MISCELLANEOUS CIVIL

Before M. L. Verma, J.

DEV RAJ BAWA,—*Appellant-Petitioner*

versus

OM PARKASH GUPTA AND OTHERS,—*Respondents.*

Civil Misc. No. 5296-C of 1974.

IN

Regular First Appeal No. 186 of 1973.

January 15, 1975.

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973) —*Sections* 2(*h*) *and* 24—*East Punjab Urban Rent Restriction Act* (*III of* 1949)—*Section* 2(*i*)—*Haryana Act—Whether prospective—Definition of tenant given in this Act—Whether applies to pending cases—Interpretation of statutes—Change in law—Whether has to be taken notice of by the Courts while deciding pending cases.*

Held, that section 24 of Haryana Urban (Control of Rent and Eviction) Act, 1973 gives an unmistakable indication that the Act is prospective and there is absolutely nothing therein of its being retrospective. On the other hand the words "any proceedings pending or order passed" in the said provision are unrestricted and go a long way to indicate that any proceedings, including suits pending in civil Courts and even appeals arising therefrom, and any order, including decrees passed in Civil suits, are saved and the same have to be disposed of in accordance with the provisions of the East Punjab Urban Rent Restriction Act, 1949. The Punjab Act has not been repealed and has to be deemed to be operative so far as pending proceedings, including appeals and decrees passed prior to the enforcement of the Haryana Act are concerned. Hence the enlarged definition of the word tenant in the Haryana Act is not applicable to pending cases under the Punjab Act.

Held, that a change in the law brought about by any new enactment has to be taken into consideration notwithstanding that the old enactment has been repealed by the new one after the passing of a decree in a suit and during the pendency of the appeal. This principle, however, is subject to the qualification that the language of the new enactment on its interpretation in accordance with settled rules thereof permits the inference that the provisions of the new enactment apply to the pending cases. If the Legislature makes the new enactment prospective in nature it will not apply in all the pending cases.

Application under Order 41 *Rule* 27 *read with Section* 151 *of the Civil Procedure Code, praying that the case be remanded to the trial*

Court after framing an additional issue and the parties be given an opportunity to lead evidence on that issue.

Jagan Nath Kaushal, Senior Advocate, Ashok Bhan, Advocate with him, *for the appellant.*

Anand Swaroop, Senior Advocate, R. S. Mittal, Advocate, with him, *for the respondents.*

ORDER

VERMA, J.—Daya Kishan, who was owner of the shop in suit, had leased it out to Dr. Hans Raj for 11 months with effect from October 1, 1949. The said lease expired on August 31, 1950, and thereafter Dr. Hans Raj continued in its possession due to the protection available to him under the provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the old Act). So, he was a statutory tenant on February 18, 1970, when he died. He left behind his son—Dev Raj (now the appellant) and daughter—Smt. Raj Mittar. Daya Kishan sold the shop to Om Parkash on November 20, 1957. Om Parkash, therefore, sued Dev Raj, Smt. Raj Mittar, Bishan Dass and Dharam Pal for possession of the shop and for recovery of mesne profits at the rate of Rs. 100 p.m. with effect from February 18, 1970 on the allegations that Bishan Dass and Dharam Pal were in its physical possession without any right or interest, and Dev Raj and Smt. Raj Mittar did not inherit any right of tenancy from Dr. Hans Raj on his death because he (Dr. Hans Raj) being a statutory tenant did not possess any such right. Bishan Dass and Dharam Pal did not file written statement. The suit was contested by Dev Raj and Smt. Raj Mittar. They admitted that Om Parkash was owner of the shop and raised the plea that the shop had been taken on lease on behalf of and for the benefit of the joint Hindu Family consisting of themselves and Dr. Hans Raj. They pleaded in the alternative, that Dr. Hans Raj was a monthly tenant and, as such, the rights of tenancy held by him were inherited by them, that Bishan Dass and Dharam Pal were carrying on business of the Joint Hindu Family as their employees and the suit was not cognizable by civil Court. The trial Court negatived the pleas raised by them and accepting the claim of Om Parkash, granted decree for possession of the shop and mesne profits at the rate of Rs. 30 per month. Aggrieved by the said decree, Dev Raj came to this Court in appeal. During the pendency of the appeal the old Act was repealed and was replaced by the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called

the New Act) which came into force on April 25, 1973. Since the scope and extent of definition of 'tenant' has been enlarged by the New Act, Dev Raj moved this application registered as Civil Miscellaneous Number 5296/C-1974 stating that as he and Smt. Raj Mittar had been residing with Dr. Hans Raj being his son and daughter at the time of his death, they were covered by the said definition of tenant and were entitled to the protection against eviction from the shop under section 13 of the New Act and therefore the following issue be framed:

> 'Whether the appellant has become tenant in view of the provisions of the New Act.'

and the case be remitted to the trial Court for recording evidence of the parties thereon. The said application has been resisted by Om Parkash and it is being disposed of by this order.

2. In support of the application Shri J. N. Kaushal, learned counsel for the appellant, has advanced two contentions; firstly, that the appeal being rehearing of the suit, this Court has to take into consideration the change in law brought by the New Act and, secondly, since the appellant and Smt. Raj Mittar being son and daughter of Dr. Hans Raj had been residing with him at the time of his death, they have become tenants by virtue of the definition of 'tenant' and are entitled to protection against their eviction from the shop available under section 13 of the New Act. While opposing the application, Shri Anand Swarup, learned counsel for Om Parkash, argued that he (Om Parkash) had acquired vested right to claim possession of the shop on the basis of title and the appellant and the other respondents were liable to eviction from the shop being trespassers. His line of argument is that Dr. Hans Raj was a statutory tenant and the protection available to him against eviction from the shop under the old Act was personal benefit, but he held no right to possess the shop and, therefore, no such right could pass to the appellant or Smt. Raj Mittar on his (Dr. Hans Raj's) death; and neither the vested right available to Om Parkash nor the liability of the appellant and the other respondents for eviction from the shop could be abrogated on account of repeal of the old Act.

3. The principle is well recognised that a Court of Appeal is not a Court of error, but is a Court of rehearing and the decree or

order that it passes, is passed in the suit or other proceeding instituted in the trial Court, and the decree or order passed by the trial Court merges into the decree or order of the Appellate Court. In other words, when the Appellate Court decides an appeal, it decides the suit itself. Therefore, it cannot be gain said that the Appellate Court shall, and is rather required to, take into account the change in law brought about during the pendency of the appeal. The observations made in *Patterson* v. *State of Alabama* (1)—

> "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

were approved in *Lachmeshwar Prasad Shukul and others* v. *Keshwar Lal Chaudhury and others* (2). The aforesaid principle was affirmed by the Supreme Court in *Ram Sarup and others* v. *Munshi and others* (3), and was accepted by this Court in *Ram Lal* v. *Raja Ram and another* (4). Therefore, I unhesitatingly agree with the learned counsel for the appellant that the change in law brought about by the New Act has to be taken into consideration notwithstanding that the old Act has been repealed by the New Act after passing of the decree in the suit and during the pendency of the appeal. But this is subject to the qualification that the language of the New Act allows and the rule of interpretation of statute permits the inference that the legislature intended to give retrospective effect to the provisions of the New Act or in other words it (the New Act)

(1) (1934) 294 U.S. 600 at page 607.

(2) A.I.R. 1941 F.C. 5.

(3) A.I.R. 1963 S.C. 553.

(4) 1960 P.L.R. 291.

applies to the pending cases. The definitions of 'tenant'—given in the old and New Act—read thus :—

S. 2(i) of the Old Act.	*S. 2(h) of the New Act.*
"tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal, town or notified area committee;"	"tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord or person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out, or leased by a municipal, town or notified area committee."

The words "and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act, and who were ordinarily residing with him at the time of his death" were not in the definition of 'tenant' of the old Act and have been introduced in the definition by the New Act. Son and daughter are included in the heirs mentioned in the Schedule. It is, thus, indisputable that the definition of 'tenant' has been enlarged by the New Act so as to give to son and daughter and also other heirs mentioned in the Schedule, the status of statutory tenant, provided they were ordinarily residing with the statutory tenant at the time of his death. Section 13 of the New Act contains a mandate that a tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of that section. It is, therefore, clear that under the provisions of the New Act the protection against eviction available to a statutory tenant can be claimed

by his son and daughter and any other heir mentioned in the Schedule, after his death, providtd he or they were ordinarily residing with him at that time. In view of the aforesaid change in law brought about by the New Act, I would not hesitate to agree with the learned counsel for the appellant that he (the appellant) or Smt. Raj Mittar would not be liable for eviction from the shop in the instant suit if it can be shown that they were ordinarily residing with Dr. Hans Raj at the time of his death and it is also held that the New Act is applicable. If that view is taken, then there is necessity of framing of the proposed issue and recording of evidence thereon. But as will be presently seen, the New Act, especially in view of the provisions of section 24, cannot govern the case in hand.

5. *As observed in Digambar Paul Ghosh and others* v. *Tufazuddi Ijaradar and others* (5), it is undeniable that the effect of repeal of a statute, in the absence of saving clauses is, that it has to be considered as if the statute so repealed had never existed. It ceases to be operative, unless there is any clause in the new statute preserving the old statute; the underlying principle being, that there cannot be two inconsistent codes in the same matter, and if the previous statute has to be preserved that must be done expressly. Every legislation is prospective and general presumption is against its being retrospective. It is a fundamental rule of interpretation of statutes that no statute shall be construed to have a retrospective operation, unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication and no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair the existing right or obligation otherwise than as regards matter of procedure. Such is also the purpose and aim of clause (c) of section 4 of the Punjab General Clauses Act, which is applicable to the State of Haryana and corresponds to clause of section 6 of the General Clauses Act, 1897. The relevant provision of section 24 of the New Act reads as under :—

> "Provided that such repeal shall not affect any proceedings pending or order passed immediately before the commencement of this Act which shall be continued and disposed of or enforced as if the said Act had not been repealed."

(5) A.I.R. 1934 Calcutta 80(2).

(6) The aforesaid provision gives an unmistakable indication that the New Act is prospective and it has, with regard to pending cases and orders already passed, preserved the old Act. Shri J. N. Kaushal, learned counsel for the appellant, has been of the view that the aim of the aforesaid provision is nothing more than the object and purpose of clause (c) of section 4 of the Punjab General Clauses Act and, therefore, it could, at the most, save the proceedings pending, if any, under the provisions of the old Act or any order passed thereunder before April 25, 1973, when the New Act came into force, but decree which is subject of the appeal having been passed by a civil Court in a suit is not saved by the aforesaid provision. I am unable to subscribe to the said view. The language of the provision of section 24 of the Act, reproduced above, is unambiguous and there is absolutely nothing therein to confine its application to the proceedinsg pending or orders passed under the old Act. The words "any proceedings pending or order passed" in the said provision are unrestricted and go a long way to indicate that any proceedings, including suits pending in civil Courts and even appeals arising therefrom, and any order, including decrees passed in civil suits, are saved and the same have to be disposed of in accordance with the provisions of the old Act, and it is to be regarded that the old Act has not been repealed and has to be deemed to be operative so far as pending proceedings, including appeals and decrees passed prior to April 25, 1973, are concerned. Viewed thus, I, in disagreement with the learned counsel for the appellant, have no reluctance in finding that the appeal has to be decided and the correctness of the decree in question has to be determined in accordance with the provisions of the old Act and no notice of the provisions of the New Act can be taken. In that view of the matter, the point as to whether the appellant and Smt. Raj Mittar can claim themselves to be statutory tenants by virtue of definition of 'tenant' given in the New Act by proving the qualification contained therein is wholly irrelevant. So, there is no merit in this application and there is no necessity of framing the issue suggested by the appellant, much less of recording evidence thereon. I, therefore, dismiss C.M. No. 5296/C of 1974 with no order as to costs.

B. S. G.