Pt. Rishikesh And Anr. Etc vs Smt. Salma Begum Etc. Etc on 2 May, 1995

Equivalent citations: 1995 AIR SCW 2476, 1995 (4) SCC 718, 1995 ALL. L. J. 1336, (1996) 2 RENCJ 272, (1995) 26 ALL LR 78, (1995) 2 RENTLR 19, 1995 SCFBRC 344, (1995) 3 SCR 1062 (SC), (1995) 2 ALL RENTCAS 224, 1995 ALL CJ 2 715, (1995) 2 SCJ 496, (1995) 2 RENCR 425, (1995) 4 JT 401 (SC), (2014) 2 ANDHLD 6, (2017) 2 SCALE 34, AIRONLINE 1995 SC 943

Author: K. Ramaswamy

Bench: K. Ramaswamy, N. Venkatachala

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           CASE NO.:
Appeal (civil)  1266 of 1979

PETITIONER:
PT. RISHIKESH AND ANR. ETC.

RESPONDENT:
SMT. SALMA BEGUM ETC. ETC.

DATE OF JUDGMENT: 02/05/1995

BENCH:
K. RAMASWAMY & N. VENKATACHALA & S. SAGHIR AHMED

JUDGMENT:
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JUDGMENT 1995 (3) SCR 1062 The Judgment of the Court was delivered by K. RAMASWAMY, J. Leave granted in SLP NOS. 3554, 5453, 6054, 2815/79, 3182/87, 4150/92, 12520/86 and 5791/95.

These appeals by Certificate under Article 133 arise from the judgment of the Full Bench of Allahabad High Court in Smt. Chandra Rani v. Vikram Singh, [1979] Allahabad Law Journal 401. The respondents laid the suits in the Courts of Small Causes for recovery of arrears of rent or for rent and possession from the appellants. On their committing default in payment of rent in pending suit, their defence was struck off under Order 15 Rule 5 of CPC as amended by U.P. Civil Laws (Reforms and Amendment) Act, 1976, U.P. Civil Laws (Amendment) Act 37/1972 and U.P. Civil Laws (Amendment) President's Act 19/73. They challenged the vires of Order 15 Rule 5. On reference, the Full Bench held that it is not inconsistent with the CPC Central (Amendment) Act 104/76 (for short, 'the Central Act') and is not void under Article 254(1) of the Constitution.

By U.P. Act 37/72, s.4 of the Provincial Small Causes Court Act was amended empowering the Court of Small Causes to decree suit for possession of immovable property and for recovery of arrears of

rent or interest in such property. By U.P. Act 37/72, brought on statute, Rule 5 of Order 15, stating thus:-

> "5. Striking off defence on failure to deposit admitted rent, etc. - (I) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendants shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per centum per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making, the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the court may subject to the provisions of sub-rule (2), strike off his defence.
>
> Explanation 1. - The expression 'first hearing' means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.
>
> Explanation 2. - The expression 'entire amount admitted by him to be due' means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any deposited in any court under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Explanation
>
> 3. - The expression 'monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deductions except the taxes, if any, paid to a local authority in respect of the building on lessor's account.
>
> (2) Before making an order for striking off defence, the court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.
>
> (3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:
>
> Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

> Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the court may require the plaintiff to furnish security for such sum before he is allowed to withdraw the same."

Consequentially Order L Rule l(b) of CPC was suitable amended by President's Act 19/1973 so that Rule 5 of Order 15 would consistently be applicable to the suits for recovery of possession and arrears of rent or recovery of rent simplicitor, as the case may be. After the Central Act was enacted on September 1976 and received the assent of the President on the same day, i.e. September 9, 1976, it was published in the Central Gazette on December 10, 1976, the U.P. State Legislature swung into action and enacted U.P. Civil Laws (Reforms and Amendment) Act 57/76 on December 13, 1976 reserved for consideration and received the assent of the President on December 30, 1976. It was published in the Gazette on December 31, 1976 brought into force with effect from January 1, 1977. The Central Act became operative with effect from February 1, 1977. In U.P. Act 57/76 "by s.7 thereof, three Explanations to Sub-rule (1) to Rule 5 of Order 15 were added as referred to hereinbefore.

When these appeals came up for final disposal, on July 14, 1987 a Bench consisting of E.S. Venkataramaiah and K.N. Singh, JJ (as they then were) referred the appeals for consideration by a Bench of three Judges. Thus these appeals have come up before us. Shri Parag, learned counsel, after thorough preparation, placing strong reliance on Ganpat Giri v. Ilnd Addl. District Judge, (1986) 1 SCR 151, argued with commitment and conviction, that the object of the Central Act was that Parliament intended that CPC should be uniform throughout India. The U.P. Act came into force prior to the Central Act was brought into force on February 1, 1976. The State Act or a provision made by a High Court to the order previously made by consistent with the provisions of the Code as amended by the Central Act which alone remain valid. All the pre-existing amendments made by the appropriate State legislature or a High Court stand repealed. Order 15 Rule 5 is one such prior amendment made by the State Legislature which is consistent with the Central Act from the date of its commencement. By operation of clause (1) of Article 254, the State Act became void. The striking of the defence, therefore, is contrary to law. Shri Manoj Swarup contended that the State amendment violates Article 14. An honest litigant who admits of arrears is made to suffer the onslaught' of Order 15 Rule 5, while dishonest tenant who denies rent is permitted to defend the suit by adduction of evidence. The striking off valid defence raised by an honest litigant, for his failure to pay the arrears is made to pay the penalty of his defence being struck off creating unjust and unfair procedure violating Article 14.

The High Court certified two questions of law for decision by this Court as under:

> "1. Whether Rule 5 inserted in Order XV C.P.C. by the U.P. Civil Laws (Amendment) Act, 1972 and substituted by new Rule 5 of the U.P. Civil Laws (Reforms and Amendment) act, 1976 is consistent with the provisions of the Principal Act as amended by the Central Civil Procedure Code (Amendment) Act, 1976 and stands repealed?

2. Whether Section 97(1) and (3) and of the Central Civil Procedure Code (Amendment) Act, 1976 are retrospective and the orders passed before 1.2.1977 striking off the defence for non- compliance of Rule 5 are to be set aside?"

It would appear that consequent upon Rent Acts made by the State legislature to protect unreasonable eviction of the tenants by the landlord's torrent racket and when tenants taking aid of accrued statutory tenancy, commit default in the payment of rent and drive the landlords to recover the same by filing civil suits, undue delay in disposal of the suits cause considerable hardship to the landlords. To remedy the situation of occupation of the building without paying arrears or accumulated arrears of rent, with a view to restoring the equilibrium between the competing interests of the tenants and landlords and to relieve the latter from hardship, the State legislature stepped in and introduced Rule 5 to Order 15 so as to enable the landlord to make an application to the Court for direction to pay the admitted rent and on an order passed in that behalf and on failure to comply therewith, the Court is empowered to strike off the defence of the tenant so as to enable the landlord to have the suit decreed and to recover possession and arrears of rent.

The Central Act was enacted pursuant to the recommendation made by the Law Commission of India. The Central Act is an Amending Act as its title itself unmistakably indicates. In Order 15, the Central Act amended only Rule 2 but Rules 3 and 4 remain unamended. The U.P. Act, added Rule 5 to get over the inequilibrium created by recalcitrant tenants, giving an opportunity to the defaulting tenants to pay the admitted rent pending suit at the pain of striking down the defence.

The question, therefore, is whether Rule 5 of Order 15 is inconsistent with the Central Act and thereby became void under Article 254(1) of the Constitution? Entry 13 of the Concurrent List of the 7th Schedule to the Court, namely, Civil Procedure, including all matters included in the Code of Civil Procedure, empowers the Parliament and the legislature of the State to make or amend the law in that behalf. The Legislature of the State has power to amend Sections as well as Schedules to the Code while a High Court is empowered to amend the orders on the Schedules. The Central Act being an Amending Act to the Code of the Civil Procedure Act 5/1908 existing at the commencement of the Constitution appropriate amendments are permissible. Article 254(1) envisages that "if any provision or law made by the Legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by the Parliament whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void". Clause (2) of Article 254 is an exception to clause (1) which adumbrates that where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State, provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding or, amending, varying or repealing the law so made by the Legislature of the State. (Emphasis supplied).

In Zaverbhai Amaidas v. State of Bombay, [1955] SCR 799 at 809, a Constitution Bench of this Court considered whether s.7 of the Essential Supplies (Temporary Powers) Act, 1946 as amended in 1948 and 1949 repealed by implication, the Bombay Act (XXXVI of 1947) being inconsistent with Article 245(1) of the Constitution. At page 809, the Constitution Bench held that "Whether an Act of Parliament prevails against a law of the State, no question of repeal arises but the principle on which the rule implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will equally applicable to a question under article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law." It was held that Bombay Act cannot prevail against the Central Act.

This Court in Ch. Tika Ramji v. State of U.P., [1956] SCR 393, another Constitution Bench was to consider whether the U.P. Sugarcane Act, 1953 was inconsistent with the Essential Commodities Act, 1955. Having adverted to the three principles laid by Nicholas in his Australian Constitution, 2nd Ed. p.303 approved them as those applicable to test inconsistency or repugnancy, namely (1) there may be inconsistency in the actual terms between competing statutes, (2) though there may be no direct conflict, a State law may be inoperative because the Commonwealth law or the award of the Commonwealth Court, is intended to be complete exhaustive code, and (3) even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers for the same subject matter. It was, therefore, held that there was no conflict between the State Act and the Central Act and both do co-exist.

In Deep Chand v. State of Uttar Pradesh, [1959] Supp. 2 SCR 8 at 43. Subba Rao, J. speaking for majority held that the repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

> "(1) Whether there is direct conflict between the two provisions;
>
> (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature ; and (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

Examining the provisions of the U.P. Transport Service Development Act 9/1955 and the Motor Transport (Amendment) Act, 1956, held that the State Law did not, on the passing of the Central Act, become wholly void under Article 254(1) of the Constitution and continued to be valid and subsisting law supporting the scheme already framed under the U.P. Act.

Entire case law was reviewed by yet another Constitution Bench in M. Karunanidhi v. Union of India, [1979] 3 SCR 254, and held that the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 was not repugnant to the Code of Criminal Procedure or the Prevention of Corruption Act or Criminal Law (Amendment) Act, 1952. In that behalf, this Court emphasised that in deciding the question of repugnancy, it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field. There could

be no repeal by implication unless the inconsistency appears on the face of the two statutes. Both statutes, if operate in the same field without coming in collision with each other there would be no repugnancy. If the statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both statute continue to operate in the same field. In Krishna Dist. Cooperative Marketing Society Ltd., Vijayawada, v. N.V. Pumachandra Rao, AIR (1987) SC 1960, following the Maxwell's Interpretation of Statutes, held that when the latter Act is capable and reasonably applicable without extending it to the subjects specially dealt with by the earlier legislation, it cannot be held that earlier special legislation indirectly repealed, altered or derogated merely by force of such general words without any indication of a particular intention to do so. Mere general rule is not enough even though by its term, it is stated widely that it would, taken by itself, cover special cases of that kind referred to earlier.

In Gauri Shankar Gaur v. State of U.P., [1994] 1 SCC 92, the question was whether the Land Acquisition (Amendment) Act 68/84 repealed the U.P. Avas and Vikas Parishad Adhiniyam, 1965, one of us (K. Ramaswamy, J.) considered the case law whether Central Act would be applicable by reference or by incorporation and held that certain provisions of the Central Act were by incorporation and not by reference. On incompatibility under Article 254 of the Constitution, considered the cases starting from Zaverbhai's upto T. Barai v. Henry Ah Hoe, [1983] 1 SCR 905, held that the State law was not repugnant to the Central Act and both would operate consistently and they did not occupy the same field. State law was not fully inconsistent with the Central Act. Equally, it is not absolutely irreconcilable. Both the State and the Central Acts do co-exist in relation to the procedure prescribed under the respective Acts. Both the Acts co-exist independently without, in any way, colliding with each other. Therefore, s.55 of the Adhiniyam and the Schedule did not become void.

Clause (2) of Article 254 is an exception to Clause (1). If law made by the State Legislature is reserved for consideration and received assent of the President though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central Law and operates in that State as valid law. If the Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier amendment made by the State legislature, if found inconsistent with the Central amended Law, both Central law and the State Law cannot co-exist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State Law becomes void under Article 254(1) unless the State Legislature again makes law reserved for the consideration of the President and received the assent of the President. Full Bench of the High Court held that since U.P. Act 57/76 received the assent of the President on December 30, 1976, while the Central Act was assented on September 9, 1976, the U.P. Act made by the State Legislature, later in point of time it is a valid law.

Shri P.P. Tripathi contented that the repugnancy arises not with the making the law as envisaged in Clause (1) of Article 254 but when Act was brought into operation since State Act came into force with effect from January 1, 1977 while the Central Act became operative from February 1, 1977, the U.P. Act is an earlier enactment to the Central Act. The Parliament evinced intention to bring about an exhaustive amendment to the CPC and is applicable to all States. The State amendments, being inconsistent with the Central Act, became void. We find no force in the contention.

Section 97(1), with a marginal note "repeal and savings" , envisages that any amendment made or any provision incorporated in the Principal Act by a state legislature or a High Court before the commencement of the Central Act shall, except in so far as amendment or provision is consistent with the provisions of the Principal Act as amended by the Central Act, stands repealed. The emphasis as rightly stressed by Sri Parag is "any amendment to CPC made by the state legislature or a provision by the High Court"

> before the "commencement" of this Act stood repealed. It is to be noted here that the Central Act is an amending Act, not a repealing and consolidating statute to supplant the Principal Act, namely, Act 5 of 1908. Since CPC is a concurrent subject, the Parliament and the Legislature of a State or a High Court in respect of orders in the Schedule are competent to enact or amend CPC respectively. In fact several local amendments made to CPC before the commencement of the Central Act do exist. Pursuant to the recommendation made by the Law. Commission of India to shorten the litigation, the Parliament made the Central Act to streamline the procedure. It is true that inconsistency in the operation of the Central and the State Law would generally arise only after the respective Acts commenced their operation. Section 3(13) of the General Clauses Act defines "commencement" to mean the day on which the Act or Regulation comes into force. The founding fathers were cognizant to the distinction between making the law and commencement of the operation of the Act or Regulation. Article 254, clauses (1) and (2) and in a way s.97 of the Central Act are also alive to the distinction between making the law and commencement of the law. In Collins English Dictionary at p.889 "make" is defined to mean, to "cause to exist", "to bring about" or "to produce". Black's Law Dictionary, 6th Edn. at p.955 making is defined to cause to exist.....to do in form of law; to perform with due formalities; to execute in legal form;.... The verb 'made' in Art. 254 brings out the constitutional emanation that it is the making of the law by the respective constituent legislatures, namely, the Parliament and the State Legislature as decisive factor. Commencement of the Act is distinct from making the law. As soon as assent is given by the President to the law passed by the Parliament it becomes law. Commencement of the Act may be expressed in the Act itself, namely, from the moment the assent was given by the President and published in the Gazette, it becomes operative. The operation may be postponed giving power to the executive or delegated legislation to bring the Act into force at a particular time unless otherwise provided. The Central Act came into operation on the date it received the assent of the president and shall be published in the Gazette and immediately on the expiration of the day preceding its commencement it became operative. Therefore, from the mid- night on the day on which the Central Act was published in the Gazette of India, it became the law. Admittedly, the Central Act was assented to by the President on September 9, 1976 and was published in the Gazette of India on September 10, 1976. This would be clear when we see the legislative procedure envisaged in Arts. 107 to 109 and assent of the President under Art. 111 which says that when a Bill has been passed by the House of the People, it shall be presented to the President and the President shall either give his assent to the Bill or withhold his assent therefrom. The proviso is not material for

the purpose of this case. Once the President gives assent it becomes law and becomes effective when it is published in the Gazette. The making of the law is thus complete unless it is amended in accordance with the procedure prescribed in Arts. 107 to 109 of the Constitution. Equally is the procedure of the State Legislature. Inconsistency or incompatibility in the law on concurrent subject, by operation of Art. 254, clauses (1) and (2) does not depend upon the commencement of the respective Acts made by the Parliament and the State legislature. Therefore, the emphasis on commencement of the Act and inconsistency in the operation thereafter does not become relevant when its voidness is required to be decided on the anvil of Art. 254(1). Moreover the legislative business of making law entailing with valuable public time and enormous expenditure would not be made to depend on the volition of the executive to notify the commencement of the Act. In compatibility or repugnancy would be apparent when the effect of the operation is visualised by comparative study.

It is true that CPC, the principal Act No. 5 of 1908 as amended by the Central Act and the pre-existing State amendment or a provision made by a High Court was intended to be consistent so that the procedure would uniformly be efficacious and expeditious in adjudicating the substantive civil rights of the parties. It, thereby manifested its intention that there should be amendment to the Principal Act by the Central Act to a particular Section or a Rule or sub-rule or a provision in an Order in the Schedule. If the Principal Act, as so amended, and the pre-existing State amendment or a provision made by the High Court is found to be inconsistent with the amendment brought under the Central Act, then to the extent of inconsistent pre-existing amendments made by State Legislature or a provision made by the High Court becomes void by operation of clause (1) of Art. 256. By operation of sub-s. (1) of s.97 of the Central Act, it stands repealed unless State Act is passed, reserved for consideration and received the assent of the President under clause (2) of Article 254. Section 1(2) of the Central Act visualises that the Central Government may bring into operation different provisions in the Central Act at different dates by a notification published in a Gazette. As a matter of fact, three different notifications were published in the official gazette bringing diverse provisions of the Amendment Act into operation form three different dates. All the provisions except amended ss.28, 34 and 148A were brought into force on February 1, 1977. Sections 28 and 148A were brought into force with effect from February 1, 1977 and s.34 was brought into force with effect from July 1, 1977. The legislative business done by the appropriate State Legislature cannot be reduced to redundance by the executive inaction or choice by the Central Government by issuing different dates for the commencement of different provisions of the Central Act. The Constitution, therefore, made a clear demarcation between malting the law and commencement of the law which, therefore, bears relevance for giving effect to Article 254.

In this view the expression "that provision" in s.97(l) of the Amendment Act must be understood in juxtaposition to Art.254 of the Constitution and not in derogation thereof. If the contention of the counsel that the commencement of the provision is a

condition precedent to bring about inconsistency by statutory interpretation, the word "made" be substituted with the word "commencement" in Article 254 (1) and (2) of the Constitution which is impermissible by interpretative process and amounts to judicial legislation.

The contention of the learned counsel proceeded on the assertion that the Central Act is a consolidation Act intended to repeal Act 5/1908 and re- enact Act 104/76 to be a complete code is misconceived. The title of the Act itself manifests the intention of the Parliament that it is an 'Amending Act" to various provisions of the CPC by only 96 Sections to the main Code. It is also true that s.97(l) of the Central Act says that any amendment, made, or any provision inserted to the principal Act by a State legislature or a High Court before the commencement of the Central Act shall, except in so far as amendment or provision is consistent with the provisions of the principal Act as amended by the Central Act, stood repealed. The contention advanced by the learned counsel for the appellants is that all pre-existing amendments stood obliterated unless fresh amendment, by the State Legislature or a High Court, is made after February 1, 1977 reserved for consideration and received the assent of the President. In support thereof they placed reliance on the ratio in Ganpat Gin's case. It may be mentioned at once that Justice Venkataramaiah (as he then was) who rendered the judgment in Ganpat Gin's case, on behalf of a Bench of two judges, himself referred the cases for consideration by a three Judge Bench. In that case, some observations made would lend support to the contention of the appellant. It was observed thus:

"(i) The object of Section 97 of the Amending Act appears to be that on and after February 1, 1977 throughout India wherever the Code was in force there should be same procedural law in operation in all the civil courts subject to course to any future local amendment that may be made either by the State Legislature or by the High Court, as the case may be in accordance with law. Until such amendment is made the Code as amended by the Amending Act along should govern the procedure in civil courts which are governed by the Code. We are emphasising this in view of the decision of the Allahabad High Court which is now under appeal before us."

(ii) "Section 97(1) of the Amending Act takes note of the several local amendments made by a State Legislature and by a High Court before the commencement of the Amending Act and states that any such amendment shall except insofar as such amendment or provision is consistent with the provisions of the Code as amended by the Amending Act stands repealed. It means that any local amendment of the Code which is inconsistent with the Code as amended by the Amending Act would cease to be operatives on the commencement of the Amending Act, i.e. on February 1, 1977."

(iii) The repealing provision in section 97(1) is not confined in its operation to provisions of the Code including the Orders and Rules in the First Schedule which are actually amended by the Amending Act".

The ratio therein must be understood in the light of the facts therein. Rule 72 of Order 21 CPC was amended by the State legislature, equally the Central Act repealed the existing rule and re-enacted the rule so as to be self-operative and complete code consistent with the development of the law. Therefore, the Bench held that State amendment since was not consistent with the Central Act, the State amendment was declared repugnant to the Central Act. Therefore, it became void unless it was re-enacted by the State Legislature, reserved for consideration and received the assent of the President. The ratio on the facts in that case is unexceptionable but observations which we have noted above, gave rise to a construction advanced by the counsel. The wide construction put up by the Bench with due respect does not appeal to be sound. It is seen that Order 15 of the Central Act, as it stood before to the Amendment Act, consists of only Rules 1 to 4. Since the special need arose in Uttar Pradesh to maintain equilibrium between the rights of the tenants of their fixity of tenures subject to compliance with the provisions of the Rent Act and of the landlord to receive rent from the tenant, even pending proceedings, enacted Rule 5 and received the assent of the President and became a statute. Three Explanations were made by U.P. Act 57/76 to remove ambiguities and doubts. As stated earlier, the Central Act being an Amending Act and not a repealing Act and only Rule 2 of Order 15 was amended by the Central Act and the State Act made no amendment to Order 15 Rule 2. Rule 5 as was pre- existing was not dealt with in the Central Act. On the other hand, Section 35-B of the Code empowers the Court to strike down the defence if costs are not paid as directed by the Court. Equally, Order 6 Rule 16 empowers the Court to strike down the pleading on conditions mentioned in the said Rule. Order 11 Rule 21 empowers the Court to strike down the defence in case the party fails to comply with any order to answer interrogatories for discovery or inspection of the documents. The Code, thus, by itself envisages striking of the defence in the stated circumstances. Similar provision made by the State Legislature is also consistent with the policy and principles of the Act 5 of 1908 as amended by the Central Act. In other words, there is no repugnancy in that behalf.

The condition precedent to bring about repugnancy should be that there must be an amendment made to the Principal Act under the Central Act and the previous amendment made by a State legislature or a provision made by a High Court must occupy the same field and operate in a collision course. Since the State Act as incorporated by Act 37/72 and the Explanations to Rule 5 by the Act 57/76, Rule 5 was not occupied by the Central Act in relation to the State of U.P., they remain to be a valid law. We may clarify at once that if the Central Law and the State Law or a provision made by the High Court occupy the same field and operate in collision course, the State Act or the provision made in the Order by a High Court being inconsistent with or in other words being incompatible with the Central Act, it becomes void unless it is re-enacted, reserved for consideration and receives the assent of the President after the Central Act was made by the Parliament i.e. September 10, 1970.

It is true that inconsistency or incompatibility of the operation of the Central Act and the State Act would also arise after the respective Acts are brought into force and such State Act must be prior in point of time to the Central Act. We have already found that the point of time is with reference to making the law as envisaged in Article 254 and not when the Central Act had come into force. Accordingly we hold that there is no inconsistency in the operation of Rule 5 of Order 15 since the same is not occupied by the Central Act or Act 5 of 1908 and that, therefore, it did not become void.

The contention that s.20(4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, provides procedure for payment of the arrears "on the first date of hearing of the suit" and if the tenant deposited the arrears, the Court has been given power to relieve the tenant against the liability for eviction on that ground and Order 15 Rule 5 provides discriminatory procedure offending Article 14 needs no close scrutiny. The two procedures are distinct and separate. The former gives opportunity to a tenant to make amends to his conduct of default and to availed the benefit of avoiding decree for eviction under the Rent Control Act. The jurisdiction of the Small Causes Court in that behalf was expressly taken out. The further contention that Order 15 Rule 5 makes arbitrary discrimination between two classes of tenants, namely, one making a bona fide mistake in not depositing the rent prior to the date of the first hearing and the other a dishonest tenant who takes a plea disputing the rent itself and permitted the latter to contest the suit by an adjudication and the former is negated by striking down the defence which violates Article 14 also is untenable. As stated earlier the bonafide mistake on the part of the tenant in depositing the rent was given benefit of the discretionary relief may be granted by the Court considering from the previous conduct of the tenant and the mitigating circumstances, if any. Therefore, they are treated as a class. The dispute of tenancy and right to adjudication thereon also stands as a class. The tenant in default at a suit in the court of Small Causes is given right to contest the suit subject to his paying the admitted rent. It is a condition precedent. All those tenants are treated as a class. There is no invidious discrimination in that class. All are treated alike. There exists discernible differantia between two classes. The only class of tenants who commit default in payment of admitted rent after an order has been passed by the court, alone are disabled to contest the suit by striking of defence due to his recalcitrant attitude in committing further default in payment of the rent. The nexus in pregnant with legislative wisdom to protect the landlord from hardship. Order 15 Rule 5 gives a right to the plaintiff to make an application to this Court. The Court after considering the respective contentions and circumstances would pass an order directing the tenant to continue to pay the admitted rent as a condition to contest the suit. On his committing default, the defence will be struck off. The classification is based on intelligible differantia. The procedure, therefore, is consistent with the just and fair procedure to mitigate the hardship to the landlord and to prevent unfair advantage of delaying the disposal of the suit by the tenant. The procedure, therefore, is neither discriminatory nor arbitrary nor capricious but one which is judicious.

The next question is whether the Central Act is retrospective in operation? The majority of the Full Bench held that it is retrospective and one Judge held it to be prospective and, therefore, U.P. (Amendment) Act would not be applied to the pending proceedings. Section 97 (3) itself has taken care of the situation and envisaged thus:

> "97(3) Save as otherwise provided in sub-Section (2), the provisions of the principal Act, as amended in this Act, shall apply to every suit, proceeding, appeal or application pending at the commencement of this Act or instituted or filed after such commencement, notwithstanding the fact that the right, or cause of action, in pursuance of which such suit, proceeding appeal or application is instituted or filed, had been acquired or had accrued before such commencement."

Note This reference relates to amendments made to rules in Order 39.

However, a plain reading clearly indicates the legislative intention that the provision of the principal Act as amended in the Central Act shall apply to every suit, proceeding, appeal or application pending at the commencement of the Amendment Act or filed thereafter, notwithstanding the fact that the right or cause of action in pursuance of which such suit, proceeding, appeal or application is instituted or filed had been acquired or had accrued before such commencement. Thereby it would be applicable to the pending proceedings even though a right had accrued or proceedings were instituted prior to the Central Act and the State Act have come into force.

Accordingly, we hold that s.97(3) itself has affected the vested right and given retrospective operation to the pending proceedings, apart from applicability of the law from that date. It may be of interest to notice that after the judgment in Ganpat Girl's case, the matter was again refereed to another Full Bench to reconsider the affect of the ratio in Chandra Rani's case, the subject matter of the appeals. The Full Bench in Premier Motors v. Jaswant, AIR (1989) All. Page 1, considered the affect of the Ganpat Giri's ratio and held that the ratio in Chandra Rani's case was not weakened. The ratio of the Full Bench was held to be still good law.

In the above perspective, we are of the view that Order 5 Rule 15 is still a valid law, retrospectively operates and applies to the pending proceedings instituted prior to the State Act 57/76 and the Central Act have come into force.

The appeals are accordingly dismissed but in the circumstances without costs.

Appeal dismissed.