Rajender Bansal & Ors vs Bhuru (D) Thr. Lrs. & Ors on 18 October, 2016

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Bench: N.V. Ramana, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8194 OF 2016

RAJENDER BANSAL & ORS.	.....APPELLANT(S)
VERSUS	
BHURU (D) THR. LRS. & ORS.	.....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

The appellants in this appeal are the landlords who had filed suit for eviction of the respondents herein, their tenants. Suit was filed in the Civil Court. The premises in-question were outside the ambit of rent legislation. It is because of this reason that civil suit for possession/ejectment 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 requisite notifications. The effect of such coverage was to give protective umbrella to the tenants. As a fortiorari, the landlord can now

evict the tenant only by taking recourse to the rent legislation, that too, by filing the petition for eviction under the Rent Act before the Rent Controller/Tribunal constituted under the said Acts. Civil Court ceases to have jurisdiction over the matter insofar as eviction/ejectment of tenant is concerned.

In this backdrop, the question that has arisen for consideration is as to whether the Civil Court would cease to have jurisdiction to try the suit of eviction if the suit property came under notified area during pendency of the suit? To put it differently, the question is : whether Rent Act would apply even to the pending suits or it will be enforced only from the date when notification covering the area in- question is issued and, therefore, will have no effect on the suits which are already pending before the civil courts?

In the instant case, the premises in-question were in rural area in respect of which suit was filed by the appellants on February 11, 2002. These premises consist of a shop (suit property) which is situate at Barkali Hodal Road, Punhana, Tehsil Punhana, District Gurgaon, Haryana. In the State of Haryana, Rent Act, known as Haryana Rent Urban (Control of Rent and Eviction) Act, 1973 (for short, 'Rent Act, 1973') is promulgated. Its sweep, however, is over the urban areas of Haryana, as defined in the Act. As pointed out above, at the relevant time suit property was in rural area and, therefore, not covered by the said Rent Act, 1973. This suit was filed, after terminating the tenancy, by the landlord, namely, father of the appellants (predecessor of the appellants) under Section 106 of the Transfer of Property Act, 1882. The ground taken was that shop was let out to one Rehmat who inducted his son (respondent/defendant herein) as a sub- tenant without the consent of the landlords. Rehmat passed away in the year 1997 and had not even paid rent for 10 years. Therefore, possession of the respondent as sub-tenant was unauthorised and illegal. Notice of vacating the premises and handing over the possession was given on October 22, 2001 and as the respondent failed to vacate the premises, suit was filed on February 11, 2002. In the suit, brother of the respondent, Yasin, was also impleaded as a defendant, who did not appear and was proceeded ex-parte. Insofar as, Respondent No. 1 is concerned, though he had appeared but did not pay any rent for more than 14 years and, therefore, his defence was struck off by the civil court vide order dated May 26, 2008. Five months thereafter, i.e., on October 29, 2008, notification was issued whereby the area where the suit premises situate was declared as urbanised area and, thus, was brought within the fold of Rent Act, 1973. The Trial Court, however, after striking off defence of Respondent No. 1 continued with the suit, recorded the evidence of the plaintiff and ultimately decreed the suit vide judgment and decree dated December 12, 2008. Against this decree, respondent no. 1 filed Civil Appeal No. 11/9 in the Court of Additional District Judge, Nuh taking the plea that the Civil Judge ceases to have jurisdiction over the matter from October 29, 2008 when Municipal Committee, Punhana came into existence vide notification dated October 29, 2008 and the area in-question was included in municipal limits because of which Rent Act, 1973 became applicable to the suit premises. This contention found favour with the learned Additional District Judge who allowed the appeal vide judgment dated March 16, 2009. Aggrieved by that judgment, the appellants herein preferred second appeal under Section 100 CPC, being RSA No. 3963 of 2009 in the High Court of Punjab and Haryana, but unsuccessfully inasmuch as the High Court has dismissed the appeal vide judgment dated February 10, 2014. It is this judgment which is impugned in the present proceedings giving rise to the question of law that has been noticed in the earlier portion of this

judgment.

Learned counsel for the appellants has argued that law applicable on the date of institution of the suit would govern the suit. On that basis, it is submitted that since on the date when the suits were filed by the appellants in these appeals, the suit properties were not covered by the Rent Act which legislation came into effect on a subsequent date, when the law applicable on the date of institution is to be applied, Civil Court would have the jurisdiction in the matter in the vein and taking this line of argument further, it was submitted that the Notification which is issued in respect of an area in-question, notifying the same to be municipality, is to take effect only from the date of such a Notification and such an Order/Notification cannot be given retrospective operation. In support of the aforesaid submission, counsel for the appellants relied upon the following judgments:

(i) Ramesh Chandra Vs. III Addl. Distt. Judge & Ors.[1]

(ii) Mansoor Khan Vs. Moti Ram & Anr.[2]

(iii) Nand Kishore Marwah & Ors. Vs. Samundri Devi[3]; AND

(iv) Harijeet Kaur Vs. Sarabjit Kaur[4] [P&H High Court] The argument canvassed by the learned counsel for the respondents, on the other hand, was that having regard to the nature and scheme of the two legislations in-question, viz., Rent Act, 1973 and Haryana Municipality Act, one has to keep in mind that the scheme contemplates two types of cases: (i) where the premises are covered by the Rent Act, 1973 but exemption in terms of Section 1(3) of the Rent Act is provided for a period of 10 years to certain kinds of premises. It was argued that in respect of such premises which are enjoying protection and during that period suit is filed in the Civil Court, the rights of the parties to the suit would be seen on the date on which the suit was filed and even if the period of exemption expires during the pendency of the suit, Civil Court would continue to have the jurisdiction to try the said suit, and (ii) Other cases were those where the particular premises are notified as coming within the municipal area under the provisions of Haryana Municipal Act, which had the effect of covering these premises under the Rent Act as well.

It was argued that in such cases the moment such an Order/Notification is passed and the premises get covered by the Rent Act, from the date of such a Notification, Civil Court will cease to have jurisdiction and it will apply even to the pending suits by relegating the parties to the Court of Rent Controller/Tribunal created under the Rent Act.

The learned counsel further argued that the aforesaid distinction was discerned by the learned High Court in the impugned judgment after scanning through the various judgments of the High Court as well as this Court. It was argued that such a distinction can be found after reading those judgments and the attention of this Court was drawn to the following judgments, in particular:

(i) Mani Subrat Jain Vs. Raja Ram Vohra[5]

(ii) Lakshmi Narayan Guin and Others Vs. Niranjan Modak[6] In order to find out the veracity of the aforesaid arguments and position taken by the learned counsel on either side and to give answer to the question that has arisen for determination, it becomes necessary to traverse through the judgments cited inasmuch as reading thereof would help in deciding as to on which side the scales are tilted. We would be going through these judgments in chronological order. In that order, first case that needs our attention is Mani Subrat Jain5. In this case, the landlord had filed a suit for ejectment in Civil Court in the absence of any rent legislation at the relevant time when the suit was filed. The compromise decree was passed against the tenant. After the said decree was passed, East Punjab Rent Restriction Act, 1949 was extended to Chandigarh vide Notification issued on November 04, 1972. House in dispute was situate in Chandigarh. By that time, the Act was extended to Chandigarh, the tenant had already suffered a decree but he was still in possession of the tenanted premises when the execution petition was filed by the landlord seeking execution of the said decree. The tenant resisted the same claiming the protection of Section 13(1) of East Punjab Rent Restriction Act, 1949 which provided that a tenant could not be evicted in execution of a decree passed before or after the commencement of the said Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the said or in pursuance of an Order under Section 13 of the Rent Restriction Act. This Court held that even an ex-

tenant will continue to be a tenant. A reading of the judgment, however, would show that the Court went by the definition of “tenant” contained in Section 2(i) of the Rent Restriction Act which included an ex-tenant also and more importantly the provisions of Section 13 of the Rent Restriction Act which specifically provided that a tenant will not be evicted even in execution of a decree passed either before or after the commencement of the Rent Restriction Act, except in accordance with the provisions of Section 13 or in pursuance of the order passed under Section 13 of the Rent Restriction Act.

In Lakshmi Narayan Guin6, ejectment decree was passed by the Civil Court against which appeal was pending. During the pendency of the appeal, Rent Act was made applicable to the area where the premises in-question situate. This Court took the view that since appeal was in continuation of the suit having regard to the fact that premises were now covered by the West Bengal Premises Tenancy Act, protection of the said Act would become available to the tenant having regard to the provisions of Section 13(1) of that Act which was of the same nature, as noticed in Mani Subrat Jain5 case. Judgment in Atma Ram Mittal Vs. Ishwar Singh Punia[7], related to the situation where the premises in-question though covered by the Rent Control Act, were exempted from the provisions of the said Act for a particular period. That case arose under the same Haryana Act of 1973 which we are dealing with. It may be pointed out, at this stage, that Section 1(3) of the Act, 1973 provides the exemption in the following manner: “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”.

Though, the area where the building is situate comes under the protected umbrella of the Act, 1973, still for a period of 10 years the said protection is not available to the tenant in respect of a newly constructed building, which is completed on or after the commencement of the Act. In such a case the tenancy in respect of that particular building shall be governed by contractual terms and under the provisions of the Transfer of Property Act. On the termination of tenancy in any of the manners stipulated in the Transfer of Property Act, the landlord is entitled to file suit for possession in the Civil Court. In this backdrop, in Atma Ram Mittal8, this Court was concerned with a situation where such a suit was filed by the landlord in respect of newly constructed premises during the period of exemption by virtue of Section 1(3) of the Rent Act of 1973. However, when the suit was still pending period of 10 years expired. The Court held that on this basis, the tenant argued that since the exemption period had expired, the effect thereof was that the Rent Act had also become applicable to the building in-question and, therefore, Civil Court ceased to have jurisdiction to try even the pending suit. This contention was repelled by the Court holding that the Civil Court will continue to have the jurisdiction. For coming to this conclusion, the Court relied upon its earlier judgments in Vineet Kumar Vs. Mangal Sain Wadhera[8] and Ram Saroop Rai Vs. Smt. Lilawati[9].

After referring to the aforesaid two judgments, the Court gave the following reasons in support of its conclusion:

> "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 shallprejudice 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 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.
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> 9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people.

Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law (emphasis by the court) See Commentaries on the Laws of England (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). Mukherjea, J. as the learned Chief Justice then was, in Poppatlal Shah v. State of Madras (1953 SCR 677) said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are

rather looking to the meaning of the words that the legislature has used and the true meaning of what words as was said by Lord Reid in Black- Clawson International Ltd. v. Papierwerke Waldhof

-Aschaffenburg A.G. We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law. 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, 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." (Emphasis added) Judgment in Ramesh Chandra1, falls in the category of Atma Ram Mittal8 case. In that case also Court was dealing with the case of newly constructed property exempted from operation of U.P. Rent Act and the decision was on the same lines as noted in Atma Ram Mittal8. At this juncture, we would like to discuss another judgment of this Court rendered by a three Judge Bench in the case of Shri Kishan alias Krishna Kumar & Ors. v. Manoj Kumar & Ors.[10] At the outset, it needs to be emphasised that it was also a case under the same very enactment of Haryana, i.e. Rent Act, 1973, and this case also dealt with a newly constructed property which was exempted from operation of the said Act for a period of 10 years and the suit was filed by the landlord during the exempted period. In this case also, the Court held that the law applicable on the date of the institution of the suit would govern and as at that time the protection of the Rent Control Act was not available and thus Civil Court had the jurisdiction, the Civil Court will continue to have the jurisdiction even after the expiry of the said period of 10 years. While coming to this conclusion, the Court had relied upon Ramesh Chandra1, Atma Ram Mittal8 and other such cases. The learned counsel appearing for the appellants heavily relied upon the reasons given by the Court in taking the aforesaid view and on that basis it was argued that the principle laid down should be made applicable even in those cases where the protection of the Rent Control Act is extended in respect of the area in question after the filing of the suit, in an attempt to impress upon this Court to take the view that even in such cases the Civil Court should not be deprived of its jurisdiction in respect of pending cases, when on the date of institution of the suit the Civil Court had the requisite jurisdiction to entertain the same. For this purpose, the learned counsel referred to the arguments of the tenant in that case recorded in paragraph 5 thereof with the submission that this very argument was specifically rejected. Paragraph 5 thereof reads as under:

> "5. It is argued that the Act is intended to be beneficial to the tenants and special protection is afforded to them. According to the learned counsel for the purpose of the Act the expression "tenant" includes a tenant continuing in possession after the termination of his tenancy and at the expiry of period of ten years as set out in Section 1(3) of the Act, the "building" comes within the fold of the Act and the tenant in occupation will automatically have the protection afforded by the Act. Emphasis is laid on the wordings of Section 13(1) which prevents eviction of a tenant in possession except in accordance with the provisions of the section. According to the learned counsel the moment the Act becomes applicable to the building in question,

the suit in relation thereto has to abate and the remedy of the landlord is to approach the Controller with an application for eviction on any of the grounds set out in the section. According to him even if a decree is passed by the civil court it will not be enforceable and the tenant cannot be evicted from the building pursuant to the decree as the bar in Section 13(1) is absolute. In support of this contention, learned counsel has placed reliance on some of the rulings of this Court which will be adverted to a little later." In order to appreciate this argument, we will have to notice the contention which was advanced by the counsel for the landlord in the said case as the judgment is ultimately passed on the acceptance of those submissions. These are contained in paragraph 6 and we reproduce below that paragraph as well:

"6. On the other hand, learned counsel for the respondents has placed before us the following proposition:

(a) On the date when the suit was instituted it was to enforce a legal right which had already accrued to the plaintiff and stood crystallized under the law applicable to the building at that time. In the absence of any specific provision in the Act to deprive the Court of its jurisdiction to determine the issue pertaining to that right, it cannot be contended that by efflux of ten-year period mentioned in Section 1(3) the Court would lose its jurisdiction.

(b) The maxim ubi jus, ibi remedium can be excluded only by a substantive legislation expressly extinguishing the said right. The Act does not contain any such provision to bring to an end the right of the plaintiff which had already accrued and put in issue in the suit. A judicial vacuum cannot be created by preventing the Court from deciding an issue which has arisen before it unless the right which had accrued in favour of one party is taken away by the legislation.

(c) The principle of the maxim actus curiae neminem gravabit would apply and because the Court had taken a long time to dispose of the matter before it, the party which had approached it cannot be made to suffer.

(d) The provisions of Section 1(3) and Section 13(1) should be so construed as to advance the legislative intention and if the contention of the appellants is accepted it would defeat the purpose of the moratorium and make it futile.

In support of the above contentions learned counsel has referred to several rulings of this Court and submitted that the consistent view taken by this Court is in his favour." Arguments of both sides have been dealt with by the Court, thereafter, in the following manner:

"7. Before referring to the decisions cited before us it is necessary to advert to the provisions of the Act. We have already quoted Sections 1(3) and 13(1). Apart from the legislative exemption contained in Section 1(3) there is a provision in Section 3 of the Act enabling the State Government to exclude any building or any class of buildings

from the purview of the Act. Sections 4 to 8 deal with fair rent, deposit of rent etc. Sections 9 and 10 refer to the amenities to be provided to the tenant. Section 11 prevents conversion of a residential building into a non-residential building except with the permission in writing of the Controller. Section 12 deals with the situation where a landlord fails to make the necessary repairs. Section 13 sets out the grounds on which eviction can be sought by a landlord. Section 13-A prescribes special procedure for disposal of the application by a landlord in certain cases such as members of the Armed Forces, government employees etc. Section 14 prevents reopening of decisions which have become final. Section 15 prescribes appellate and revisional authorities. Section 16 provides that an authority exercising powers under the Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a court under the Civil Procedure Code. Sections 17 to 23 deal with order as to costs, execution, power to transfer proceedings, penalties etc. Section 24 repeals the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949).

8. There is no provision in the Act taking away the jurisdiction of a civil court to dispose of a suit validly instituted. There is also no provision preventing the execution of a decree passed in such a suit.

Section 13(1) does not expressly refer to execution of a decree for possession. On a reading of all the provisions of the Act, it is evident that it has not prevented a civil court from adjudicating the rights accrued and the liabilities incurred prior to the date on which the Act became applicable to the building in question. If the legislature had intended to take away the jurisdiction of the civil court to decide a suit which had been validly instituted, it would have been worded differently. The purpose for which the exemption is granted statutorily under Section 1(3) is to encourage construction of new buildings. That purpose would be defeated if the owner of the building is deprived of his right to get possession of the building unless he gets a decree within a period of ten years from the date of its completion. In fact the logical consequence of the argument of the appellants if accepted would be that even if a decree is obtained by the landlord within ten years from its completion it cannot be executed after the expiry of the said period of ten years as such execution would not be in accordance with the provisions of the Act. It is common knowledge that a proceeding in a civil court for recovery of immovable property could be dragged on by the defendant easily for a period of ten years or more and thereby any tenant whose tenancy had been terminated validly before the suit would successfully make the proceeding infructuous by prolonging the litigation. The argument of the appellants cannot be accepted as otherwise the purpose of exemption would get defeated." (emphasis supplied) Thereafter, the Court has referred to various earlier judgments and all these judgments are concerned with the provision of exemption contained in such Rent Acts. Therefore, all these judgments are authority on the issue that in those cases where exemption from operation of Rent Control Acts is provided for a particular period and suit for eviction is filed during the said period of exemption, the Civil Court shall continue to have the jurisdiction to adjudicate the rights of the parties under the said suit even where the period of exemption has expired during the pendency of the suit. The reason was that as on the date of the institution of the suit legal right in favour of the landlord had already accrued and it stood crystallised under the law applicable to the building at

that time. The Court was also influenced by the consideration that the maxim ubi jus, ibi remedium can be excluded only by substantial legislation expressing extinguishing the said right. If the delay in disposal of the said suit had occurred, that was because of the Court where the suit kept pending and the principle of the maxim actus curiae neminem gravabit shall apply. In this context, the Court interpreted the provisions of Section 1(3) and Section 13(1) of the Act pointing out the purpose for which the Legislature had exempted the newly constructed buildings from the operation of the Rent Act. For this, the object of such an exemption from the applicability of the Act was specifically taken note of by extracting a passage from Ram Saroop Rai v. Lilavati[11], as can be seen from paragraph 10 of the judgment:

> "10. In Ram Saroop Rai v. Lilavati while dealing with a case under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, Justice Krishna Iyer referred to the object of exemption from the applicability of the Act in the following words: (SCC p. 453, para 1) "... Chronic scarcity of accommodation in almost every part of the country has made 'eviction' litigation explosively considerable, and the strict protection against ejectment, save upon restricted grounds, has become the policy of the State. Rent control legislation to give effect to this policy exists everywhere, and we are concerned with one such in the State of U.P. (U.P. Act 13 of 1972). The legislature found that rent control law has a chilling effect on new building construction, and so, to encourage more building operations, amended the statute to release, from the shackles of legislative restriction, 'new constructions' for a period of ten years. So much so, a landlord who has let out his new building could recover possession without impediment if he instituted such proceeding within ten years of completion." The aforesaid observations would apply in the present case too." From the aforesaid discussion in Atma Ram Mittal, Vineet Kumar, Ram Saroop Rai, Ramesh Chandra and Shri Kishan alias Krishna Kumar cases, the apparent principles which can be culled out, forming the ratio decidendi of those cases, are as under:
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> i) 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 suit is disposed of or adjudicated.
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> ii) If during the pendency of the suit, Rent Act becomes applicable to the premises in question, that would be of no consequence and it would not take away the jurisdiction of civil court to dispose of a suit validly instituted.
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> iii) In order to oust the jurisdiction of 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 Rent Act became available in respect of the said area/premises/tenancy.
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> iv) In case 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, inexecutable after the application of these Rent Act in respect of such premises. This would not be in consonance with the legislative intent.

In laying down the aforesaid dicta, the Court also took support of two well known maxims viz. (i) ubi jus ibi remedium which lays down the principle that where there is a right there is a remedy and it can be excluded only by substantial legislation expressly extinguishing the said right AND (ii) actus curiae neminem gravabit, which means that nobody should be allowed to suffer because of the act of the Court. Here the act attributed is delay in disposal of the case. Additionally, the Court took aid of purposive interpretation i.e. legislative intent in not making Rent Act applicable to new constructions for a period of ten years.

What we notice is that in the impugned judgment, the High Court has divided the cases into two categories and restricted the law laid down in the aforesaid judgments only in respect of those category of cases where Rent Act exempts from its applicability newly constructed properties for a period of ten years. Second category of cases carved out covers those cases where the Rent Act was not applicable when the suit was filed but extended to the area/premises in question during the pendency of the suit. In respect of later category the High Court held that the dicta in the aforesaid judgments would not be applicable and the moment Rent Act is extended to such areas where the premises are situate, civil court shall cease to have jurisdiction to continue with the suits though instituted even at a point of time when Rent Act was not applicable. This distinction, according to us, is illusory. The principles of law laid down in the aforesaid judgment as culled out above would apply in equal force to second category of cases as well inasmuch as the basic principle which is laid down in the aforesaid judgments is that rights of the parties get crystallised on the date of the institution of the suit and the law applicable on the date of filing the suit would continue to govern such suit.

At the juncture, we take note of the law laid down in Mansoor Khan2 which is in tune with what we have stated above. That was a case which arose out of Central Provinces and Berar Letting of Houses and Rent Control Order, 1949. Clause 13 thereof provided protection to the tenants against eviction and stipulated grounds which would entitle a landlord to seek eviction of the tenant by filing a petition before the Controller appointed under the said Act. This Order was applicable to certain areas but did not include city of Risod. The said area of Risod in the erstwhile province of C.P. and Berar was covered under the Order, 1949 by Notification dated October 09, 2010. However, much before this Notification, the landlord in that case had filed the suit for possession in the Civil Court after the lease had been determined. This Court held that Civil Court shall continue to have jurisdiction as Order, 1949 was not retrospective in operation and where the eviction suit had already been initiated and was pending on the date when order became applicable to the area in which the suit premises was situate, provisions of the order would not affect validity of previously instituted proceedings and the Court was competent to pass eviction decree under the Transfer of Property Act.

A significant question would be as to how we need to read judgments in Mani Subrat Jain and Laxmi Narayan Guin cases, the outcome whereof went in other direction. However, when we

understand the ratio of the aforesaid two cases appropriately, we find no contradiction between these two cases and other line of cases like Atma Ram Mittal etc. discussed above. Insofar as judgments in Mani Subrat Jain and Laxmi Narayan Guin are concerned, these were rendered keeping in view the definition of "tenant" appearing in the rent legislations therein, namely, East Punjab Rent Restriction Act and West Bengal Premises Tenancy Act. What was found that definition of tenant in those enactments included even an ex-tenant. This coupled with the fact that there was specific provision laying down that a tenant will not be evicted even in execution of a decree passed either before or after the commencement of the enactment, except in accordance with the provisions contained in the Rent Act, impelled the Court to take the view that the moment Rent Act became applicable to the area in question, the tenant or even ex-tenant stood protected and could be evicted only under the said Rent Acts. Therefore, the principles which we have culled out above in para 16 would be subject to one exception. In case definition of 'tenant' and provisions pertaining to eviction of tenants contained in Rent Acts cover even those cases where the tenancy has been terminated (or depending upon the provisions of the Rent Act, even when Civil Court has passed the decree) the protection provided under such provision would come to the rescue of the tenant even in respect of pending cases. It is because of the reason that such a Rent Act specifically provides for protection of this nature and bars the jurisdiction of civil court even in respect of pending cases. On the other hand, where there is no such specific protection given under the provisions of the said Rent Act, the principle as laid down in Mansoor Khan2 will be applicable.

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 and Mansoor Khan 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 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 suit was even decreed. It is only during the pendency of the appeal that the notification was issued covering the area where suit premises are situate under the Rent Act. It will be travesty of justice if the appellants/landlords are deprived of the fruits of the said decree.

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 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 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 cost.

.....J. (A.K. SIKRI) .....J. (N.V. RAMANA) NEW DELHI;

OCTOBER 18, 2016.

(1992) 1 SCC 751 [2] (2002) 5 SCC 462 [3] (1987) 4 SCC 382 [4] 2013 (1) RCR (Rent) 74 [5] (1980) 1 SCC 1 [6] (1985) 1 SCC 270 [7] (1988) 4 SCC 284 [8] (1984) 3 SCC 352 [9] (1980) 3 SCC 452 [10] (1998) 2 SCC 710 [11] (1980) 3 SCC 452