A VATAN MAL

*v.*

KAILASH NATH

MARCH 30, 1989

B [R.S. PATHAK, CJ, S. NATARAJAN AND M.N. VENKATACHALIAH, JJ.]

*Rajasthan Premises (Control of Rent and Eviction) Act, 1950—Section 13-A-benefit of provisions—Conferred on all tenants—Provided actual eviction had not taken place.*

C **Appellant herein was a lessee of the Respondent in respect of a shop since 1961, at a monthly rent of Rs.25 later increased to Rs.30 and in addition to the said rent, he was to pay house tax to the municipality. Respondent-landlord filed a suit for eviction against the appellant on the ground of default in payment of rent for the period 1.2.1966 to** D **31.12.66. The appellant filed an application in that suit under sec. 13(4) of the Act (as it stood prior to amendment) for determination of arrears of rent and the interest payable thereon. The Trial Court determined the arrears of rent and the interest payable by the appellant. Consequent upon the appellant's depositing the same, the suit was dismissed in terms of sec. 13(7) of the Act. The appellant continued depositing the** E **rent in Court. Thereafter the Respondent filed another suit on 21.5.75 alleging that the appellant has again committed default in payment of rent and should therefore be evicted. The appellant received a notice calling upon him to appear in Court on 10.2.76. Since he had not received a copy of the plaint, he was granted time till 30.3.76 to file his written statement. In the written statement he refuted his liability to** F **pay the rent and also moved an application u/s 13(3) & 13(4) of the amended Act praying that if in the course of his depositing the rent in court, there has been any omission, due to oversight the Court may determine the arrears of rent & interest payable thereon and permit him to deposit the same in court.**

G **It may be pointed out here that before the appellant was served with the notice of the suit, the Act was amended on 29.9.75 by Amending Ordinance No. 26 of 75 whereby a new section 13-A was added to the Act. The object of the newly added section was to provide benefit to all tenants against whom suits for eviction on the ground of default in paying the rent were pending by making a provision that the Courts** H **shall not pass any decree in favour of landlords on that ground if the**

tenant makes an application within a stipulated period and deposits in court the total rent due. A

The Trial Court passed orders on the application u/s 13(3) & 13(4) and called upon the appellant to deposit a sum of Rs.335 towards arrears of rent and interest before 28.7.76. The appellant complied with the order but despite that, the Trial Court passed a decree for eviction and B the appellate Court confirmed the same.

In the second appeal preferred by the appellant, he contended that the Trial Court ought to have treated the application filed by him u/s 13(3) & 13(4), as one filed u/s 13-A of the Act and given the benefit thereof to him. Even though the High Court found that the appellant C having received the notice of the suit late and hence was not in a position to make the application within 30 days, declined to interfere because in its view the Act has not provided for any relief to tenants placed in the situation in which the appellant was placed. The High Court held that the Act contains a lacuna but the same can be remedied by the legislature and not by Courts and as such the appellant cannot claim the benefit D of sec. 13-A of the Act. The suit having been filed prior to the coming into force of Amending Act, the same will be governed by the provisions of unamended Act.

On the dismissal of the second appeal by the High Court, the appellant has filed this appeal after obtaining special leave. E

Before this Court two questions arose for consideration viz: (1) whether the appellant is not entitled to the benefit of sec. 13-A because he had not filed an application within 30 days from the date of commencement of the Act, and (2) even otherwise whether by reason of the earlier default in payment of rent for the period 1.2.1966 to 31.12.1966, F the appellant is disentitled under the Act to claim the benefit of sec. 13-A.

Allowing the appeal, this Court,

HELD: Section 13-A has been given overriding effect. Sub- G section (1) of section 13-A mandates all courts not to pass any decree in favour of a landlord for eviction of a tenant on the ground of non-payment of rent, if the tenant makes an application as per clause (b) and pays to the landlord or deposits in court within the prescribed time the total amount of rent in arrears together with interest and full costs of the suit. [199B-C] H

**The intention of the legislature to confer the benefit of section 13-A to all tenants, provided actual eviction had not taken place could further be seen by the terms of section (c). [199D-E]**

**It would be unreasonable and inequitable to hold that the legislature had intended to confer the benefit of sec. 13-A only to those tenants who had received notice of the suit filed against them before the Ordinance came into force and not to those tenants against whom proceedings were pending in the sense they had been instituted but who had no notice of the pendency of the suit. [199F-G]**

**Even though it was found that some arrears had to be paid, the appellant cannot be denied the benefit of sec. 13-A because the section has been given overriding effect in so far as suits and other proceedings which were pending on the date of the promulgation of the ordinance and as such the proviso to sub-sec. (6) of sec. 13 of the amended Act would not disentitle the appellant to claim the benefit of sec. 13-A. [202H; 203A]**

*B.P. Khemka Pvt. Ltd.* **v.** *V.B.K. Bhowmick,* **[1987] 2 SCR 559, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3604 of 1987.

From the Judgment and Order dated 19.9.1986 of the Rajasthan High Court in S.B.C.S.A. No. 163 of 1986.

S.K. Jain and I. Makwana for the Appellant.

Rajinder Sachar, Rameshwar Nath, B.P.S. Mangat and Suresh Vohra for the Respondent.

The Judgment of the Court was delivered by

**NATARAJAN, J.** In this appeal by special leave arising from a judgment of the High Court of Rajasthan in a second appeal, the question for consideration is whether the appellant will not be entitled to claim the benefit of Section 13-A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as the Act) as has been held by the High Court. It is worthy of mention even here that though the suit for eviction filed by the respondent was pending on the date the ordinance came to be promulgated, the appel-

lant had no knowledge of the filing of the suit and he came to be served with notice in the suit only after some months after the Ordinance came to be promulgated. The High Court has based its conclusions on two factors viz. (1) no application under Section 13-A had been made by the appellant in the suit filed by the respondent within a period of 30 days from the date of commencement of the Ordinance and (2) the suit had been filed before the Amending Ordinance No. 26 of 1975 was issued and hence the proceedings would be governed by the provisions of the unamended Act.

The facts are not in controversy and are briefly as under. Since 1961 the appellant was a lessee of the respondent in respect of a shop. The agreed rent was Rs.25 per mensem and in addition he had also to pay the house tax to the municipality. The rent was increased to Rs.30 per mensem with effect from 1.1.1963. On the ground the appellant had committed default in payment of rent for the period 1.2.1966 to 31.12.66, the respondent filed a suit on 17.1.1967 for eviction. The appellant filed an application under Section 13(4) of the Act (as it stood prior to amendment) for determination of the arrears of rent and the interest payable thereon. The Trial Court determined the arrears of rent and the interest payable thereon and on the appellant depositing the same, the suit was dismissed in terms of Section 13(7) of the Act. Thereafter, the appellant went on depositing the rent in court. However, the respondent filed another suit on 21.5.75 alleging that the appellant had again committed default in payment of rent and should therefore be evicted. The appellant was served with a notice calling upon him to appear in Court on 10.2.76. Since a copy of the plaint was not sent along with the notice, the appellant was furnished a copy of the plaint on 10.2.76 and he was granted time till 30.3.76 to file his written statement. In his written statement the appellant refuted his liability to be evicted on the ground of default in payment of rent. In addition, by way of abundant caution, he filed a petition under Section 13(3) and 13(4) of the amended Act praying that if in the course of depositing the rent during the long period of eight years from 1967 to 1975 there had been any omission, due to over-sight, in depositing the monthly rent, the Court may determine the amount of shortfall and the interest payable thereon and permit him to deposit the same in Court.

Even before the appellant was served with notice in the suit, the Act came to be amended on 29.9.1975 by Amending Ordinance No. 26 of 1975 (later replaced by an Act). The Ordinance provided for a new section viz. Section 13-A being added to the Act. Section 13-A is in the following terms:

"13-A. Special provisions relating to pending and other matters.—Notwithstanding anything to the contrary in this Act as it existed before the commencement of this Amending Ordinance or in any other law.

(a) No court shall, in any proceeding pending on the date of commencement of the (amending ordinance) pass any decree in favour of a landlord for eviction of a tenant on the ground of non-payment of rent, if the tenant applies under clause (b) and pays to the landlord, or deposits in court, within such time such aggregate of the amount or rent in arrears, interest thereon and full costs of the suit as may be directed by the court under and in accordance with that clause;

(b) in every such proceeding, the court shall, on the application of the tenant made within thirty days from the date of commencement of the (amending ordinance) notwithstanding any order to the contrary determine the amount of rent in arrears upto the date of the order as also the amount of interest thereon at 6% per annum and costs of the suit allowable to the landlord; and direct the tenant to pay the amount so determined within such time, not exceeding ninety days, as may be fixed by the court; and on such payment being made within the time fixed as aforesaid, the proceeding shall be disposed of as if the tenant had not committed any default;

(c) the provisions of clauses (a) and (b) shall mutatis mutandis apply to all appeals; or applications for revisions, preferred or made, after the commencement of the (amending ordinance) against decrees for eviction passed before such commencement with the variation that in clause (b), for the expression from the commencement of the (amending ordinance), the expression "from the date of the presentation of the memorandum of appeal or application for revision" shall be substituted;

(d) omitted.

(e) omitted.

(f) omitted."

The Trial Court, after hearing both the parties, passed orders on the application filed earlier by the appellant under Sections 13(3) and 13(4) of the Act and called upon the appellant to deposit a sum of Rs.335 towards arrears of rent and interest before 28.7.1976 after giving credit to the sum of Rs.1290 already deposited by him. The appellant complied with the order of the Court by depositing the said amount within the prescribed time.

Even so, the Trial Court passed a decree for eviction against the appellant on the ground of default in payment of rent and the Appellate Court confirmed the decree. In the second appeal preferred to the High Court, the appellant's counsel contended that the Trial Court ought to have treated the appellant's application under Section 13(3) and 13(4) as one under Section 13-A and given the benefit of the Section to the appellant and dismissed the suit for eviction. The High Court, in spite of accepting the position that though the suit was pending when the Amending Ordinance was promulgated, the appellant could not have filed a petition under Section 13A within thirty days from the date of the Ordinance coming into force as the suit summons came to be served on him only later, nevertheless declined to interfere because in its view the Act has not provided for any relief to tenants placed in the situation in which the appellant was placed. The High Court has further held that the Act contains a lacuna but it can be remedied only by the Legislature and not by the Courts and, as such, the appellant cannot claim the beneft of Section 13A of the Act. The High Court has expressed its view in the following terms:

> "Section 13-A of the Rent Control Act does not envisage and does not provide for a contingency as in the present case where the suit was pending but the defendant had no notice of the pendency of the suit and could not have availed of the benefit of Section 13-A of the Rent Control Act on account of restriction placed under Clause (b) for filing an appliaction u/s 13-A within one month from the date of the commencement of the Amending Ordinance. It is true that Section 13-A is a beneficial legislation, to help the tenants but the Court cannot substitute or add something to the Act. It will be for the legislature to amend section 13-A of the Rent Control Act so as to cover up contingency arising in the present case. Language of Amended Section 13-A is not ambiguous and therefore, there is no question of interpreting so as to extend the rule of beneficial construction in order to cover up cases like the present one."

A The High Court has further held that since the appellant had committed default in payment of rent for a second time, he will not be entitled to claim the benefit of Section 13(7) of the Act once again. The High Court has expressed its view on this aspect of the matter in the following terms:

B > "It is also not disputed that defendant had taken benefit of Section 13(7) of the Old Rent Control Act in an earlier suit filed by the plaintiff on the ground of default in payment of rent. Since the suit had been filed before coming into force of the Amending Ordinance of 1975 or the Amending Act of 1976, the provisions of the Old Rent Control Act before amendment will apply, as has been held by the Division
C Bench of this Court in *Kishan Lal Sharma* (supra)."

The two grounds on which the High Court had dismissed the appellant's second appeal are the subject-matter of attack in this appeal.

D

Learned counsel for the appellant contended that the High Court, after having found that though the suit was admittedly pending when the Amending Ordinance was promulgated the appellant had no notice of the pendency of the suit at the relevant time and as such he could not possibly have filed an application within one month's time
E from the date of the commencement of the Ordinance, should not have denied the benefit of Section 13-A to the appellant on the ground the Section does not provide for an application being made beyond a period of thirty days from the date of the commencement of the Ordinance. On the other hand, the learned counsel for the respondent argued that the Section is clear in its terms and, as such, the High
F Court was perfectly justified in holding that the appellant cannot claim benefits under Section 13A of the Act. It was his further contention that since the appellant had committed default in payment of rent for a second time he will not be entitled to claim benefit under Section 13A, even if the delay in filing the application beyond the prescribed period of thirty days is to be overlooked. In view of the conflicting arguments
G of the learned counsel, two questions fall for consideration viz (1) whether the appellant is not entitled to claim the benefit of Section 13A because he had not filed an application within thirty days from the date of commencement of the Ordinance and (2) even otherwise, whether by reason of the earlier default in payment of rent for the period 1-2-1966 to 31-12-1966, the appellant is disentitled under the
H Act to claim the benefit of Section 13A.

So far as the first question is concerned, the High Court has failed to see that the object of enacting Section 13A by the Legislature was to confer benefit on all tenants against whom suits for eviction on the ground of default in payment of rent were pending. To achieve the object, Section 13-A has been given overriding effect. Sub-clause (1) of Section 13-A mandates all courts not to pass any decree in favour of a landlord for eviction of a tenant on the ground of non-payment of rent, if the tenant makes an application as per clause (b) and pays to the landlord or deposits in court within the prescribed time the total amount of rent in arrears together with interest and full costs of the suit. It is no doubt true sub-clause (b) lays down that in every such proceeding, the Court shall, on the application of a tenant made within thirty days from the date of the commencement of the amending Ordinance, determine the amount of rent in arrears as well as the amount of interest at six per cent per annum and the costs of the suit and direct the tenant to pay the amount so determined within a time not exceeding ninety days as may be fixed by the Court. Sub-clause (b) further provides that on such payment being made, the proceedings shall be disposed of as if the tenant had not committed any default. The intention of the Legislature to confer the benefit of Section 13A to all tenants, provided actual eviction had not taken place, could further be seen by the terms of sub-clause (c). Under sub-clause (c) the provisions of sub-clause (a) & (b) have been made applicable *mutatis mutandis* to all appeals or applications for revision preferred or made after the commencement of the Amending Ordinance and the only stipulation contained is that the tenant preferring an appeal or an application for revision should apply to the Court within a period of thirty days from the date of presentation of the memorandum of appeal or the application for revision for giving him the benefit of Section 13A. Such being the case, it would be unreasonable and inequitable to hold that the Legislature had intended to confer the benefit of Section 13A only to those tenants who had received notice of the suit filed against them before the Ordinance came into force and not to those tenants against whom proceedings were pending in the sense they had been instituted but who had no notice of the pendency of the suit. In this case, it is common ground that though the suit was filed by the respondent on 21-5-1975, the appellant had no notice of the suit on 29.9.1975 when the Ordinance was promulgated or even before the expiry of thirty days after the Ordinance was promulgated. Such being the case, the appellant, even if he had known of the promulgation of the Amending Ordinance on 29-9-1975, could not have known that a suit for eviction had been filed against him on the ground of default in payment of rent and that he should file an applica-

A tion under Sec. 13-A(1)(b) within thirty days of the commencement of the Ordinance. It would therefore be futile to expect compliance from him of the terms of Sec. 13-A(1)(b) in the suit which was no doubt pending, within thirty days from the date of the commencement of the Ordinance to claim the benefit of Section 13A.

B A somewhat similar situation came to be noticed by this Court in *B.P. Khemka Pvt. Ltd.* v. *B.K. Bhowmick*, [1987] 2 SCR 559. In that case the tenant made an application, in the suit filed by the landlord for eviction on the ground of default in payment of rent, under Section 17(2) of the West Bengal Premises Tenancy Act for the court determining the amount of rent payable by him to the landlord. During the C pendency of the proceeding, the West Bengal Premises Tenancy (Amending) Ordinance, which was later replaced by an Act, came to be promulgated with effect from 26-8-1967. Sub-sections (2A) and (2B) to Section 17 of the Act were inserted and Section 5 of the Ordinance gave retrospective effect to the amendments and provided that the amendments made by the Ordinance shall have effect in D respect of suits including appeals which were pending on the date of the commencement of the Ordinance. To avail the benefit of the amended provision, the tenant preferred an application within one month and prayed for the payment of the arrears of the rent. The Trial Court determined the amount and the tenant paid the entire arrears but even so the Trial Court struck off the defence of the appellant on E the ground that in paying the rent for the months of September, 1968 and March, 1969 there had been a delay of 44 days and 6 days respectively and hence there was a contravention of Section 17(1) of the Act. Thereafter the landlord's suit was decreed and the decree was confirmed by the Appellate Court. In the second appeal preferred by the tenant the High Court not only confirmed the decree for eviction F but went a step further and held that the tenant was not entitled under the Act to file an application under Section 17(2A)(b) because he had not filed the application within the time specified under Sub-section (1) of Section 17 of the Act viz. "one month from the service of the writ of summons on the defendant or where he appears in the suit or proceeding without the writ of summons being served on him, within G one month of his appearance." The High Court expressed its view as under:

> "In our view, the application under section 17(2A)(b) was not also maintainable. It is true that Section 17(2A)(b) was made applicable to pending suits by the Ordinance. But H such applicability will be subject to the limitation imposed

by sub-section (2B) of Section 17, namely, that an application under sub-section (2A)(b) has to be made before the expiry of the time specified in sub-section (1) of Section 17 for the deposit or payment of the amount due on account of default in payment of rent. Under sub-section (1) of Section 17 the time specified is one month from the service of the writ of summons on the defendant or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance. In the instant case, the summons was served on the defendants on April 6, 1967. The application under section 17(2A)(b) having been filed on September 22, 1967, it was barred by limitation ..... In our view, after the expiry of one month of the service of summons on the defendants, they had no right to avail themselves of the provisions of section 17(2A). Sub-section (2B) of section 17 having prescribed a time limit for an application under sub-section (2A), no other period of limitation can be substituted for the purpose of making an application for instalments. It is true that the Act is a remedial statute, but that fact does not give the Court jurisdiction to alter the period of limitation as prescribed by the statute for the purpose of giving relief to the tenant. If the legislature had intended that the tenant in a pending suit would be entitled to make an application under section 17(2A) within one month of the date of promulgation of the Ordinance, it would have expressly provided for the same as it has done in other cases covered by section 17B and 17D."

In the appeal preferred by the tanant to this Court against the judgment of the High Court, this Court disapproved the view taken by the High Court. In the judgment, reference was made to the decisions in *Madhav Raw Scindia* v. *Union of India*, AIR SC 1971 530 and *Dy. Custodian* v. *Official Receiver*, [1965] 1 SCR 220 while setting out the principle to be followed in the matter of construction of the provisions of an Act. It was observed that the provisions of an Act must be construed in such a manner that the construction should serve the purpose of achieving the aim and object of the Act and not in a way as would defeat the legislative intent behind the Act. After setting out the principle, the fallacy contained in the view taken by the High Court was pointed out in the following manner:

"The High Court was, therefore, in error in holding that

A the application under Section 17(2A)(b) was itself not maintainable. If the High Court's view is to be accepted it would then amount to asking the appellant to perform the impossible i.e. asking the appellant to file an application under section 17(2A)(b) which came into force on 26.8.1967 within one month from 6.4.1967 when the suit B summons was served."

The view taken in B.B. Khemka (supra) would have relevance in this case also because though the amending Ordinance came to be promulgated on 29-9-1975, the appellant came to know of the filing of the suit only long after when notice was served on him to appear in C Court on 10-2-1976. Therefore, the question of filing an application under Section 13A would arise only when the appellant came to know of the filing of the suit and its pendency. In construing the terms of Section 13A, the Court has to bear in mind the object underlying the introduction of the Section by the Legislature. It is a settled principle that the interpretation of the provisions of a statute should conform to D the legislative intent as far as possible and the Courts should not take a narrow or restricted view which will defeat the purpose of the Act. So viewed the first question has to be answered in favour of the appellant.

In so far as the second question is concerned, it is not as if the appellant had committed a second default in the strict sense of the E term. The earlier suit was filed on 17-1-1967 and the appellant had made an application under Section 13(4) of the Act and had the amount of arrears and the interest payable thereon determined by the Court. Thereafter he had been depositing the rent in Court regularly. However, when the respondent filed a second suit on 21-5-1975 alleging that the appellant had again committed default in payment of rent, F the appellant had *bonafide* represented to the Court that he had been regularly depositing the rent and the house tax but it may be possible that there may have been some delay or omission here and there in the long period of eight years in the payment of rent and hence the Court may determine the amount of arrears, if any, and afford him opportunity to pay the arrears. This prayer was granted and the Court had G determined the arrears and the interest payable thereon and the appellant deposited the amount so determined within the prescribed time. It cannot, therefore, be said that the appellant had knowingly and wilfully committed a second default. Even though it was found that some arrears had to be paid, the appellant cannot be denied the benefit of Section 13A because the Section has been given overriding H effect in so far as suits and other proceedings which were pending on

the date of the promulgation of the Ordinance and as such the proviso to sub-section 6 of the Section 13 of the amended Act would not disentitle the appellant to claim the benefit of Section 13-A. The High Court was therefore in error in holding that since the suit had been filed before Sec-13A was introduced, the appellant would be governed only by the provisions of the Act before its amendment. A B

For these reasons the second question also has to be answered in favour of the appellant. In the light of our conclusion on the two questions falling for consideration in this appeal, the judgment of the High Court as well as the judgments of the courts below cannot be sustained. Accordingly, the appeal is allowed and the suit filed by the respondent will stand dismissed. The appellant will however, pay the full costs of the suit to the respondent as envisaged under Section 13-A, if he has not already paid the same. No order as to costs in this appeal. C

Y.L. Appeal allowed.