proviso to Section 57(2) as merely meaning that where the new (1958) Act has slightly modified or clarified the previous provisions, their modifications and clarifications should be applied. In other words, where there was a radical departure in the 1958 Act, when compared to the 1952 Act, the provisions of the 1952 Act would continue to apply and where 1958 Act merely slightly modified or clarified the pre-existing position under the 1952 Act, then such modification/clarification would apply. 30.4

But, there is no such conflict, much less apparent conflict in the provisions of Section 70 of the Karnataka Rent Act, 1999. Therefore, the decision of the Supreme Court in Karam Singh Sobti's case, supra, is not relevant. 30.5 The learned Single Judge, after referring to the passages from Karam Singh. Sobti's case, supra, has held as follows in Jain Cloth Stores case, supra, purporting to follow the said decision: ". . . Consequently, it is held that despite the new Act coming into force, the proceedings initiated under the repealed Act shall be entertained and disposed of, in view of the saving provision as provided under Section 70(3) of the new Act as if the repealed Act is in force and new Act has not at all been passed". But, this observation completely ignores and renders otiose, the statutory provision in Clause (c) of Section 70(2) of the new Act. The observations in Karam Singh Sobti's case, supra, which dealt with Section 57(2) of the Delhi Act containing a provision diametrically opposite to the provisions of Section 70(2)(a) to (c) of the new Act, cannot be used, to nullify the provisions of Section 70(2) of the new Act.

31. The learned Single Judge, has also held in Jain Cloth Stores case, supra, that if Section 70 is not interpreted as permitting the continuance of all proceedings initiated under the old Act, time, energy and money spent in litigation would be wasted and the purpose of initiating and conducting proceedings in jurisdictional Courts would become futile. For this purpose reliance has been placed on the following observations of the Supreme Court in S.R. Bommai's case, supra: "The question further arises whether by interpretative process, would it be permissible to fill in the gaps. Though it is settled law that in working in law and finding yawning gaps therein, to give life and force to the legislative intent, instead of blaming the draftsman, the Courts ironed out the creases by appropriate technique of interpretation and infused life into dry bones of law. . . where the literal meaning of the enactment goes narrower than the object of the Legislator, the Court may be required to apply a rectifying construction. . .". But, what is stated further in S.R. Bommai's case, supra, is more relevant: "Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of casus omissus or of pressing into service external aid, for in such a case the words used by the Constitution or the statute speak for themselves and it is not the function of the Court to add words or expressions merely to suit what the Courts think is the supposed intention of the Legislature". We cannot therefore ignore the provisions of Section 70(2)(c) merely, on the ground that a literal interpretation would result in waste of time, energy and money. We hold that the Jain Cloth Stores case, supra, does not interpret Section 70 properly and is not good law.
32. In view of the above, we hold that this revision petition, which relates to a non-residential premises measuring more than 14 sq. mts. stands abated under Section 70(2)(c) of the Karnataka Rent Act, 1999. We make it clear that such abatement will not come in the way of the petitioners-tenants

seeking any other remedy if available to them in law, to challenge the order of eviction.