

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF NOVEMBER, 2008

P R E S E N T

THE HON'BLE MR. JUSTICE S. R. BANNURMATH

&

THE HON'BLE MR. JUSTICE A. N. VENUGOPALA GOWDA

REGULAR FIRST APPEAL NO. 1438/2007

BETWEEN:

VIJAYA BANK
RESIDENCY ROAD BRANCH
NO. 134/1, RESIDENCY ROAD
BANGALORE-25

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. K. CHANDRANATH ARIGA, ADV.)
: APPELLANT

AND :

M/S DYNASTY HOLDINGS (P) LTD
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE
AT 1ST FLOOR, EMBASSY POINT
150, INFANTRY ROAD, BANGALORE-01
REPRESENTED HEREBY ITS MANAGER
MR. A. T. GOPINATH, AGED 36 YEARS.

: RESPONDENT

(BY SRI. S. VIJAYA SHANKAR, SENIOR COUNSEL FOR
M/S. INDUS LAW ASSOCIATES,)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AGAINST
THE JUDGEMENT AND DECREE DATED 04.04.2007 PASSED IN
OS.NO.4727/2000 ON THE FILE OF THE XV ADDL.CITY CIVIL
AND SESSIONS JUDGE, BANGALORE CITY, CCH-3, PARTLY
DECREETING THE SUIT FOR EJECTMENT.

THIS APPEAL HAVING BEEN RESERVED, VENUGOPALA
GOWDA J., DELIVERED THE FOLLOWING:-

JUDGMENT

Appellant was the defendant and Respondent was
the plaintiff in O.S.No.4747/2000 on the file of the City
Civil Court, Bangalore City. Suit filed by the respondent
for decree of ejectment and for damages / mesne profits
against the appellant having been decreed by Trial Court
on 04.04.2007, this appeal is filed questioning the same.
For convenience, parties will be referred to hereinafter with
reference to their rank in the suit.

2. The preface of the Hon'ble Supreme Court at
paras 2 and 3 in the decision of AMBALAL SARABHAI
ENTERPRISES LTD., VS. AMRITLAL AND CO., REPORTED IN
(2001) 8 SCC 397, is apt to be noticed in this appeal by a
Public Sector Bank - appellant, to consider the point raised

by it for our decision. Hon'ble Supreme Court has observed as follows:

2. It is unfortunate, an eviction petition which was filed on 13.9.1985 still the parties are battling to find which court would have the jurisdiction. Whether the Court of Rent Controller under the Delhi Rent Control Act or ordinary Civil court will have jurisdiction over the subject-matter in issue? As discipline and culture in every walk of life is essential for smooth functioning in all its activities, similarly judicial culture and discipline has to be followed in order to achieve the desired result viz. to give the litigant justice in the shortest period of time. Every legislation legislates for the benefit of its subject but many a times, raising issues for everything and stretching it too long percolates the very objective for which it is made. With the increasing complexities of laws coupled with faulty legislation, using inappropriate language, a stress is created which the courts through their judicial interpretations have

been attempting to simplify. In spite of this, the hope for an early adjudication has been eluding like a mirage. With the advancement of legal studies, there is sharpening of the acumen of advocacy. Every word of a statute, if interpreted when equipped with such dynamism, could be intellectually misused, hence to keep balance not to let this misuse surface. As a knife in the hand of a murderer and a doctor has different roles to play, so the interpreters have to select to play the role of a doctor to confer benefit to the subject. The words in a statute are dynamic, not static, hence have to be interpreted to subserve to the objectives of an Act. Such judicial discipline in interpreting has to be followed for yielding legislative intent. Similarly judicial culture has to be cultivated even by counsel appearing for a cause, who have to see that the judicial system does not rust or get stains for a delayed justice.

Defendant obtained premises bearing No.134/1, Residency Road, Bangalore, comprising of basement and ground floors (for short, suit schedule premises) on 01.08.1983 on monthly rental basis. Suit property was purchased by plaintiff under a sale deed dated 11.09.1995. Plaintiff issued legal notices dated 09.03.2000 and 12.05.2000 terminating the tenancy. Defendant sent reply to the notice dated 09.03.2000. Plaintiff filed

3. Brief facts of the case which have given rise to this appeal are:

3. To win a battle for a client is the legitimate expectation of all but in doing so deliberations should not be such which lengthens the litigation, even if it confers temporary gain to one's client in a litigant. This judicial culture has not to be lost sight of. The present case is one of such cases, which causes concern in this regard.

O.S.No.4747/2000 in the Trial Court, for decree of
ejection and mesne profits against defendant.
Defendant contested the suit by filing the written
statement inter alia contending that, it is a tenant
protected under the Karnataka Rent Control Act, 1961
("KRC Act, 1961", for short) and therefore, the suit is not
maintainable; that there was no proper termination of
tenancy; that in view of the continued acceptance of rent
without protest, plaintiff by its conduct, waived the right of
eviction and the suit is also devoid of merit.

4. Based on the pleadings, 7 issues were framed
by Trial Court for consideration. Manager of plaintiff
deposed as PW-1 through whom Exs.P1 to P9 were
marked. Manager of defendant deposed as DW-1 through
whom Exs.D1 & D2 were marked. Considering the
evidence on record and contentions of the parties, Trial
Court has held that, plaintiff is the owner of suit property;
that it has lawfully determined the lease; that the suit is
maintainable; that plaintiff is entitled to vacant possession

of suit property and damages. The suit was decreed directing the defendant to quit, vacate and deliver vacant possession of suit schedule property to the plaintiff within 90 days. Aggrieved thereby, this appeal has been preferred.

5. We have heard Sri.Udaya Holla, learned Senior Counsel for appellant and Sri.S. Vijaya Shankar, learned Senior Counsel for respondent.

6. The only contention advanced at length by Sri.Udaya Holla, learned Senior Counsel for the appellant is that, finding of Trial Court that, the suit is maintainable is erroneous. He contended that the suit on the date of filing was not maintainable, having regard to the provision of KRC Act, 1961. According to him, initial defect did not get cured by the enactment of Karnataka Rent Act, 1999 ("New Rent Act" for short) which came into force after an year after filing of the suit and since the rights of parties got crystallised as on the date of commencement of the lis, the law applicable as on the date of institution of the suit

alone will govern, which aspect has not been considered by the Trial Court and consequently the impugned judgment and decree are erroneous, illegal and liable to be set aside.

7. Per Contra, Sri.S. Vijaya Shankar, learned

Senior Counsel for respondent contended that, findings of Trial Court in the impugned judgment and decree are based on proper consideration and appreciation of oral and documentary evidence on record; that the Trial Court has not committed any error or illegality in taking notice of the subsequent development of repealing of KRC Act, 1961 and coming into force of Karnataka Rent Act and even otherwise, no rights had accrued in favour of defendant. Subsequent event being taken into consideration and relief being moulded to shorten the litigation and to enable complete justice, is well recognised and is permissible, is the submission of the learned counsel. He further contended that, the Trial Court has not committed any error in answering the issues raised by it for consideration and in passing the decree against defendant. Learned

counsel made submissions in support of the decree passed by Trial Court.

8. From the perusal of evidence of PW-1 and DW-

1, it is clear that, defendant obtained lease of suit schedule property under a lease agreement dated 01.08.1983 (Ex.D2). Plaintiff purchased the suit schedule property under a sale deed dated 11.09.1995 (Ex.P8). Plaintiff issued a notice of termination dated 9.3.2000 to the defendant, to vacate the premises before 31.03.2000, to which a reply dated 22.04.2000 (Ex.P2) was sent. Another notice dated 12.05.2000 (Ex.P3) was sent by the plaintiff terminating the tenancy of defendant from 31.05.2000. Postal acknowledgement and letter are at Exs.P5 and P6. Certified copies of the sale deed and rectification deed of the suit property in the name of the plaintiff are Exs.P8 and P9. Original title deeds have been deposited with the Vysya Bank and acknowledgement is at Ex.P1. Defendant has paid the rent to plaintiff. Defendant had sought renewal of lease of suit property from plaintiff (Ex.D1).

There is no dispute with regard to the jural relationship between the parties. Considering the oral and documentary evidence, finding of the Trial Court that, plaintiff is the owner of suit property and defendant is a tenant under plaintiff and that there is jural relationship of landlord and tenant between the parties cannot be held to be erroneous. In view of the termination notice at EX.P3, the postal acknowledgement and also the communication of postal department at EX.P5 and P6, finding of Trial Court that EX.P3 has been served on the defendant cannot be found fault with. In terms of EX.D2, the lease agreement, lease period of 10 years of defendant expired in the year 1993 itself, by efflux of time. Indisputedly there is no renewal of lease thereafter. In view of issue of notice EX.P3 by plaintiff and its service on the defendant, Trial Court has held that, there is valid termination of the lease as per Section 106 of the Transfer of Property Act, which finding cannot be held to be erroneous.

9. The main contention of the defendant before the Trial Court was that, suit for ejectment is not maintainable as the defendant being a nationalised bank wholly owned by the Government of India, the exemption under Section 31 of the KRC Act, 1961 is not applicable to it, as it is a public authority within the meaning of Section 3(p) and as such, it is statutorily protected under Section 21. The Trial Court considering the submissions made, noticing the repeal of KRC Act, 1961 and the coming into force of New Rent Act, and keeping in its view the law laid down by Hon'ble Supreme Court, has held that the defendant cannot claim that it is continued to be protected under the repealed KRC Act, 1961 and in view of the repealing of the KRC Act, 1961, Section 106 of the Transfer of Property Act is applicable and consequently, the suit is maintainable.

10. Having considered the rival contentions and after perusal of the record, the following points arises for our consideration:

11. The KRC Act, 1961, a temporary enactment which came into force on 31.12.1961 and extended from time to time, was to remain in force up to 31.12.2001. It is an Act providing for the control of rents and evictions, for the leasing of the buildings, to control rates of hotels and lodging houses and for certain other allied matters in the State of Karnataka. Part V of the Act containing Sections 21 to 31 is regarding control of eviction of tenants and obligation of landlords. Sub-Section (1) of Section 21 provided that no order or decree for recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant unless an application is made to the Court defined under Section 3(d) of the Act, on one or more of the grounds at Clauses (a) to (p). The said Act was replaced by new Rent

- (i) Whether the finding of Trial Court with regard to the maintainability of the suit is just and proper or perverse & illegal?
- (ii) Whether the impugned decree is sustainable?

Act which received the assent of President on 22.11.01 and was published in the Karnataka Gazette dated 27.11.01. Sections 1, 3 & 6 of new Rent Act came into force on 05.12.2001 and the remaining provisions came into force on 31.12.2001. The suit herein was filed on 11.07.2000. Indisputably the new Rent Act is inapplicable to the suit premises in view of Section 2(3)(g) which provides that, nothing in the new Rent Act shall apply to any premises used for non-residential purposes (excluding premises having a plinth area of not exceeding 14 sq. mts. used for commercial purposes).

12. Section 70 of the new Rent Act is relating to the repeals and savings. It reads as follows:

70. Repeal and Savings:-

(1) The Karnataka Rent Control Act, 1961 (Karnataka Act 22 of 1961) is hereby repealed.

(2) Notwithstanding such repeal and subject

to the provisions of Section 69:

(a)

It shall remain in force upto and inclusive of thirty-first December, 2001 and upon the expiry of this Act, Section 6 of the Karnataka General Clauses Act, 1899, shall apply as if this Act were a permanent Karnataka Act and had been repealed by a Karnataka Act immediately before its expiry.

13. KRC Act, 1961 was an Act, made for the control of rents and evictions for the leasing of buildings and for certain other matters. Section 1(4) reads thus:

(underlining is by us)

(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, 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.

(c)

(b)

It is true that on the date the suit was filed in the Trial Court, the provisions of KRC Act, 1961 applied to the suit premises. But before the suit could be decided the said Act was repealed by the New Rent Act. The appellant contends that, in view of the applicability of the provisions of the KRC Act, 1961 as on the date of filing the suit, the Court had no jurisdiction to grant the relief and hence, the decree passed is illegal and without jurisdiction. For raising this contention the appellant invokes in its aid Section 21(1) of KRC Act, 1961, the relevant portion of which reads thus:

21. Protection of tenants against eviction:

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant:

Provided that the court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the

following grounds only, namely:-

It was urged that in view of the above, the special Forum in terms of Section 3(1)(d) and special procedure in terms of Clauses (a) to (p) of Section 21(1) as prescribed therein only applies and without resort to the same, the suit in Civil Court under the general law is not maintainable. It was argued that the appellant is a tenant as defined under Section 3(r) and KRC Act, 1961 being intended to be beneficial to the tenants and afforded the statutory protection, the present suit being not maintainable, ought to have been dismissed accordingly.

14. The said contention was countered by the learned Senior Counsel for respondent contending that, there is a vast difference between the rights of the owner / landlord and tenant; the protection to the tenant was only till the statute was in force; no rights were acquired or accrued to the appellant under the statute which was repealed prior to the decision in the suit and the law applicable is the one in operation as on the date of hearing

(a) to (p) ...

/ decision and since the provisions of New Rent Act are not applicable to the premises in occupation of appellant, the suit under the General law i.e., Transfer of Property Act is maintainable.

15. Learned Senior Counsel on both sides relied on

various pronouncements of Apex Court and this Court, to which we make a reference later. Indisputably, KRC Act, 1961, was repealed by the time the Trial Court passed the impugned decree, with the coming into force of the New Rent Act. What has been saved are only those exceptions provided under Section 70 of the New Rent Act. Protection from eviction afforded to a tenant under KRC Act, 1961, in whose favour, there was neither an order or a decree has not been saved. Under the New Rent Act, protection from eviction etc. has been provided only to those tenants to whom the Act applies. As already noticed, as well as conceded by the appellant that, the provisions of New Rent Act are not applicable to suit premises. Hence, the protection from eviction which the appellant had in terms

of the KRC Act, 1961, stood repealed and no such protection is available to it under the New Rent Act.

16. In the case of PARIPATI CHANDRASEKHARRAO

& SONS vs. ALAPATI JALAIHA, (1995) 3 SCC 709, the distinction between the rights of a landlord and the rights of a tenant has been pointed out and it has been held that the theory of vested rights which may validly be pleaded to support the landlord's case is not available to the tenant.

At para 12 of the decision, it has been held as follows:

12. According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation

17. It is settled position of law that there is a difference between a mere right and what is the right acquired or accrued. In the case of D.C. BHATTIA vs. UNION OF INDIA, (1995) 1 SCC 104, it has been held that right of a statutory tenant to get standard rent is a right

(Emphasis supplied by us)

continues in operation. Hence while it can legitimately be said that the landlord's normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant, therefore, the protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence. When the protection does not exist, the normal relations of the landlord and tenant come into operation. Hence the theory of the vested right which may validly be pleaded to support the landlord's case is not available to the tenant.

18. The right of the tenant in terms of the KRC Act, 1961 was not to be affected by the landlord otherwise than in the manner provided under Section 21(1)(a) to (p). Since the landlord has rights recognised under the Transfer of Property Act and law of contract which are vested rights and which were suspended during the operation of a rent control Act, in our view on the repeal of such Act or non

of General Clauses Act would not apply.

(c) of the General Clauses Act and in such cases, Section 6 repealed provision is not a right accrued within Section 6 existing on the date of repeal and taking advantage of the right acquired or accrued under the Act. The mere right of an enduring nature. What is exempted by repeal is a held that the right to be governed by an Act is not a right AUTHORITY OF INDIA LTD. (1999) 9 SCC 334, it has been case of THYSSEN STAHLUNION GMBH VS. STEEL It is a mere right and not a vested right. Similarly in the or a part of it, the statutory tenant can do nothing about it. governed by the Act and if the Legislature repeals the Act

(i) T.K. LATHIKA VS. SETH KARSANDAS
JAMNADAS, reported in (1999) 6 SCC 632.
In the said decision, Section 11(3) of Kerala
Buildings (Lease and Rent Control) Act,
1965, which prohibited a landlord who
acquired the premises by transfer inter
vivos from filing eviction petition within one
year from the date of the enactment was
considered. The appellant therein had got
the property by gift on 02.08.1980 and filed
the petition on 01.07.1981 and considering
the prohibition under Section 11(3), it was
held that the third proviso to Section 11(3)
disentitles a landlord from applying for
eviction of a tenant before the expiry of the
quarantine period and the case has to be
dismissed only on that ground.

Sri.Udaya Holla, learned Senior Counsel:

19. Now we will refer to the decisions cited by

decision in the case of PARRIPATTI (supra).

suspended rights of the landlord revive in terms of the
applicability of the Rent Act to the premises, the

(iii) U.F.M. MANJU RAMAKRISHNA NAIK VS. U.F.M. UMESH SHRIDHAR SHANBAGH, reported in AIR 1977 KAR 156 wherein the facts were that, civil suit was filed by a landlord on 05.11.1962 for eviction; on the date of institution of the suit, Parts IV and V of the KRC Act, 1961 relating to rents and eviction had not been made applicable to Honnavar Town wherein, the suit premises were made applicable to Honnavar Town with effect from 01.01.1963 taking advantage of which, the tenant contended that, the suit is not maintainable. The objection was not accepted by the Trial Court and First Appellate Court but when challenged in second appeal, it was held that the Courts below had no jurisdiction to decree the suit and the impugned decrees of Courts below were set aside and the suit was dismissed.

(iii) AMBALAL SARABHAI ENTERPRISES LTD. VS. AMRIT LAL & CO. AND ANOTHER, reported in 2001 (8) SCC 397 to contend that Section 6 of GC Act contemplates

continuance of pending proceedings or investigation as if statute had not been repealed as rights and obligations of the parties get crystallised on the date of commencement of the lis.

(iv)

BHOLA NATH VARSHNEY VS. MULK RAJ MADAN, reported in 1994 (2) SCC 127

wherein, interpreting Section 2(2) of U.P. Rent Control Act which exempted new buildings for a period of 10 years and since on the date of institution of eviction suit, 10 years had not elapsed, however, during the pendency of the litigation, the said period had elapsed, it was held exemption under Section 2(2) is not displaced and the Rent Act not applicable to the building on the ground that law applicable on the date of institution of the suit alone governs the suit and that, the Act has no application.

(v)

NAND KISHORE MARWAH AND OTHERS VS. SAMUNDRI DEVI, reported in 1987(4) SCC 382 wherein, considering provisions of the U.P. Urban Buildings (Regulation of Letting and eviction) Act, 1972 and

considering the fact that for 10 years from the date of assessment of a new building, the Rent Act is not applicable and during the pendency of the proceedings, 10 years elapsed, it was held that tenant not entitled to protection under Rent Act on the ground that rights of the parties would be determined on the basis of rights available to them on the date of filing the suit.

(vi) R.KAPILNATH VS. KRISHNA, reported in 2003 (1) SCC 444, wherein, it was held that a new law bringing about a change in forum does not affect pending actions, unless a provision is made in it for change over of proceedings or there is some other clear indication that pending actions are affected.

(vii) RAMINDER SINGH SETHI VS. D.VIJAYARANGAM, reported in 2002 (4) SCC 675 wherein, it was held that the new Rent Act has not been given retrospective effect and ordinarily the rights of the parties to litigation stand crystallised on the date of commencement of lis and Section 70 of the new Rent Act which speaks of repeal and savings and which also makes provision for

20. As against the said precedents, Sri.Vijaya Shankar, learned Senior Counsel for respondent, placed reliance on the decisions in the case of AMBALAL ENTERPRISES (SUPRA); MRS. AVRIL ELLEN SMITH VS. REGINALD FRANK SMITH, reported in AIR 1954 ALLAHABAD 624; QUDRAT ULLAH, VS. MUNICIPAL BOARD, BAREILLY, reported in AIR 1974 SC 396; OM PRAKASH GUPTA VS. RANBIR B. GOYAL, reported in AIR 2002 SC 665; SUDHIR G. ANGUR AND OTHERS VS. M.SANJEEV AND OTHERS reported in (2006) 1 SCC 141; MRS. THAYARAMMAL VS. PEOPLE'S CHARITY FUND, BANGALORE

(VIII) MAHENDRA SAREE EMPORIUM (II) VS. G.V.SRINIVASA MURTHY, reported in 2005 (1) SCC 481 wherein it had been held that abatement kills the right to sue and has the effect of unceremoniously terminating legal proceedings without adjudication on merits.

new Act being applicable to certain cases and proceedings, does not speak of new Act being applicable to appeal or proceedings pending before the Hon'ble Supreme Court.

21. In the case of MERCURY PRESS (supra), it has been held that KRC Act, 1961 (old Act) was merely intended to extend certain protection to the tenants against the unbridled power of the landlord to vacate a tenant under the general law of the land. But such protection cannot be construed as creating any vested

nor acquired any right therein.

expired and the tenant has no vested right (c) KRC Act, 1961 being a temporary enactment

no applicability to the suit premises and repeal of the said Act, the new Rent Act has while it was in operation and in view of the against defendant under KRC Act, 1961 (b) since no proceedings had been initiated rights under KRC Act, 1961,

(a) defendant had not acquired any vested OTHERS reported in ILR 2002 KAR 2304 to contend that; MERCURY PRESS AND OTHERS VS. AMEEN SHACOR AND AND OTHERS reported in AIR 1978 KAR 125 and M/S

right in favour of the tenant. It has been held therein as follows:

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 G.C. 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 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.

(emphasis supplied)

The said decision was approved by the Hon'ble

Supreme Court in the case of M. SUBBA RAO & SON Vs.

YASHODAMMA reported in 2007 (7) SCC 553.

22. In the case of QUDRATH (supra), the Hon'ble

Supreme Court has held as follows:

20. Let us assume that S.6 of the

General Clauses Act applies. Even so, what is preserved is (a) the previous operation of the repealed enactment, (b) rights, privileges, obligations and liabilities acquired, accrued or incurred under the enactment repealed and (c)

investigations, legal proceedings and remedies in respect of any such right, privilege,

obligation or liability. According to Shri Sarjoo

Prasad for the respondent, the defendant had

no right or privilege under the repealed Act,

since S.3 is only a procedural restriction and

does not create a substantive right. All that

S.3 therein laid down was that:

"No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any

accommodation except on one or more of the following grounds....."

It is more a procedural disability that is cast, not a substantive cause of action that is created. Citing the authority in Haripada Pal Ghosh v. Tofajaddi Ijardar, ILR 60 CAL 1438 = (AIR 1934 CAL 80 (2)), he argued that by operation of the repeal, the restriction on his right is removed and so he can now support his present action even if previously the Act had barred it. It is true that a Division Bench of the Calcutta High Court in the case cited, dealing with a situation where an Act had been repealed by another, observed:

"The disability, which was imposed by the previous law having been removed, there was nothing that stood in the way of the plaintiffs recovering rent at the contract rate, when the cause of action for the same arose. The effect of substitution of the new Section 48 for the old Section 48 by Section 31 of Act in view of the of 1928, was that the old section was repealed. The effect of repeal of a statute in the absence of saving clauses is that it has

23. Let us assume for argument's sake that S.3 of the Act has conferred a right on the tenant in which case it survives by virtue of S.6 of the General Clauses Act. What follows? The survival of the right or the continuation of the operation of the Act to the proceedings is all that is ensured, not the expansion or extension of that right. For the normal life of the Act i.e., till September 30, 1972, the dispossession of the tenant is permissible only

22. Moreover, the nature of the Act being temporary, the right, if we can attribute that quality to a disability of the other party to enforce his right unless additional grounds were made out, comes to an end when the temporary Act expires at least by efflux of time, if not by premature repeal. The so-called right is short-lived and its longevity where it is derived under a temporary statute, cannot exceed the duration of the statute itself.

21. xxx xxx xxx

There is force in this submission.

to be considered as if the statute, so repealed, had never existed."

if the grounds in Section 2 are satisfied by the landlord. This right is circumscribed in content to conditions set out and limited in duration to the period beyond which the Act does not exist. To hold otherwise would be to give more quantum of right to the party than he would have enjoyed had the repeal not been made. Not to affect the previous operation cannot be converted into sanctioning subsequent operation. To read post-mortem operation into a temporary Act because of a premature repeal of it is wrong. To adopt the words Jagannadadas, J. in *Indira Sohanlal v. Custodian of Evacuee Property, Delhi*, AIR 1956 SC 77 at p. 84 has observed:

"What in effect, learned counsel for the appellant contends for is not the "previous operation of the repealed law" but the "future operation of the previous law".

On this footing, the right, if any, that the defendant claim terminates with the expiration of that temporary statute.

(emphasis supplied by us)

23. In the case of AMBALAL (supra), the question for consideration was "what is the effect of the amendment which incorporated Section 3(c) in the Delhi Rent Control Act in the pending eviction proceedings which amendment became effective from 01.12.1988" and it was held as follows:

37. In view of the aforesaid findings, we conclude by recording our findings on the question posed earlier by holding:

(1) A landlord or tenant are relegated to seek their rights and remedies under the common law once the protection given to a tenant under the Rent Act is withdrawn, except in cases where Section 6 of the General Clauses Act, 1897 is applicable.

(2) A ground of eviction based on illegal sub-letting under proviso (b) to Section 14 of the Rent Act would not constitute to be a vested right of a landlord, but it would be a right and privilege accrued within the meaning of Section 6(c) of

23. Before parting with this judgment, we may deal with a decision of this Court in *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.* on which the learned Senior Counsel for the appellant Mr. Gupta placed strong reliance. Relying on this decision, Mr. Gupta sought to argue that the amendment of the Act being not

SINGH (HUF) reported in (2008) 2 SCC 728 as follows:

24. The declaration of law in the case of *AMBALAL* (supra) was explained by the Hon'ble Supreme Court in the case of *NOPANY INVESTMENTS (P) LTD. VS. SANTOKH*

(emphasis supplied by us)

the General Clauses Act in a matter if proceeding for eviction is pending.

(3) When the tenant has no vested right under a Rent Act having only protective right, withdrawal of such protection would not confer on a landlord a vested right to evict a tenant under the Rent Act except where clause (c) of Section 6 of the General Clauses Act is applicable.

retrospective in operation, in view of Section 6 of the General Clauses Act, it would not affect the pending eviction proceeding, which would continue as if the Act had not been amended and therefore, the suit filed by the respondent for eviction under the general law without taking leave from the Additional Rent Controller could not be said to be maintainable. In our view, the decision of this Court in Ambalal Sarabhai case does not support the appellant but it supports the respondent. In that decision, this Court held that the vested right of the landlord under the general law continues so long it is not abridged by the protective legislation, namely, the Rent Act, but the moment this protection is withdrawn, the vested right of the landlord reappears which can be enforced by him. Such being the position, we are, therefore, of the view that since the eviction petition filed by the respondent before the Additional Rent Controller was withdrawn and the tenancy was terminated by a fresh notice to quit and in view of the increase of rent wished by the landlord in compliance with Section 6-A read with Section 8 of the Act, there cannot be any

25. In the case of SUDHIR G. ANGUR (supra), Hon'ble Supreme Court has held that a Court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came to be filed herein or on date on which suit came up for hearing. It has been held as follows:

difficulty to hold that the suit in fact was maintainable under the general law. That being the position, the decision of this Court in Ambalal Sarabhai case cannot at all be applicable in favour of the appellant and which, in view of our discussions made hereinabove, can only be applicable in favour of the respondent.

No party has a vested right to a particular proceeding or to a particular forum. It has been held that it is well settled that all procedural laws are retrospective unless the legislature expressly states to the contrary. It has been held that the procedural laws in force must be applied at the date when the suit or proceeding comes on for trial or disposal. It has been held that a court is bound to take

26. In the background of the law declared by the Hon'ble Supreme Court and considering the repeal of KRC Act, 1961 in terms of which the defendant had only a right of protection and not a vested or accrued or acquired right and with the coming into force of new Rent Act, the provisions of which have no application to the suit premises, the suit filed against the defendant under the General Law, after termination of the tenancy by issue of

(emphasis supplied by us)

jurisdiction to entertain the suit. could not be denied that now the Court has above, the Mysore Act now stands repealed. It agreement with these observations. As stated when it was instituted. We are in complete had no jurisdiction to entertain it at the date assume jurisdiction by reason of the fact that it comes on for disposal, it then cannot refuse to court has jurisdiction to try the suit, when it came up for hearing. It has been held that if a administer the law as it was when the suit notice of the change in the law and is bound to

learned Senior Counsel fairly submitted that the appellant and hand over the possession of the premises and the submitted that, reasonable time may be granted to vacate the impugned decree is immediately executed. He hardship and its customers' interest also will be affected, if business in the suit schedule premises and will suffer submitted that the appellant has been carrying on banking upheld. Sri. Udaya Holla, learned Senior Counsel the impugned judgment and decree are liable to be 27. In the result, the appeal is devoid of merit and

force of the New Rent Act on 05.12.2001 / 31.12.2001. of KRC Act, 1961 was not in force with the coming into 04.04.2007, since the bar contained under Section 21(1) for the Civil Court to pass the decree in question on accrued rights under the KRC Act, 1961, there was no bar / defendant had not acquired any rights and had no contention of the appellant / defendant, since the appellant was maintainable. Having carefully considered the notice under Section 106 of the Transfer of Property Act,

will pay reasonable amount as damages for the continued use and occupation. Said submission was opposed by Sri.Vijaya Shankar, learned Senior Counsel for the respondent contending that, the agreed period expired during 1993, despite which the premises was not vacated by the appellant. He further submitted that the suit was filed in the year 2000 and though decreed on 04.04.2007, the respondent is unable to take possession of the premises and the intended development of the property is affected and the respondent has been subjected to continuous suffering. Alternatively he submitted that, in the locality the rental is more than Rs.125/- per sq. ft.

28. Considering the rival submissions, in our view, the appellant is entitled for reasonable time to make alternate arrangement to shift from the suit premises, vacate the same and hand over the possession. Hence, we deem it proper to grant time to the appellant to hand over vacant possession of the suit premises up to 31.12.2009, subject to the payment of damages at the rate of Rs.90/-

per sq.ft. from 01.12.2008 till the date of handing over of the premises to the respondent / plaintiff and also filing an affidavit to the effect that the appellant shall:

(i) pay the damages at the aforesaid rate within 5th day of every month;

(ii) voluntarily hand over vacant possession on or before 31.12.2009 without driving the respondent / plaintiff to file execution petition, to recover the possession.

Hence, we pass the following:

ORDER

(i) Appeal is devoid of merit & is hereby dismissed.

(ii) The Judgment and Decree dated 04.04.2007 passed in O.S.No.4747/2000 by the learned XV Addl. City Civil Judge, Bangalore City, is upheld.

(iii) Appellant is granted time to vacate and

handover the possession of the suit premises on or

before 31.12.2009 subject to the filing of affidavit cum undertaking stated supra, within a period of four weeks from today, agreeing to abide by the terms and conditions. If the undertaking cum affidavit is not filed within the time allowed, the appellant is not entitled to any extension of time.

In the circumstances of the case, parties are directed to bear their respective costs.

Sd/-
Judge

Sd/-
Judge

SAC