

Shankarlal Nadani vs Sohanlal Jain on 12 April, 2022

Author: Hemant Gupta

Bench: V. Ramasubramanian, Hemant Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2816 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 2455 OF 2022)

SHANKARLAL NADANI

.....APPELLANT

VERSUS

SOHANLAL JAIN

.....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2817 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 3937 OF 2022)

JUDGMENT

HEMANT GUPTA, J.

1. This judgment shall dispose of two appeals arising out of judgment dated 16.12.2021 passed by the High Court of Judicature of Rajasthan, Jodhpur whereby the tenant's revision petition against the decree for possession was dismissed.

2. For the sake of convenience, the facts in Civil Appeal No. 2816 of 2022 (Shankarlal Nadani v. Sohanlal Jain) are mentioned hereinafter.

3. The appellant's father was the tenant of Shop No. 4 situated at Jain Katla, Bikaner Road, Suratgarh since 1982, whose owner was the father of the respondent herein at that time. The premises were let out on lease for monthly rent of Rs.583.33. After the death of the appellant's father, the shop was continuing for monthly tenancy of the appellant. The premises in question was not in the urban area when the suit for possession was filed on 18.4.2013 after serving a notice of

termination of tenancy under Section 106 of the Transfer of Property Act, 1882 1. During the pendency of the suit, the State Government issued a notification on 11.7.2014 extending the provisions of the Rajasthan Rent Control Act, 2001² w.e.f. 11.5.2015.

4. The Civil Court passed the decree for possession against the appellants on 28.5.2015 even though the Act became applicable to the area in question w.e.f. 11.5.2015. Aggrieved against the said judgment and decree, the appellants filed first appeal before the Additional District Judge, Suratgarh which was dismissed on 5.10.2021. In the second appeal before the High Court, the appellants relied on the Division Bench judgment of the Rajasthan High Court reported as K. Ramnarayan Khandelwal v. Shri Pukhraj Banthiya³ wherein it has been held that the decree in civil suit could not be passed after the applicability of the Act to the area in question. The High Court in the impugned judgment found that such judgment has been stayed by this Court in Special Leave Petition, therefore, the judgment is not binding. 1 For short, the 'TP Act' 2 For short, the 'Act' 3 2017 SCC OnLine Raj 4178 In view of the said fact, the High Court held that the decree in civil suit could be passed as the same view was adopted by another co-ordinate Bench of the High Court in another case⁴ and consequently, dismissed the appeals filed by the appellants.

5. Learned counsel for the appellants argued that the Special Leave Petition arising out of the Division Bench judgment of the Rajasthan High Court in K. Ramnarayan Khandelwal and other similar cases are pending final disposal before this Court and that, therefore, the present appeals should also be heard along with the said matters. But we do not think so. Though, ideally all cases in which the same or similar questions are pending, are taken up together, but there is no bar for us to deal with the matters that come up before us. Once the question of law is answered in one matter, all other matters, pending at various stages, will follow suit. In any case, we find that the interest of the appellants is materially different from the interest of the petitioners in the Special Leave Petition(s) which are pending. In the present case, the appellants are tenants whose interest is in continuing to be in possession whereas the petition(s) pending before this Court are preferred on behalf of the landlord. We have heard Mr. Gopal Sankaranarayanan, learned senior counsel appearing for the appellants assisted by Mr. Deepak Prakash, learned Advocate on Record on the legal question as to whether the decree passed by the civil court after 4 Mohd. Rafiq v. Hanuman Sahai & Ors. (SBCWP No. 16681 of 2019) the Act is made applicable to the area in question can be executed.

6. The Act was applicable in the first instance to such of the municipal areas which were comprising of the District Headquarters in the State and later on to such of the other municipal areas having a population exceeding fifty thousand as per 1991 census as the State Government may, by notification in the Official Gazette, specify from time to time as per Section 1(2) of the Act. Section 18 of the Act deals with jurisdiction of Rent Tribunal whereas Section 32 repeals the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The relevant provisions from the Act read thus:

“1. Short title, extent and commencement.—(1) This Act may be called the Rajasthan Rent Control Act, 2001.

(2) It shall extend in first instance to such of the municipal areas which are comprising the District Headquarters in the State and later on to such of the other

municipal areas having a population exceeding fifty thousand as per 1991 Census as the State Government may, by notification in the Official Gazette, specify from time to time.

xx xx xx

18. Jurisdiction of Rent Tribunal.—(1) Notwithstanding anything contained in any other law for the time being in force, in the areas to which this Act extends, only the Rent Tribunal and no civil court shall have jurisdiction to hear and decide the petitions relating to disputes between landlord and tenant and matters connected therewith and ancillary thereto, filed under the provisions of this Act:

Provided that Rent Tribunal shall, in deciding such petitions to which provisions contained in Chapters II and III of this Act do not apply, have due regard to the provisions of Transfer of Properties Act, 1882 (Act 4 of 1882), the Contract Act, 1872 (Act 9 of 1872), or any other substantive law applicable to such matter in the same manner in which such law would have been applied had the dispute been brought before a civil court by way of suit... xx xx xx

32. Repeal and Savings.—The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act, 1950 (Act 17 of 1950) shall stand repealed with effect from the date notified under sub-

section (3) of Section 11 of this Act.

(2) The repeal under sub-section (1) shall not affect—

(a) anything duly done or suffered under the enactment so repealed; or

(b) any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provision of the enactment so repealed.

(3) Notwithstanding the repeal under sub-section (1)—

(a) xxx xxx

(b) xxx xxx

(c) xxx xxx

(d) xxx xxx

7. The argument of learned counsel for the appellants is that after the notification of the State Government issued on 11.7.2014, became operative from 11.5.2015, it was the Rent Tribunal alone which would have jurisdiction to hear and decide the petitions related to disputes between landlord and tenant and not the civil courts. Therefore, the decree of possession could not be passed by the civil court as it can be passed only by the Rent Tribunal. Reliance was placed upon non-

obstante clause with which sub-section (1) of Section 18 of the Act starts so as to give overriding effect to the Act in question.

8. The civil court ceases to have jurisdiction to hear and decide the petitions as only the Rent Tribunal would have jurisdiction to decide such dispute but it does not deal with the suits and proceedings initiated and pending on the date of applicability of the Act to the municipal area. There is no express or implied provision in the Act in respect of the decrees passed prior to the applicability of the Act to the area in question. The notification issued cannot have any retrospective application or the Act contemplates the applicability of the Act with retrospective effect.

9. We are of the opinion that whether or not the decree of eviction can be passed after the Act became applicable would depend upon the language of the statute.

10. A short resume of the various judgments of this Court on the maintainability of decree by the civil court may be noticed. Under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972⁵, the Act is not applicable for a period of ten years from the date of construction of the building. Section 20 of the U.P. Rent Act restricts the right of a landlord to evict a tenant which reads thus:

5 For short, the “U.P. Rent Act” “2. Exemptions from operation of Act.—(1) Nothing in this Act shall apply to [the following, namely]:— (1) xxx xxx (2) [Except as provided in sub-section (5) of Section 12, sub-

section (1-A) of Section 21, sub-section (2) of Section 24, Sections 24-A, 24-B, 24-C or sub-section (3) of Section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed]:

20. Bar of suit for eviction of tenant except on specified grounds.

—(1) Save as provided in sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in court or otherwise reduced to writing and signed by the tenant.”

11. In *Om Prakash Gupta v. DIG Vijendrapal Gupta*⁶, a question arose whether the Rent Act would be applicable to a building which was constructed prior to the applicability of the Rent Act and whether the exemption granted to newly constructed buildings would be available to such building. It was held that the Rent Act is not applicable to a building which does not have a standing for ten years, even if the building was constructed prior to the applicability of the State Urban Rent Act to the area in question. However, in a later judgment *6 (1982) 2 SCC 61* reported as *Vineet Kumar v. Mangal Sain Wadhwa*⁷, it was held that under the U.P. Rent Act, even if the suit was filed within the exemption period and if the decree is not passed, the decree would be not executable after the Rent Act will become applicable. This Court held as under:

“17. The appellant in the present case only seeks the protection of the new Rent Act which became applicable to the premises in question during the pendency of the litigation. We see no reason why the benefit of the new Rent Act be not given to the appellant. Section 20 of the new Rent Act provides a bar to a suit for eviction of a tenant except on the specified grounds as provided in the section. Sub-section (4) of Section 20 stipulates that in any suit for eviction on the grounds mentioned in clause

(a) to sub-section (2) viz. the arrears of rent, if at the first hearing of the suit the tenant in default pays all arrears of rent to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from him, such damages for use and occupation being calculated at the same rate as rent together with interest thereon at the rate of nine per cent per annum and the landlord's cost of the suit in respect thereof after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground. Sections 39 and 40 of the new Rent Act also indicate that the benefit of the new Act will be given to the tenant if the conditions contemplated in those sections are satisfied. Section 39 also indicates that the parties are entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary.”

12. However, the said judgment was explained in a later judgment reported as *Nand Kishore Marwah & Ors. v. Samundri Devi*⁸ wherein it was held as under:

7 (1984) 3 SCC 352 *8 (1987) 4 SCC 382* “14. This is put in Chapter IV with the heading “Regulation and Eviction” and the section starts with title which is printed in bold “Bar of suit for eviction of tenant except, on specified grounds” and again in the wording of the section itself it provides: “No suit shall be instituted for eviction”. This clearly indicates that the restriction put under Section 20 is to the institution of the suit itself and therefore it is clear that if the provisions of this Act applies then no suit for eviction can be instituted except on the grounds specified in the sub-sections of this section. Keeping in view the language of this section if we examine the provisions contained in sub-section (2) of Section 2 it will be clear that for a newly constructed building the provisions of this Act will not apply for 10 years and therefore so far as the restriction under Section 20 is concerned they will not apply and therefore it is clear that within 10 years as

provided for in sub-section (2) of Section 2 restriction on the institution of suit as provided for in Section 20 sub-section (1) quoted above will not be applicable and it is thus clear that during the pendency of the litigation even if 10 years expired the restriction will not be attracted as the suit has been instituted within 10 years and therefore restriction as provided for in Section 20 cannot be attracted.”

13. Later in *Ramesh Chandra v. III Additional District Judge & Ors.*⁹, a three-Judge Bench of this Court held as under:

“12. Yet another contention urged by the learned counsel for the tenant on the strength of *Vineet Kumar v. Mangal Sain Wadhera* [(1984) 3 SCC 352] is that inasmuch as the statutory period of ten years expired during the pendency of the suit, the Act became applicable and the suit must be disposed of only in accordance with the provisions of the Act and in particular sub-section (2) of Section 20. This decision has, however, been explained in a subsequent decision in *Nand Kishore Marwah v. Samundri Devi* [(1987) 4 SCC 382] wherein it has been held that the law applicable on the date of the institution of the suit alone governs the suit and the mere fact that the statutory period of 10 years expires during the pendency of the suit/appeal/revision, the Act does not become applicable. It was held that the suit has to be tried and decided without reference to the Act. We are in respectful agreement with the view expressed in *Nand Kishore Marwah* [(1987) 4 SCC 382].” 9 (1992) 1 SCC 751

14. In *Mani Subrat Jain v. Raja Ram Vohra*¹⁰, the provisions of East Punjab Rent Restriction Act, 1949¹¹ were being examined. It was a case where a consent decree was passed by the civil court but before the decree could be executed, the Punjab Rent Act was extended to the urban area of Chandigarh. Section 13 of the said Act is to the effect that a tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of the Act or otherwise, before or after the termination of the tenancy, except in accordance with the provisions of this section. Considering the said provision, this Court held that a person who has suffered a decree of the civil court continues to be tenant and since he was in possession on the date when the Punjab Rent Act was extended to Chandigarh, therefore, the tenant is not liable to be evicted after the commencement of the Punjab Rent Act. Such judgment was in view of Section 13 of the Punjab Rent Act which bars the execution of a decree passed before or after the commencement of the Punjab Rent Act which reads thus:

“13. Eviction of tenants. - (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section, [or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended].” 10 (1980) 1 SCC 1 11 For short, the “Punjab Rent Act”

15. The Haryana Urban (Control of Rent and Eviction) Act, 1973 12 provides that a tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section. The relevant provisions of the said Act read thus:

“1. xx xx xx (3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.

xx xx xx 13 (1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.”

16. A perusal of the said provisions goes to show that the tenant cannot be evicted except in accordance with the provisions of the said Act. Considering the said provisions, this Court in a judgment reported as *Atma Ram Mittal v. Ishwar Singh Punia*¹³ held that if the suit has been filed within the exemption period of ten years, the decree could be executed. This Court held as under:

“8. It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim “*actus curiae neminem gravabit*” — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years 12 For short, the “Haryana Rent Act” 13 (1988) 4 SCC 284 and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else.

9. xxx xxx If the immunity from the operation of the Rent Act is made and depended upon that ultimate disposal of the case within the period of exemption of ten years which is in reality an impossibility, then there would be empty reasons. In our opinion, bearing in mind the well-settled principle that the rights of the parties crystallise to (sic on) the date of the institution of the suit as enunciated by this Court in *Om Prakash Gupta v. Digvijendrapal Gupta* [(1982) 2 SCC 61 : (1982) 3 SCR 491] , the meaningful construction must be that the exemption would apply for a period of ten years and will continue to be available until suit is disposed of or adjudicated. Such suit or proceeding must be instituted within the stipulated period of ten years. Once rights crystallise the adjudication must be in accordance with law.”

17. In a three-judge Bench judgment reported as *Shri Kishan & Ors. v.*

*Manoj Kumar & Ors.*¹⁴, the judgment of this Court in *Vineet Kumar* was specifically overruled. This Court held as under:

“20. Thus it is seen that this Court has been consistently taking the view that a suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption came to an end during the pendency of the suit. The only discordant note was struck in Vineet Kumar v. Mangal Sain Wadhera [(1984) 3 SCC 352] . We have noticed that several decisions subsequent thereto have held that Vineet Kumar [(1984) 3 SCC 352] is not good law. We have already construed the relevant provisions of the Act and pointed out that there is nothing in the Act which prevents the civil court from continuing the suit and passing a decree which could be executed.”

18. Thus, under the Punjab Rent Act, the provision is explicit that no decree 14 (1998) 2 SCC 710 for eviction passed before or after the commencement of the Act can be executed whereas under the Haryana Rent Act, a tenant cannot be evicted except in accordance with the provisions of the Haryana Rent Act. It has also been held in the judgments referred to above that in a suit filed within the exemption period, the decree could be passed by the civil court even if the premises are located within the urban area to which the Act is applicable. The consistent view of this Court is that the decree can be validly executed if the suit was filed within the exemption period, except Vineet Kumar, which was specifically held to be not laying good law.

19. It would be relevant to refer to one judgment of this Court reported as Mansoor Khan v. Motiram Harebhan Kharat & Anr.¹⁵ which dealt with an identical question wherein after filing of the suit, by virtue of a notification, a municipality was established. The landlord filed a suit for possession on 2.5.1985 whereas Risod, District Yavatmal was notified to be a municipality on 9.10.1989. This Court held as under:

“5. So long as the provisions of the Order are not applicable to any premises, the rights and obligations of landlord and tenant are governed by the provisions of the Transfer of Property Act. Once the Order becomes applicable, a landlord cannot give notice to a tenant determining the lease nor can initiate proceedings for recovery of possession from the tenant except with the previous written permission of the Controller in accordance with clause 13 of the Order. What is prohibited by the Order is initiation of the proceedings by the landlord. In the present case, the proceedings were initiated by filing suit before a civil court, much before the provisions of the Order became applicable to the suit premises. There is nothing in the Order 15 (2002) 5 SCC 462 which makes it applicable to the pending suit for eviction of the tenant.

6. The learned counsel for the appellant tenant has placed reliance on a decision of this Court in Nandlal v. Moti Lal [(1977) 3 SCC 500 : AIR 1977 SC 2143] . The said decision is an authority for the proposition that the Order becomes applicable to any area which is notified to be a municipality from the date of such notification because the Order was already applicable in the Province of C.P. and Berar. However, this Court has very specifically held that the provisions of the Order would become applicable from that date i.e. the date on which a particular area within which the suit

premises are situated, is notified to be a municipality. The Order is not retrospective in operation. It does not affect the validity of the proceedings initiated before the date on which the Order became applicable. Clause 13 of the Order does not restrain the court from exercising its power to pass a decree of eviction. All that clause 13 provides is to impose a restriction on the right of the landlord to initiate the proceedings for eviction. Inasmuch as the proceedings for eviction were already initiated and the Order is not retrospective in operation, it does not affect the validity of the previously instituted proceedings nor does it take away the power of the court to pass a decree of eviction in the pending suit.”

20. Out of the various judgments referred to by the learned counsel for the appellants, the judgment relied upon in *Rajender Bansal & Ors. v. Bhuru (Dead) through Legal Representatives & Ors.* 16 was dealing with Haryana Rent Act. The landlords were the appellants who had filed suit for eviction of the respondents, their tenants. The suit was filed in the civil court. The premises in question were outside the ambit of rent legislation on the day the suit was filed. However, during the pendency of the suit and before it could be finally decided, the area in question was brought within the sweep of rent legislations by 16 (2017) 4 SCC 202 requisite notifications. This Court concluded the issue against the tenants wherein it was held as under:

“18. From the aforesaid discussion in *Atma Ram Mittal* [*Atma Ram Mittal v. Ishwar Singh Punia*, (1988) 4 SCC 284] , *Vineet Kumar* [*Vineet Kumar v. Mangal Sain Wadhera*, (1984) 3 SCC 352] , *Ram Saroop Rai* [*Ram Saroop Rai v. Lilavati*, (1980) 3 SCC 452] , *Ramesh Chandra* [*Ramesh Chandra v. III Addl. District Judge*, (1992) 1 SCC 751] and *Shri Kishan* [*Shri Kishan v. Manoj Kumar*, (1998) 2 SCC 710] cases, the apparent principles which can be culled out, forming the ratio decidendi of those cases, are as under:

18.1. Rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the law applicable on the date of filing of the suit will continue to apply until the suit is disposed of or adjudicated.

18.2. If during the pendency of the suit, the Rent Act becomes applicable to the premises in question, that would be of no consequence and it would not take away the jurisdiction of the civil court to dispose of a suit validly instituted.

18.3. In order to oust the jurisdiction of the civil court, there must be a specific provision in the Act taking away the jurisdiction of the civil court in respect of those cases also which were validly instituted before the date when protection of the Rent Act became available in respect of the said area/premises/tenancy.

18.4. In case the aforesaid position is not accepted and the protection of the Rent Act is extended even in respect of suit validly instituted prior in point of time when there was no such protection under the Act, it will have the consequence of making the decree, that is obtained prior to the Rent Act becoming applicable to the said

area/premises, unexecutable after the application of these Rent Acts in respect of such premises. This would not be in consonance with the legislative intent.

XX XX XX

23. When we apply the principles laid down above to the instant case, we find that this case would fall in the category of *Atma Ram Mittal* [*Atma Ram Mittal v. Ishwar Singh Punia*, (1988) 4 SCC 284] and *Mansoor Khan* [*Mansoor Khan v. Motiram Harebhan Kharat*, (2002) 5 SCC 462], etc. as under the scheme of the Rent Act, no protection to the ex-tenants is provided and no provision is made excluding the jurisdiction of the civil courts in respect of pending cases, expressly or impliedly. On the other hand, in the facts of the present case, it needs to be highlighted again that the respondents had not only sublet the premises but had not paid rent for a period of 14 years. His defence was struck off by the civil court and ultimately the suit was even decreed. It is only during the pendency of the appeal that the notification was issued covering the area where the suit premises are situate under the Rent Act. It will be travesty of justice if the appellant landlords are deprived of the fruits of the said decree.

24. We are, thus, unable to accept the view taken by the High Court. Accordingly, this appeal is allowed and the judgment of the first appellate court as well as the High Court is set aside. As the only contention which was taken by the respondents before the first appellate court, challenging the decree of the trial court, was that the civil court ceased to have jurisdiction, the said first appeal preferred by the respondents stands dismissed thereby restoring the decree passed by the trial court. There shall, however, be no order as to costs.”

21. In the aforesaid case, the Haryana Rent Act provided that no decree could be executed after the commencement of the Haryana Rent Act whereas, the Act herein has no such or similar provision. Therefore, this Court in the said judgment held that decree for eviction can be executed if suit has been filed when the Act was not applicable to the premises in question. We have our reservations in respect of such finding in the context of Haryana Rent Act but such question may be examined in an appropriate case. The Haryana Rent Act was enacted after repeal of Punjab Rent Act, which provides that a tenant in possession of a building shall not be evicted except in accordance with the provisions of Section 13 of the said Act.

22. Mr. Sankaranarayanan has referred to *Shree Chamundi Mopeds Ltd.*

v. *Church of South India Trust Association CSI Cinod Secretariat, Madras*¹⁷ to contend that the stay granted by this Court would not wipe off the order passed by the Division Bench of the High Court holding that the decree could not be passed by the civil court. The said question need not be answered in the present case as the fact remains that the High Court has taken a view that the decree of the civil court could be validly passed to which we agree.

23. Another judgment referred to is Pandurang Ramchandra Mandlik & Anr. v. Shantibai Ramchandra Ghatge & Ors.¹⁸ wherein the issue was maintainability of the suit filed by the appellants under the Bombay Tenancy and Agricultural Lands Act, 1948. The finding returned was that the said Act is not applicable to the land in question as only natural grass grew thereon. The issue was whether the civil court has the jurisdiction to entertain the suit or the competent authority under the Bombay Tenancy and Agricultural Lands Act, 1948 would have the jurisdiction to decide the suit. The question was regarding the jurisdiction of the civil court and the revenue court not that whether the decree passed by the civil court could be executed.

24. Reference has been made to Dilip v. Mohd. Azizul Haq & Anr.¹⁹ wherein Section 13-A of the C.P. and Berar Letting of Houses and Rent 17 (1992) 3 SCC 1 18 1989 Supp (2) SCC 627 19 (2000) 3 SCC 607 Control Order, 1949 as amended on 26.10.1989 barred the passing of a decree of eviction in a suit for proceedings filed and pending. The relevant clause reads as under:

“13-A- no decree for eviction shall be passed in a suit or proceeding filed and pending against the tenant in any court or before any authority unless the landlord produces a written permission of the Controller as required by sub-clause (1) of clause 13”

25. The dispute in the said case was in respect of an open plot. As per the landlord, the tenancy was deemed to have expired on 10.4.1986 in view of Section 106 of the TP Act before Section 13-A of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 came into force.

The High Court held that no appeal was pending against the tenant when Section 13-A was introduced. This Court remanded the matter back to the High Court as the High Court has not examined the question as to whether the amendment was retrospective or prospective. This Court held as under:

“8. The High Court further concluded that the amendments have no retrospective effect. The provision came into force when the appeal was pending. Therefore, though the provision is prospective in force, has “retroactive effect”. This provision merely provides for a limitation to be imposed for the future which in no way affects anything done by a party in the past and statutes providing for new remedies for enforcement of an existing right will apply to future as well as past causes of action. The reason being that the said statutes do not affect existing rights and in the present case, the insistence is upon obtaining of permission of the Controller to enforce a decree for eviction and it is, therefore, not retrospective in effect at all, since it has only retroactive force.

xx xx xx

10. The High Court further took the view that the expression “premises” in the Act (sic Order) does not state as to when the amendment was to be effective as it does not state whether the amendment was retrospective or prospective. The same is on the

statute-book on the date on which the suit or proceeding is pending for purpose of eviction and cannot ignore the provision on the statute-book. Therefore, the view of the High Court on this aspect of the matter also, is incorrect. The arguments advanced on behalf of the respondents that these amendments are retrospective in character and could not have been made in the absence of an authority under the main enactment by virtue of which such order is made are untenable.”

26. The facts of the said case do not go to the extent to say that the decree of the civil court cannot be executed if the Act has been extended to an urban area.

27. Mr. Sankaranarayanan has also referred to the judgment of this Court reported as Subhash Chander & Ors. v. Bharat Petroleum Corporation Ltd. (BPCL) & Anr.²⁰ wherein the landlord had filed a civil suit for possession though the premises was situated in the urban area governed by the Haryana Rent Act. It has been held that such civil suit is not maintainable as the remedy lies under the Haryana Rent Act. This Court held as under:

“25. In the given circumstances, we are of the considered view that no error was committed by the High Court in arriving to a conclusion that even after the expiry of the lease term of the lease deed, the respondents became a statutory tenant and jurisdiction of the Civil Court is impliedly barred and could be evicted only under the provisions of the Act 1973.”

28. Under the Act in question, Section 18 does not talk about the validity of

20 2022 SCC OnLine SC 98 any decree of the civil court but only restricts the jurisdiction of the civil court from the date the Act became applicable. The Act has come into force in respect of the premises in question on 11.5.2015 i.e., after the civil suit was filed, therefore, the decree could validly be passed and executed. After the applicability of the Act to the area in question, the landlord and tenant dispute can be raised only before the Rent Tribunal but not before the civil court. However, a suit filed before the civil court prior to the applicability of the Act has to be decided by the civil court. A decree passed by the civil court is valid and executable which is not interdicted by the applicability of the Act to the area in question. The Act is applicable to the area in question from the date the notification came into force and it does not bar the decree of the civil court or the pendency of such civil suit.

29. Still further, one of the principles is that the rights of the parties have to be determined on the date when lis commences i.e., on the date of filing of the suit. The plaintiff is entitled to decree on that day when he initiated the proceedings, therefore, rights of the parties have to be examined as on the said day. Recently, this Bench in a judgment reported as ECGC Limited v. Mokul Shriram EPC JV²¹ was examining the question as to whether the condition of deposit while filing appeal under the Consumer Protection Act, 2019 would be applicable or the provisions as it existed under the Consumer Protection Act, 1986 when the complaint was filed would be applicable. This Bench considering 21 2022 SCC OnLine SC 184 the Constitution Bench judgments in Garikapati Veeraya v.

N. Subbiah Choudhry & Ors.²², Vitthalbhai Naranbhai Patel v. Commissioner of Sales Tax, M.P., Nagpur²³ and Hardeodas Jagannath v. The State of Assam²⁴ held that the provisions of the Consumer Protection Act, 2019 would not be applicable to the complaints filed prior to the commencement of the 2019 Act. Therefore, the Judgement and Decree passed in the suit for possession does not suffer from any illegality.

30. In view of the above, we do not find any error in the order passed by the High Court. Consequently, the appeals are dismissed.

.....J. (HEMANT GUPTA)J. (V. RAMASUBRAMANIAN) NEW DELHI;

APRIL 12, 2022.

22 AIR 1957 SC 540 23 AIR 1967 SC 344 24 AIR 1970 SC 724