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Court : Kolkata

Decided On : Apr-20-1951

Reported in : AIR1951Cal539

Judge : P.B. Mukharji, J.

Acts : West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Sections 12, 12(1), 14 and 18(5); ;West Bengal Premises Rent Control (Temporary Provisions) (Amendment) Act, 1950; ;West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 - Sections 9, 12(3) and 12(8); ;Constitution of India - Articles 14 and 19(1); ;Code of Civil Procedure (CPC) , 1908

Appeal No. : O. Suit No. 4828 of 1949

Appellant : S.B. Trading Co. Ltd.

Respondent : Shyamlal Ramchandra

Advocate for Def. : Sadhan Gupta and ;Yusuf Jamal, Advs. and ;S.M. Boss, Advocate-General, Amicus Curia

Advocate for Pet/Ap. : A.K. Sen, Jr. Standing Counsel and ;S. Roy, Adv.

Judgement :

P.B. Mukharji, J.

1. The validity of the recent amendments of the Rent Act of 1950 under the Constitution & specially the interpretation of Section 18 (5) of that Statute as amended are the important questions of controversy in this suit.

2. The pltf. company instituted this suit on 17-12-1949, claiming ejectment of the deft. from room No. 209 on the ground floor of 57 Clive Street, Calcutta, now Netaji Sabhas Road, on the ground of ipso facto determination of deft's. tenancy under Section 12 (3), Rent Act of 1948 for the failure to pay or deposit three consecutive months' rent under that Act at the rate of Rs. 91 per month. These three months are Agrahayan Pous & Magh of the Bengali calendar year 1355 B.S. corresponding to the period from 17-11-1948, to 12-2-1949 in the English calendar. No notice to quit is pleaded in the plaint because under Section 12(3), Rent Act of 1948, it was provided that upon such failure to pay or deposit rent, the interest of the tenant was ''ipso facto determined'. I will refer hereinafter to ipso facto determination as statutory forfeiture.

3. The defence raised in the written statement of the deft. is that rents of Agrahayan & Pous were duly sent to the pltf. by Money Order & the pltf. accepted the same & thereafter on pltf's. refusal, deposit was made regularly with the Rent Controller. In addition, the plea in the written statement is that by order of the 2nd Additional Rent Controller in Case No. 3500A of 1949 & dated 22-12-1949, the rent was reduced to Rs. 35 per month with effect from the month of October 1949. Deposit has been made at this reduced rate of Rs. 35 per month.

4. There are two admitted briefs of documents & correspondence in this suit-one is marked EX. 'A' & the other marked Ex. 1. There is another admitted document setting out the particulars of payment of rent & electric charges month by month, amounts of payment, & months for which such payments were made along with the dates of payment. This document is marked Ex, 'D' in the suit.

5. An attempt was made by the deft. to lead evidence by calling one Mohanlal Gupta but was given up. The suit has proceeded only on the admitted documents without any oral testimony.

6. A preliminary point was taken by Mr. Sadhan Gupta, counsel for the deft. that the suit is not maintainable without notice to quit, regard being had to the Rent Act of 1950, as amended by the amending Act. Mr. Gupta's contention is that the suit was filed when the Rent Act of 1948 was in operation on the ground of statutory forfeiture of tenancy without notice to quit. The Rent Act of 1950 as amended has avoided the statutory forfeiture & therefore, notice to quit is now necessary. I am unable to accept that argument. Neither the Rent Act of 1950 nor the amendment thereof, in my judgment, requires notice to quit in suits pending at the commencement of such Act on the ground of statutory forfeiture under Section 12 (3), Rent Act of 1948. The Rent Act of 1950 has abolished the statutory forfeiture of tenancy & the amendment gives relief to such tenants where a suit was pending against them on the ground of such statutory forfeiture. But the language of the statute of 1950 or of its amendment does not according to my interpretation, lead to the conclusion that such suit should fail because no notice to quit was given. The Rent Act, 1950, or its amendment does not make pending suits, on the ground of statutory forfeiture, incompetent because of the absence of the notice to quit. They only give certain reliefs to such tenants. Indeed, if it were otherwise, most of these pending suits would have failed on that ground alone & perhaps no such controversial provision like Section 18 (5), Rent Act, 1950, as amended need have been made at all. But the real answer is that a proper construction of the Statute & its amendment does not require either explicitly or even by necessary implication that a notice to quit must be served in such cases. I, therefore, overrule this preliminary objection.

7. Mr. Gupta raised thereafter two issues for determination in this suit. They are :

'(1) Is the deft. entitled to relief under Section 18 (5), Rent Act of 1950 as amended by the Amending Act ?

If so, what relief ?

(2) Was the order dated 22-12-1949, of the second Additional Kent Controller in case No. 3500A of 1949 without jurisdiction ?

If so, are deposits under such order sufficient to save the default ?'

8. Issue No. 1.--The arguments on this constitutional issue can be broadly classified for their appreciation. The first & foremost argument is that Section 18 (5), Rent Act, 1950, & the amendment thereof are ultra', vires the Constitution on the ground :

'(a) Of infringement of the guarantee of 'equal protection of laws' or 'equality before the laws' as provided in Article 14 of the Constitution ;

(b) of being unreasonable within the meaning of Sub-article 5 of Article 19 read with Article 19(1)(f) of the Constitution.'

On both these grounds Section 18 (5) of the Rent Act of 1950 as amended is said to be void under Article 13 of the Constitution.

9. The West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, came into force on 30-3-1950 & by Section 45 thereof repealed the Rent Control Act of 1948. Section 18, Rent Act of 1950 made provisions for granting relief to 'tenants' against whom decrees were made or suit's were pending on 30-3-1950 'on the ground of default in payment of arrears of rent under the provisions of the West Bengal Premises Rent

Control Act, 1948'. This Court held that these provisions did not give any protection to the persons who forfeited their interest as tenants under Section 12 (3),, Rent Act of 1948. See Manik Lal v. S. Dabiruddin, 54 C.W.N. 572 & S. B. Trading v. Satyendra Chandra Sen, 86 C. L. J. 46. As a result of these decisions of the High Court, the West Bengal Legislature amended the statute. The amending, statute is the West Bengal Premises Rent Control (Temporary Provisions) (Amendment) Act, 1950, being West Bengal Act 62 of 1950. I shall refer to this Act as the Amending Act. The amending Act came into operation on 30-11-1950. Apart from changing the definition of tenants, the amending Act made a substantial & elaborate alteration in Sub-sections (1) & (5) of Section 18, Rent Act of 1950 by substituting altogether one class of tenants for another class. This is done by Section 4 of the amending Act.

10. Article 14 of the Constitution guarantees every person equality before the law or equal protection of the laws. This Article has received the authoritative interpretation from the Supreme Court in Charanjitlal v. Union of India, A. I. R. (38) 1951 S. C. 41. The effect of the majority decision in that case is that while Parliament or Legislature has wide discretion in creating classes on which the legislation will operate, no classification is permissible which is arbitrary & which is made without any basis & that a proper classification must always rest upon some difference & must bear a reasonable & just relation to the things in respect of which it is proposed. Mukherjea J. with whose views on this point the learned Chief Justice of India agreed in explaining the law on the subject at pp. 57-58 of that Report observed in particular :

'In other words, there should be no discrimination between one person & another if as regards the subject-matter of the legislation their position is the same.'

The observations of Pazl Ali J. at pp. 44-45 of that report are also in support of this view.

11. In the light of the law as laid down by the Supreme Court, I have now to consider how far the amending Act offends against this fundamental right of equality before the law or equal protection of the laws.

12. The effect of the Rent Act of 1948 was to divide the tenants into two broad classes. One class was the ordinary defaulters who failed to pay or deposit rent for one or two months. The other class was represented by tenants who defaulted in paying or depositing rents for three consecutive months or more. I will refer to the former class as the short-term defaulters & the latter class as long-term defaulter?. This Act of 1948 was a law before the Constitution & naturally, no constitutional doctrine of 'equal protection of the laws' or 'equality before the law' affected such statutory provision.

13. The Rent Act of 1950, however, gave relief only to short-term defaulters but excluded the long-term defaulters. Such differentiation as to relief to my mind assumes & proceeds on a classification which is unobjectionable. It satisfies the test laid down by the Supreme Court & cannot, in my judgment, be said to be 'arbitrary' or 'without any basis' & in my view it bears 'a reasonable & just relation to the things in respect of which it is proposed.' But the amending Act reverses the entire situation. The direct result of the amendment is that short term defaulters are denied relief while long-term defaulters are afforded protection. To prefer long-term defaulters to short-term defaulters is to indulge in eccentricity and would appear to be repugnant to all commonsense. Mere eccentricity, however, or even lack of commonsense does not make a statute un constitutional, provided such eccentricity or lack of commonsense does not travel beyond the limits of reasonableness under Sub-Articles (3) to (6) of Article 19 of the Constitution where they apply. The privilege of eccentricity & the presumption of wisdom alike belong to the legislators. For the Court, however, the question has to be judged in this case by the test whether the statute creates an unjustified classification which infringes the guarantee of Article 14 of the Constitution.

14. If the principle of differentiation or classification is longer or shorter default in payment of rent, then it is difficult to escape from the conclusion that the law whose direct result is protection of long-term defaulters & penalisation of short-term defaulters is arbitrary & does not bear a reasonable & just relation to the things in respect of which the legislation is made. But that is not the principle of classification which to my mind is the true criterion by which this Amending Statute or even the parent Statute should be judged in this case. I will

discuss the principle of classification which, in my opinion, is the true basis of the impugned legislation, after I have set out the arguments in support of the unconstitutional character of this legislation.

15. I will now chronicle & enumerate the arguments advanced in support of the contention that the amendments of Section 18 of the Rent Act, 1950, infringe the constitutional guarantee of 'equality before the law' or the 'equal protection of laws.'

16. I. Under the amended Section 18 (1) if the application is pending on 30-11-50 at the date of the amendment, the relief proposed by the amendment is granted in respect of decrees before 30-3-50 & made on the ground of statutory forfeiture, but if the application had been made between 30-3-50 & 30-11-50 and dismissed on the ground that the very same class of tenants was not within the bounty of unamended Section 18 (1), then no relief can be allowed to such unfortunate victims as the limitation of the sixty days from 30-3-50 having already expired, successfully prevents them from availing of the amendment,

17. II. Then again, those very tenants whose tenancies were forfeited by operation of Section 12 (3), Rent Act of 1948 who after being properly advised under unamended Section 18 (1) did not make any application thereunder, are denied relief under the amendment. Because the limitation under the amended Section 18 (1) having already expired at the date of the amendment, they are left with no scope for making any application thereunder. Yet the amendment is linguistically & verbally expressed to be for the benefit of the same class of tenants who incurred statutory forfeiture under Section 12 (3), Rent Act of 1948. The learned Advocate-General appearing as amicus curiae describes this sub-section as 'sheer nonsense' & stated that the legislature had forgotten to alter the period of limitation. Such obvious lapse can only be the result of utter carelessness that today prevails in drafting statutes.

18. The results therefore in either of the two cases I & II above are contended to be that among the same class of tenants under statutory forfeiture against whom decrees for ejectment had been passed, there is no equal 'protection of the laws' or any 'equality before the law' & it is therefore argued to be a violation of the guarantee of Article 14 of the Constitution.

19. III. Thirdly, a discrimination is made among the decree-holder before & after 30-3-50 although such decrees are on the very same ground of statutory forfeiture. Decrees made on such ground before 30-3-50 & where amended Section 18 (1) can be made applicable must under compulsion be reopened, the language of the Statute being 'shall', whereas similar decrees passed on the very self-same ground bat after 30-3-59 may or may not at the discretion of the Court be reopened, the language of the Statute being 'may'. The recent decision of the Court of Appeal in Satyendra v. S. B. Trading, 55 C. W. N. 309, makes it clear. It is, therefore, contended that the D.-Hs. of the same class are not equal before the law & do not receive the equal protection of the laws, To this the answer is given that these D-Hs. are not similarly circumstanced because the date of 30-3-50 provides the dividing line & therefore, such classification is justified. To that the rejoinder is given that the amendment was made on 30-11-50 with retrospective effect so that on 30-11-59 the differentiation between decrees of the same class by the date 30-3-50 is arbitrary & cannot be said to bear any just & reasonable relation to the subject-matter of the legislation.

20. IV. The next argument is that those ordinary short term defaulter tenants against whom decrees were made before the amendment & who applied within the specified time thereunder but whose applications remained undisposed of at the date of the amending Act are prevented from continuing their applications under amended Section 18 (1) by reason of Sections 5 & 6. of the amending Act not applying to such cases. But the same class of tenants who had the chance of having their applications disposed of before 30-11 50 got the relief. Yet the Amending Act is made retrospective from 30-3-50 although passed on 30-11-50. The amendment, therefore, is contended to be not only discriminatory between the same class of tenants but is said to be hostile legislation.

21. V. Under unamended Section 18 (5), the ordinary short-term defaulter tenants obtained relief in pending suits & decrees made in their favour between 30-3-50 & 30-11-50 cannot be affected because Section 6 of the

amending Act only applies to decrees for recovery of possession but the same class of tenants whose suits could not be disposed of during the period of 30-3-50 & 30-11-50 is now denied relief, although the amending Act was passed on 30 11-50 and made retrospective. This result again is said to be discriminatory between the same class of tenants and is said to be arbitrary & without any rational basis.

22. VI. Again, when a suit had been decreed and appeal filed against such decree before 30-3-50 and when such appeal is pending on 30-11-50 at the date of the amendment, relief must be given under the amended Section 18 (5) of the Act to the class of tenants who suffered statutory forfeiture of their tenancies by the Rent Act of 1948 and so decreed. But if the same decree was appealed against after 30-11-50, so the appeal was not pending on 30-11-50 but was say filed a day or two after on 1-12-50, then the same class of tenants can get no relief under amended Section 18 (5), Rent Act of 1950 because of the words therein 'if at the date when the Act comes into force', & because of the words 'pending at the commencement of this Act' & 'at such commencement' in Section 5 of the Amending Act. This again is argued to be a discrimination which does not bear a just & reasonable relation to the subject in respect of which the legislation is made especially when such legislation is passed on 30-11-50 & male retrospective from the prior date of 30-3-50.

23. I have given my most careful & anxious consideration to each one of these arguments. Force & reasonableness of these arguments & their seeming plausibility made me ponder long for their consideration. There can be no doubt that this amendment is a clumsy piece of legislation & it has produced results which do violence to every canon of commonsense. But I have, however, come to the conclusion that each one of these arguments, reasonable as they all are, & pointing as they do to unreasonable results of the amendment, represents a wrong approach to the constitutional issue of 'equal protection of laws', or 'equality before the law'. On close scrutiny I discern in each of these arguments the fallacy of unequal comparison & such arguments fail to show inequality between similarly circumstanced individuals or classes.

24. Section 18 (5), Rent Act of 1950, as amended proceeds first on the broad classification of pending suits. Then the class affected is not all pending suits but only such suits as are pending on the ground of statutory forfeiture of tenancy. Within this class of pending suits against such tenants, there is in fact no inequality as I will presently show. The underlying principle recognised in the amendment is that special consideration is to be given to those tenants who incurred statutory forfeiture by reason of Section 12 (3), old Rent Act of 1948. These are the broad principles of classification on which the amended legislation proceeds. Section 18 (5), Rent Act of 1950, as amended by the Amending Act is applicable only to pending suits of the particular class I have just mentioned. Among such pending suits, no discrimination is made by denying 'equality before the law' or 'equal protection of laws'. They are all treated on the same & equal footing.

25. The arguments noted above on analysis will be found to suffer from the defect of attempted comparison between persons not equally situated or circumstanced. I will deal with the last two arguments first because they directly concern Section 18 (5) of the Act as amended. In argument V, the comparison is not among tenants against whom suits are pending on the ground of statutory forfeiture but relates to ordinary short-term defaulter tenants & is one between pending suits & suits disposed of But they represent distinguishing factors & such comparison cannot mean inequality in the same class. They are not similarly circumstanced individuals & if the effects are queer as indeed they are, even then they cannot be said to infringe the constitutional guarantee of 'equal protection of laws' or 'equality before the law'. Then again, in argument VI the comparison is attempted between appeals pending on 30-11-50 & those not pending on 30-11-50 but filed thereafter & I do not see how they can be said to represent individuals or classes similarly circumstanced or similarly situated.

26. The other four arguments that I have noticed above, have more for their concern Section 18 (1) of the amended Rent Act, 1950. Argument I suffers from the same defect of attempted comparison between dissimilarly circumstanced individuals or classes. These applications pending on 30-11-50 are compared with applications disposed of before 30-11-50. They, therefore, cannot be said to be similarly situated. Argument II deals with the situation of those persons or tenants under statutory forfeiture who did not apply under

unamended Section 18 (1). But no inequality is created by this amendment as between these persona or tenants. All those who rightly did not make the application under unamended Section 18 (1) are treated equally before the law. They cannot be said, in my view, to be similarly circumstanced or similarly situated with those who did make the application although wrongly. It would certainly have been more logical & sensible to include those mentioned in argument II for the pltf. But that is very different from saying that the statute is unconstitutional. Argument III similarly introduces factors which do not suggest equally or similarly situated individuals or classes. Decrees before & after 30-3-50 can be classified differently for the very important reason that the former was on the basis of Section 12 (3), Rent Act of 1948 an existing law prevailing at the time, but the latter was after the new Rent Act of 1950 had come into force abolishing statutory forfeiture of tenancy. What happened was this that although the Rent Act of 1950 removed the provision for statutory forfeiture of tenancy it failed to give relief it intended to give the J. Ds. who suffered decrees on the ground of statutory forfeiture. That was the reason for the amendment & in that context to make the relief discretionary in the latter case was to give some recognition at least to the dealings on the basis of law as existing in the unamended Section 18 (1), during its short career from 30-3-50 to 30-11-50. It therefore in my view cannot be said that this difference does not bear any just & reasonable relation to the subject of legislation. Argument IV suffers from the same defect inasmuch as it makes a comparison between persons not equally situated, namely those whose applications have been disposed of before the amendment & those which were pending at the date of the amendment.

27. The frontiers of the constitutional doctrine of 'equality before the law' or 'equal protection of the laws' shade off imperceptibly inter the region of legislative policy. This constitutional guarantee is not intended to invade the policy consideration of the legislature. Legislative policy belongs to the domain of politics. The Courts are not concerned with the wisdom or folly of any legislative policy. Equally, on the other hand, in the name of legislative policy, the constitutional guarantee of equality before the law or of equal protection of the laws will not be allowed to be interfered with, & legislation that infringes this constitutional guarantee cannot be sanctified in the name of policy. The question very often is one of determining the balance between legislative policy & this constitutional guarantee. That balance is frequently delicate but upon it hangs all the difference between politics & constitutional jurisprudence, the theme of the legislatures & the theme of the Courts. Arguments on the subject very often miss the balance. This is the twilight domain. Here the light of the constitution fades into the darkness of the politics of legislative policy. This is where the Court halts. This is the terminus for the Courts. The arguments before me against the validity of the Statute have overstepped this terminus. The language of Article 14 of the Constitution has all the delirious qualities of a slogan & a catchword which have the tendency to avoid & ignore the sober & true constitutional content of the guarantee. Legislative policy, inviolate save in the legislature itself, must however observe the constitutional bars provided in the Constitution. For instance, the legislature cannot, in the name of policy, discriminate by legislation on the ground only of race. The supremacy of legislative policy, as much as legislative power, must fit in & not override the Constitution.

28. The constitutional implication of this branch of the law is easily liable to be misunderstood, as indeed in my view, in fact has been misunderstood, in the arguments made before this Court, challenging the validity of the Amending Act.

28a. No legislation in any practical sense is possible without some kind of classification & some kind of discrimination. The very nature & purpose of every legislation depend on the choice of some subject or others, to the exclusion of the rest & some arena for its operation. This selective quality is inherent & implicit in every legislation. The constitutional guarantee of 'equality before the law' or of 'equal protection of the laws' cannot, therefore, be understood & construed in such a manner as to make legislation impossible for all practical purposes. Not all classification or discrimination is a breach of the constitutional guarantee of Article 14 of the Constitution. Equality before the law or equal protection of the laws therefore, means that the law being there, its application should be universal in every case which answers the description in the legislation. That other more desirable objects, which do not answer such legislative description, are left out of the

operation of such legislation is, in my view, a matter of legislative policy & not a consideration which affects the constitutional doctrine of equality before the law or of equal protection of the laws. The power to classify or particularise objects of legislation must, in the nature of things, be left as wide as possible to the law-making authorities. But the line is drawn so as to ensure that, other things being equal, the same & similarly-circumstanced persons who are subjects of the legislation, should be equal before such law & there should be, as between them, equal protection of the laws. If not, it is only then that such law is discriminatory in the sense of being an infringement of the guarantee of Article 14 of the Constitution. It is in this sense that the constitutional doctrine of 'equality before the law' or of 'equal protection of the laws' should be understood & it cannot be over emphasised that in applying this doctrine no narrow dogmatic constitutional niceties should hamper the true exposition of the Constitution as a living practical instrument of Govt. of men & affairs.

29. The legislature, in my view, is free to classify tenants who incurred statutory forfeiture of their tenancies & it is free to choose to grant them relief where suits are pending against them on that ground. That is a matter of legislative policy with which the Courts are not concerned, & so long as within that class of tenants in pending suits no inequality or unequal treatment is made, such legislation is free from any unconstitutional taint on this ground.

30. Retrospective & retro-active legislation bears very materially on this constitutional question of 'equality before the law' or of 'equal protection of the laws.' Primary legislation which is not retrospective & enjoying the amplitude of wide classificatory powers raises comparative simpler problems. Here in the case of retrospective legislation, that power has to be textured by the fact of existing law & rights acquired & obligations incurred thereunder, so that particular caution is required to see that the retrospectively legislation, when piecemeal & fragmentary as the Amending Act, does not create a situation whereby similarly-circumstanced individuals or classes, subject to the same legislation, are found to be not equal before the law or do not receive the equal protection of laws. Such caution is required all the more when the retrospective legislation is not merely retrospective but also partially amendatory of the existing law or legal scheme. The danger is real in the case of an amendatory retrospective legislation because the integral picture of the law after the amendment is very often missed by reason of over-emphasis on the partial picture of amendment without the whole context. That is exactly what appears to have happened in this case producing absurd & queer results. Relief was certainly intended to be given to the tenants who forfeited their tenancies under Section 12 (3) of the now-repealed Rent Act of 1948. But the method by which it appears to have been done is by a total substitution of one class for another with the resulting denial of relief to the former class who previously got the relief before the amendment. I have little doubt in my mind that the legislature did not intend to penalise the ordinary short-term defaulters & deny them relief. It appears to me that this old result is due entirely to careless phrasing of the amendment. It has narrowly escaped from being unconstitutional, although producing results wholly inconsistent with common sense as will clearly appear from the arguments I have set forth in detail. I would only wish to record that although its validity is established, the absurdity of its illogical consequences will receive the immediate remedial attention of the legislature.

31. The next argument on the constitution is that Section 18 (5), Rent Act 1930, is not a reasonable restriction within the meaning of Article 19(1)(f) read with Sub-Article (5) of Article 19 of the Constitution.

32. The argument is put in this way. Article 19(1)(f) of the Constitution provides that all citizens shall have the right to acquire, hold & dispose of property. The exercise of such right however can be restricted under Sub-Article (5) of Article 19 provide it is a reasonable restriction in the interests of the general public. It is said, therefore, that the landlord's right to recover his own property can only be restricted if it is reasonable restriction in the interests of the general public. It is then contended that Section 18 (5), Rent Act 1950 as amended preventing landlord's right to recover possession from a tenant in a pending suit where the tenant suffered statutory forfeiture of tenancy, is an unreasonable restriction coming within the infringement of Article 19(1)(f) read with Sub-article. (5) thereof.

33. The whole controversy therefore resolves into this question whether the law contained in Section 18 (5),

Rent Act 1950 as amended is a law imposing reasonable restriction in the interests of the general public on the exercise of the landlord's right to acquire, hold & dispose of property. The landlord must establish in order to successfully challenge the validity of the Statute under the Constitution that the exercise of his right to acquire, hold & dispose of property has been unreasonably restricted by Section 18 (5), Rent Act 1950. That Section prevents landlord in a pending: action from obtaining possession of his property from a tenant who incurred statutory forfeiture under the Rent Act of 1948. Does it affect the right to acquire, hold and dispose of property

34. The word 'acquire' in Article 19(1)(f) appears to me to mean to make one's own. 'To acquire' means to obtain or get something which was never one's own before. Etymologically it comes from the Latin Origin 'quaerere' meaning to seek. In James Murray's New English Dictionary (Oxford Clarendon Press) at p. 85 of vol. I its meaning is given as to gain, or to get as one's own, to gain the ownership, & also to come into possession. To recover possession from a tenant does not appear to me, in the context of this article to come within the meaning of the word 'to acquire.' It is true that tenancy itself is a species of property but the landlord does not acquire that species of property when he sues to obtain recovery of possession from the tenant. The prevention of the landlord by Section 18 (5), Rent Act 1950 as amended from obtaining a decree in ejectment against a tenant does not in my view involve the right 'to acquire' property within the meaning of this article. Nor does this section in my view affect the landlord's right to dispose of the property because the property though let remains disposable by the landlord. 'To hold' in the same article of the Constitution appears to me to be more relevant on the problem under consideration. The right to hold property should include the right to recover possession of the property. In one sense the landlord holds the property even when he lets it out to the tenant but that is only in the sense of holding the reversion which is also property. Holding the reversion is only a portion of the total right to hold. I am, however, inclined to construe the word 'to hold' to mean not only to hold the reversion but also to hold the property in prasenti & that to the exclusion of others. I am, therefore, of the opinion that the right to hold is affected by Section 18 (5) of the Rent Act. Ordinarily when a landlord lets out his property he can subject to the terms of the contract of tenancy hold the property by determining the tenancy. But that right is restricted by Section 18 (6), Rent Act of 1950.

35. Therefore the law imposing restriction on the right to hold the property must be a reasonable restriction on the exercise of such right in the interests of the general public under Sub-Article (5) of Article 19 of the Constitution.

36. Due to the operation of various causes which I need not discuss here, is an acute shortage of housing accommodation in this State. The available supply of housing accommodation is at present totally inadequate in this State to meet the very large & pressing demand for the same. Housing accommodation is a necessity of life & some control of such accommodation in the present economic context appears to me to be in the 'interest' of everyone concerned. To the same effect is the observation of Holmes J. of the American Supreme Court in Julius Block v. Louis Hirsh, (1921) 256 Under Section 135 : 65 Law. Ed. 865. In that case the emergency growing out of the first World War made the housing accommodation in the District of Columbia a problem of great public interest which was held to justify temporary regulation for its control. Holmes J. at page 871 says :

'Housing is a necessary of life. All the elements of public interest justifying some degree of public control are present. The only matter that seems to us open to debate is whether the Statute goes too far.'

37. The words 'general public' in Article 19(5) of the Constitution are wide enough to include sections of the public. Having regard to the large class of people who will answer the description of tenants who had suffered statutory forfeiture of their tenancy by reason of the operation of the old law of 1948, it is clear to my mind that they come within the expression 'general public.' That being so, the test of 'interest of the general public' as laid down in 19(5) of the Article is satisfied. It is futile & undesirable to define & limit the expression' in the interest of the general public' or the expression 'reasonable,' Each case should be decided on its own merits. I am, however, satisfied that it is to say in the interest of the general public to restrict & control eviction of

tenants who suffered statutory forfeiture. I see nothing unreasonable in such restriction or control. Section 18 (5), Rent Act 1950, does no more than put reasonable restriction, reasonable in the present social & economic context, on the exercise of--the landlord's right in such cases to hold the property. All that Section 18 (5) does is to give another chance to those who suffered statutory forfeiture to stay on & expiate what after all was a specially created statutory forfeiture by payment of arrears of rent, interest & costs. I do not consider this to be unreasonable & I have come to the conclusion that it is a reasonable restriction on the exercise of landlord's right to recover possession from such tenants. I hold the law contained in Section 18 (5), Rent Act 1950, as amended to be reasonable under Article 19 of the Constitution, & therefore valid under the Constitution on this ground also.

38. This disposes all the arguments on constitution law addressed to me in this suit & I hold that Section 18 Rent Act, 1950, as amended is not unconstitutional and does not violate Articles 14 & 19 of the Constitution.

39. I will proceed now to consider the next issue.

40. Issue No. 2 --This, issue raises two questions for determination. One is that the order of the Rent Controller dated 22-12-1949 in case No. 3500A of 1949 is without jurisdiction & therefore invalid. The other is that the payments or deposits made under such invalid order are therefore insufficient to protect the defaults . incurred. This argument raises the controversial problem as to how far the language of Section 18 (5) attracts the operation of the proviso to Section 14, Rent Control Act of 1950. Another contention put forward is that even defaults prior to the Act of 1950 in this case are such that they come within the mischief of the proviso to Section 14 of the Act. The answer to this particular argument on pre-Act defaults given by counsel on behalf of the tenant is that there has been waiver of such pre-Act defaults by acceptance of subsequent rents. I will deal with these arguments in the same order in which they have been set out above.

41. The order of the Rent Controller in this case was passed when the Rent Act of 1948 was in force. Before the Rent Controller it was argued that he could not determine the standard rent in this case because the tenancy had already suffered statutory forfeiture by operation of Section 12 (3), Rent Act of 1948. The Rent Controller observed in his order dated 22 12-1949, 'The question whether the tenancy held by this applicant had been determined ipso facto or not is left open in this case.' Leaving this question open, the Rent Controller proceeded to determine the standard rent. in this case by reducing the rent from Rs. 91 per month to Rs. 35 per month with effect from October 1949.

42. Section 8, Rent Act of 1948, required the Controller, on an application made to him by any landlord or tenant, to grant a certificate stating the standard rent under Section 2 (1) (b) of that Statute which provided that where rent had not been fixed under Section 9, the standard rent was to be determined in accordance with the provisions of the schedule to the Act. Similarly, Section 9, Rent Act of 1948, sets out cases in which the standard rent shall be fixed by the Rent Controller, but that, again, on the application of any landlord or tenant. The definition of 'tenant' in the 1948 Act is provided by Section 2 (11) stating that it means any person by whom or on whose account rent is or, but for a special contract, would be payable for any premises, & includes a legal representative, as defined by the Civil P. C., of the tenant & any person continuing in possession after the termination of the tenancy in his favour. That definition of 'tenant' under the Rent Act of 1918 was held by this Court not to include a tenant whose tenancy had been determined ipso facto & who was expressly mentioned as not; to be deemed a tenant by Section 12 (3) of that Act. Reference has already been made to the relevant authorities on the point.

43. The case here is that the deft. forfeited the tenancy under the statute of 1948 for non-payment of rent for the three consecutive months of Agrahayana, Paus & Magh, 1355 B. S. corresponding to the period from 17-11-1948 to 12-2-1949. Therefore at the date of 22-12-49, when the Rent Controller was purporting to decide the standard rent, it cannot be said that he had before him any application by a tenant which alone could grant him the jurisdiction to decide the standard rent.

44. The decision of the Division Court of the King's Bench Division in Rex v. London Tribunal, reported in 1951

W. N. 34 requires to be noticed on this branch of the argument. The learned Lord Chief Justice of England delivering judgment in that case considered the question how far a collateral point of fact may be decided by the Rent Tribunal in deciding the main issue. A Tribunal will ordinarily, be held to have the power to decide a collateral fact. The reason why I think that decision does not apply in this case is two-fold. First, here the Rent Controller has not decided the fact whether the application before him was by a tenant or not, even if that question be said to be a collateral fact capable of being decided by him. Because without that finding on fact there cannot, in my opinion, be any assumption of jurisdiction by the Rent Controller. Secondly, a fact cannot be collateral which is the very basis & foundation of the jurisdiction of the Tribunal. Here the fact, whether the application was from a tenant or not, was such a primary fact & not a collateral fact. It is said then in that case the contention will always be raised before the Rent Controller in every application for fixing the rent, that there was no tenancy & thus making the office of the Rent Controller quite an ineffective & unpractical one. But that seems to me a matter for the legislature to prevent & not for this Court. If effect is to be given to this argument, then where is the limit to be drawn Suppose, a mere trespasser makes a false claim before the Rent Controller for fixing the rent, is the Rent Controller going to decide the point whether he is a tenant or a trespasser under the cover of the doctrine of deciding a collateral issue I think not. What is or is not collateral in such circumstances must necessarily have some reference to the terms of the Statute under which the Tribunal is required to function. The statute under consideration in this English case is the Furnished Houses Rent Control Act, 1946 (9 & 10 George VI, Ch. 34) which is very different in terms from the West Bengal Premises Rent Control Act in this respect. Section 2 of the English Act, unlike the West Bengal Act, makes elaborate provision for reference to tribunal thereunder of contracts for furnished letting, which is given the power to call for particulars of the contract of tenancy. In this English Act there is, again, nothing similar to Sections 12 (3), 8 & 9, West Bengal Rent Act of 1948.

45. The principle, how far collateral issue can be decided by a statutory tribunal of limited jurisdiction, was laid down by Coleridge J. in Bunbury v. Fuller, (1854) 9 Ex. 111 at p. 140. It was approved by Atkin L. J. in Rex v. Lincolnshire Justices, (1926) 2 K. B. 192 at p. 201 & referred to by Lord Goddard C. J., in the English case which I have just cited. Coleridge J. observed :

'Now it is a general rule that no Court of limited jurisdiction can itself give jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limitation of this jurisdiction depends; & however this decision may be final on all particulars making up together that subject-matter which, if true, is within its jurisdiction & however necessary in many cases it may be for it to make a preliminary enquiry, whether some collateral matter be or be not within the limits, yet upon this preliminary question its decision must always be open to enquiry in the superior Court.'

I respectfully agree with these observations of Coleridge J. as laying down the correct position in law. Two propositions appear to me to be settled on the authorities that I have examined. One is that without deciding the collateral fact which forms the foundation of jurisdiction, the tribunal's decision on the merits must be held to be without jurisdiction & therefore, invalid. The other is that the decision on collateral point in any event must be open to enquiry by the superior Court. By applying these two propositions before me, the Rent Controller's order of 22-12-1949, in this case, must be held to be void as being without jurisdiction.

46. The next problem for consideration is the pltf's. argument that the defaults in this case preclude the tenant from obtaining relief under Section 18 (5), Rent Act of 1950, as amended. It is to be decided first on the basis of the alleged post-Act defaults & secondly, on the basis of alleged pre- Act. defaults.

47. The facts on this point will appear from Ex. 'D' which is the chart showing payments or deposits with dates & amounts. The pre-Act defaults will appear from this chart & the contention in their regard is that rents were not paid in time, although they were accepted by the pltf. Pre-Aet defaults are said to arise on the ground of irregularity in the payments & not in the actual failure to make the payment at all. The post-Act defaults as shown in the chart are, however, said to arise from Palgoon 1356 B. S. (Falgoon 1356 B. S. corresponds to a period from 13-2-50 to 14-3-60). It is from the month of Palgoon that the rent is paid at the rate of Rs. 43 per

month as fixed by the order of the Rent Controller which I have found to be invalid. Payment of deposit of rent at this rate of Rs. 43 per month, therefore, from Palgoon 1356 B. S. up to date is said not to have the default. This is so far as the post-Act defaults are concerned.

48. This argument postulates the application of the proviso to Section 14 in granting relief under Section 18 (5) as amended. The language of amended Section 18 (5) use the expression

''the Court shall exercise the power of granting relief against ejectment given by Section 14 of this Act following the provisions & procedure of that section as far as may be necessary.'

Among the 'provisions' to be followed is the proviso to Section 14. This basic postulate has been challenged.

49. The next consideration is--assuming that the proviso to Section 14 applies under amended Section 18 (5), do the defaults in this case come within the proviso? What is this proviso? It can only apply if it is found that the tenant makes default in payment of the rents referred to in Clause (i) of the proviso to Section 12 (1) of the Rent Act of 1950 on three occasions within a period of 18 months. On behalf of the deft. tenant, it is argued that such a default has not occurred in this case.

50. I will proceed now to an examination of these two arguments.

51. In my view, the basic postulate in the firsts argument is sound. I will indicate the reasons which lead me to this conclusion after setting out the argument a little more elaborately on this point. In granting relief under Section 18 (5), it is argued that the Court only exercises the powers of relief against ejectment given by Section 14 of the Act following the provisions & procedure of that Section as far as may be necessary. Therefore, it is said that the proviso to Section 14 need not be applied, but only that part of Section 14 without the proviso. The proviso to Section 14 of the Act is certainly applicable to cases that come under Section 14. The words ''as far as may be necessary' in Section 18 (5) are supposed to exclude the proviso when Section 14 is applied for the purpose of giving relief under Section 18 (5). The argument again emphasises the words 'powers of granting relief against ejectment.' Therefore, it is said that as the proviso does not relate to the power of granting relief but only creates the ground of excluding relief, it should not be applied. To my mind this argument suffers from a fallacy. A proviso to a section is just as much a part of the section as any other part. The fact that particular provision is stated by way of proviso to a section does not, in my judgment, in any way derogate from the law which has always to be read from the section as a whole including any proviso. The law in my view is clearly laid down on the point in Maxwell's Interpretation of Statutes, Edn. 9, p. 165 where the correct view is expressed in the following statements :

'There is no rule that the first or enacting part is to be construed without reference to the proviso. The proper course is to apply the broad general rule of construction which is that a section or enactment is to be construed as a whole each portion throwing light if need be on the rest. The true principle undoubtedly is that the sound interpretation & meaning of a Statute on a view of the enacting clause, saving clause & proviso, taken & construed together is to prevail.'

Now what is the power under Section 14 of granting the relief? That power is not only stated in Sub-sections (1), (2) & (3) of Section 14, but it must be held to be a power which is not exercisable when a tenant makes default in payment of rent referred to in Clause (i) of the proviso to Sub-section (1) of Section 12 on three occasions within a period of 18 months. The power, therefore, of granting relief under Section 14 is a circumscribed power, not an unqualified power. It will, in my opinion, be spelling out a new power of relief if the section is read without the proviso. The proviso goes as much to the consideration of the power to grant relief because when the conditions stated in the proviso exist the power to grant relief against ejectment does not exist. I am not impressed by the argument attempted to be made at one stage that in granting relief under Section 18 (5), Section 14 is not applied by its own force but indirectly by reason of the language of Section 18 (5). I am of the view whether a section applies directly or indirectly, the whole of that section is to be applied without reservation to the particular case where it is intended to be applied. The power of granting

relief under Section 14 cannot be divorced from the proviso because the proviso is the very basic foundation on which the existence of the power to grant relief depends. It is not an unqualified power of granting relief under Section 14. Limitation on the power is part of the power itself & forms its integral content. This, find, is consistent with the settled principles of construction of statutes including construction of provisos in such statutes. The proviso is only a manner of expression but cannot alter the substance of the law which has always to be gathered from the section as a whole including the proviso.

52. I will at this stage dispose of another argument on this branch. It is said that the application of proviso to Section 14 in granting relief under Section 18 (5) would make a difference between pending suits & cases where decrees have already been made on the ground of ipso facto determination; for the latter case, relief is granted under Sub-sections (2), (3) and (4) of Section 18 which do not contain anything like the proviso to Section 14. But in former case a difference is made by applying the proviso to Section 14. The basic assumption on which this argument proceeds is, in my view, unsound because decrees already passed & suits pending may be justifiably differentiated. From this point of view. I do not subscribe to the opinion expressed that Section 18 (5), Rent Act of 1950, is intended to achieve identically the same results both in cases where decrees have already been made as well as in pending suits on ground of statutory forfeiture. I should have thought that if it was intended that pending suits as well as decrees on the ground of statutory forfeiture should be treated similarly on equal footing, then the legislature would have easily said that under Section 18 (5) the Court shall exercise similar powers hereinbefore mentioned in Sub-sections. (2), (3) &(4) of Section 18, without any reference to Section 14, at all. On the other hand, the more cogent consideration to my mind is that the legislature put pending suits on the ground of ipso facto determination on the same footing as suits filed after coming into operation of the Rent Act of 1950. That seems to me the more sensible conclusion. From that point of view, application of the proviso to Section 14 in pending suits under Section 18 (5) would be justified.

53. But that is not the end of this difficulty. While I feel fortified both by the principles of construction as well as by the language of Section 18 (5) of the Rent Act, 1950, that the proviso to Section 14 should be applicable in suits pending under Section 18 (5). I feel this is one of those cases where I have to disregard both the language of Section 18 (5), as well as settled rules of construction for another much greater & over-riding consideration. That consideration is that application of proviso to Section 14, in granting relief under Section 18 (5), would make the provisions in Section 18 (5), a complete dead letter & utterly nugatory. One of the cardinal rules of construction of statutes is that no statute or any part thereof however oracular should be treated as void & meaningless. If any authority is needed for this well-settled proposition that is to be found in Craies on Statutes, Edn. 4 pp. 69 & 92. I will now explain how the application of the proviso to Section 14, in granting relief under Section 18 (5), will make the latter Section meaningless & unworkable.

54. In all cases of statutory forfeiture under the Rent Act. of 1948, the tenant after such forfeiture could neither pay nor deposit rent because he was not deemed to be a tenant at all either contractual or statutory. Therefore, in all pending suits under Section 18 (5) on ground of statutory forfeiture, when amendment was made on 30-11-1950, default within the meaning of proviso to Section 14, had already occurred. The result, therefore, in such a case of applying the proviso to Section 14, under Section 18 (5) will be to make the amended Section 18 (5) completely ineffective & meaningless. The Rent Act of 1950 came into force on 30-3-1950. Suits pending on that date on the ground of statutory forfeiture must show on that date that the rent had been in arrears at any rate for January, February & March 1950, if not earlier. Now if one comes to the date of 30-11-50 when the amendment was made, then the tenant had already made default in payment of rent referred to in Clause (i) of the proviso to 12 (1) on three occasions within a period of 18 months as contemplated by the proviso to Section 14 of the Rent Act of 1950. It is quite true that on 30-11-50 such tenants are deemed again to be tenants from 30-3-50, but that is of no help to the sufferers because now after the amendment, this is already too late. This nonsensical result is due to the fact that formerly tenants who were granted relief under the unamended Section 18 (5) could pay or deposit rent under the Rent Act of 1948 because such tenants were not those who incurred the statutory forfeiture & therefore, application of

proviso to Section 14, was quite practical & sensible. I have no doubt left in my mind that here again the Legislature committed the blunder by forgetting to make consequential amendments in Section 18 (5) which seemed to follow naturally as a result of the amendment by the substitution of tenants under statutory forfeiture for the ordinary short-term defaulter.

55. What then is to be done in such a situation? Denning, L. J. in Seaford Court Estate v. Asher, (1949) 2 ALL. E. R. 155 observes:

'Where a defect appears in a Statute, a Judge cannot simply fold his hands & blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament & he must do this not only from the language of the Statute but also from a consideration of the social conditions which give rise to it & of the mischief which it was passed to remedy & then he must supplement the written word so as to give force & life to the intention of the Legislature.'

This is the desperate position of the Court in the extreme case. Such an extreme case is the present one with which I am faced. The burden thrown on the Court to give force & life to dead words may be quite unnecessary & may misguide the Court in its attempt to discharge the burden into the path of what has been euphemistically called legislative judgments. It makes ancient controversy between judicial decision & legislative action acquire new proportion & new significance.

56. With a view to give working effect to Section 18 (5), Rent Act, as amended, I propose to adopt therefore the following construction which to my mind is the only possible construction & which reconciles the different conflicts on the point. The proviso to Section 14, although attracted by the language of Section 18 (5), should not be applied while granting relief under Section 18 (5) because such an application of the proviso of Section 14, will make Section 18 (5) completely unworkable & meaningless. My reasons for this conclusion may be briefly stated.

57. The proviso to Section 14, in order to operate must bring the tenant within the meaning of Clause (i) of Section 12 (1) & the default mentioned in Clause (i) of Section 12 (1) must be on three occasions within a period of 18 months. Now, under Clause (i) of Section 12 (1) two months' rent legally payable by the tenant & due from him must be in arrears. I will, therefore, hold that in this case only three months' rent legally payable was in arrears at the date of the institution of the suit. Thereafter no rent became 'legally payable' by the tenant because of the statutory forfeiture that he had incurred thereafter. Retrospective condonation of such statutory forfeiture which occurred on 30-11-50 by the amendment making him a tenant again from 30-3-50 could not enable him to pay in the meantime & cannot therefore permit the defaults from March to November to be brought into calculation so as to make him come within the default under Clause (i) of Section 12 (1) on three occasions within a period of 18 months. Any other construction will in my opinion make the entire law in amended Section 18 (5) quite insensible,

58. It only remains for me to notice some of the decisions in this regard if only to show that the law on this point is made obscure by clumsy draftsmanship & if only to show that the construction of the Rent Act of 1950 has become very nearly a cross-word puzzle. As many as six learned Judges of this Court have expressed differently on this point. I do not propose to notice all these differences which are not necessary for me but I will notice two or three decisions that are reported. In S.K. Chaudhury v. Jai Kumar Sarkar, 55 C. W. N.. 75, Roxburgh J. came to the conclusion that the proviso to section 14 of the Act did not include the pre-Act defaults and at page 80 of the Report the learned Judge set forth his reasons in the following terms:

'It is to be noted that under Section 18 (5) of the Act, the Court has to exercise the powers of granting relief against ejectment given by Section 14 of the Act following the provisions & procedure of that Section as far as may be necessary. It does not provide that the relief is to be given against the same default as that against which Section 14, is to give relief namely, the default created by the effect of the proviso (i) to Section 12 (1) of the Act. The default against which relief is to be given following the provisions & procedure of Section 14, is the default under 1948 Act which would result in the decree for ejectment under that Act.'

Although it has been contended before me that I should not accept this view & for that purpose other decisions of this Court have beer shown to me, on a close consideration of the whole Act & the different interpretations put thereupon, I find myself in complete agreement with the above reason of Roxburgh J.

59. Bose J. in Amarnath y. Sreenarayan Mansingka, 54 C. W. N. 617, takes a different view & comes to the conclusion that the Court's ppwer of granting reliefs under Section 18 (5), of Rent Act, 1950 is limited by the proviso to Section 14 & holds that Section 18 (5) makes the entire Section 14, including its proviso applicable to pending suits. No particular reasons are however stated in that judgment. There was an appeal from that judgment reported in Sree Narainmansingh v. Amarnath, 87 C. L. J. 4. But there at page 21 S.N. Banerjee J. delivering judgment observed:

'It is not argued by the appellant's counsel that there has been no breach as contemplated in that proviso referred to in Section 14 but what is sought to be argued is that even so, the tenant is entitled to relief contemplated in Section 18 (5) by reason of the fact that the tenant was a statutory tenant under the Act of 1948 and therefore, he must get also all the benefits of the Act of 1948.'

Now both the decisions of Bose J. & of the Appeal Court were rendered on the original Section 18 (5) & not on its amendment which now raises special difficulties in the way of applying the proviso to Section 14 under Section 18 (5) as amended. Again as will be clear from the observations of Banerjee J., it was never mooted before the Court of Appeal that there was no breach as contemplated in that proviso, but here before me that was the very argument made. I agree with Bose J. as a matter of academic construction that Section 18 (5) should attract the proviso to Section 14. But the matter does not end there. The more practical problem begins thereafter. Can the proviso of Section 14 phrased as it is ever be made to apply to the default which has led to the statutory forfeiture under Section 12 (3) of the Rent Act of 1948 The answer depends on the construction of the proviso itself. It must be construed strictly as it is intended to exclude relief in an otherwise remedial section & a remedial Statute.

60. My construction is that the proviso on a proper interpretation means that the default must be such as is referred to in Clause (i) of Section 12 (i), Rent Act of 1950. Such a default can never occur in the case of statutory forfeiture of the interest of the tenant under Section 12 (3), Rent Act of 1948, because there on the default of payment or deposit of only three consecutive months' rent the tenant's interest was ipso facto determined by Statute with the result there never can be rent 'legally payable' in default on three occasions each with a period of two months such as is contemplated under proviso (i) of Section 12 (1) read with Section 14, Rent Act of 1950.

61. The compelling consideration for me in coming to this conclusion is that otherwise amended Section 18 (5) will be entirely nugatory & quite unworkable. Impossibility of working out a Statute or the test of giving working effect to the Statute must override any other consideration. I am not prepared to put an interpretation which will make the section a dead letter. My conclusion, therefore, is this that a proper interpretation of amended Section 18 (5), Rent Act, 1950, does attract the proviso to Section 14 of that Act, but that proviso to Section 14 must be strictly construed & must be confined only to the default contemplated in Clause (i) of Section 12 (l), Rent Act, 1950, & not defaults which are inevitable as a result of statutory forfeiture under the Rent Act of 1948 by which such tenants could neither pay nor deposit rent during the period from 30-3-1950 to 30-11-1950.

62. In view of construction of the proviso to Section 14 that I have adopted it is unnecessary for me to deal with pre-Act defaults separately. Because in the case of statutory forfeiture under Section 12 (3), Rent Act, defaults whether pre-Act or post-Act can never come within the default of the particular description mentioned in the telescopic provisions of proviso (i) of Section 12 (1) & Section 14, Rent Act 1950. Besides Ex. D, the chart shows that there was in any event in fact no two-monthly default on three different occasions in a period of 18 months.

63. The result therefore is that the pltf. at this stage is not entitled to any judgment for possession. The course

of the Court is to follow the provisions & procedure of Section 14 as far as may be necessary. I follow Sub-sections (1), (2) & (3) of Section 14, Rent Act of 1950, & make an order accordingly.

64. I determine that the rant legally payable by the deft. is Rs. 2,520-11-2 up to 5-5-1951, being the 35th day from this order & calculated from the 1st Magh 1355 B. S. corresponding to 14-1-1949 being a total period of 27 months & 21 days. This is on the basis of the agreed rent under the contract of tenancy at the rate of Rs. 91 per month & subject to any determination of Standard Rent under the Rent Act 1950. If the standard rent so determined is less than the agreed rent then the excess will be refundable by the pltf. to the deft. I determine also the amount of interest on such arrears of rent at the rate of 9-3/8% per annum which the parties agree at Rs. 250 altogether. I determine the costs fairly allowable to the pltf. to be Rs. 3,000 on the consent of the parties. The consent of the parties is only with regard to the amount of interest & costs & will not prejudice right of appeal of any party if so advised. The deft. will therefore pay the aggregate sum of Rs. 5,770-11-2 being the said total of arrears of rent, interest & costs on the 15th day from this-order excluding the day of the order which will be 5-5-1951.

65. If the deft. deposits in Court the sums specified in this order within the time fixed aforesaid the suit so far as claim for possession is concerned shall be dismissed. In default of such payment the Court will proceed with the hearing of the suit.

66. The deft. is also liable to pay to the pltf. electric charges for the said period of 27 months & 21 days at the agreed rate of Rs. 8 per month amounting altogether to Rs. 222.

67. Liberty to the parties to mention.

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