

Ajit Kumar Roy Vs. Surendra Nath Ghose

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Court : Kolkata

Decided On : May-28-1953

Reported in : AIR1953Cal733,57CWN627

Judge : Chakravartti, C.J., ;Das, ;Das Gupta, ;P.B. Mukharji and ;Sarkar, JJ.

Acts : West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Sections 14, 14(3) and 18(5); ;[Code of Civil Procedure \(CPC\) , 1908](#); ;West Bengal Rent Control Act, 1948

Appeal No. : Full Bench Reference No. 2 of 1952 in A.F.O.D. No. 20 of 1952

Appellant : Ajit Kumar Roy

Respondent : Surendra Nath Ghose

Advocate for Def. : Shyama Charan Mitter, Adv.

Advocate for Pet/Ap. : Abinash Chandra Ghose and ;Biraj Mohan Roy, Adv.

Judgement :

Chakravartti, C.J.

1. An experiment in law-making with a view to establishing some control over the rents chargeable for premises let to tenants, primarily in Calcutta and other municipal areas, has been going on in this Province since 1943 and so far there have been five products of that experiment. As each of the successive pieces of

legislation superseded its predecessor, there has on each occasion been some attempt to adjust the new law to the old or to extend some of the benefits of the new law to those against whom the old law had already been set in motion. The question involved in the present reference concerns one such extension made of the Act of 1950. It arises in the following way.

2. The West Bengal Premises .Bent Control (Temporary Provisions) Act came into force on 1-12-1948 and remained in operation till 30-3-1950. Under Section 12(3) of that Act, a tenant who committed default in paying the rent accruing due from him after the commencement of the Act for three consecutive months, ceased to be a tenant and his interest in the tenancy was, by such default, 'ipso facto' determined. Thereafter, he became a trespasser and if sued in ejectment, had no means open to him to avert either a decree or actual eviction. But the next Rent Act, West Bengal Act No. 17 of 1950, which superseded the Act of 1948 and came into force on 31-3-1950, contained no provision similar to Section 12(3) of the 1948 Act. It provided instead by proviso (i) to Section 12(1) that if a tenant committed default in paying duly the rent legally payable by him for two months, the protection conferred by the Act against a decree for ejectment would not be available to him and even that less stringent provision was made subject to an exception contained in Section 14. The exception was that if on a suit being brought, it was found that the only ground which excluded the tenant from the protection of the Act was a default as contemplated by proviso (i) to Section 12(1) and the tenant yet paid up all arrears of rent due from him upto date, as determined by the Court, which it would be the duty of the Court to determine, and also paid them by a date which it would be the duty of the Court to fix, ejectment would be refused, in spite of the previous default. This, therefore, was the last chance provided to a defaulting tenant to save himself from eviction. On the other hand, the exception itself was made subject to an exception, added by a proviso thereto. It was to the effect that if a tenant was found to have been in default within the meaning of Section 12(1), Proviso (i) on three different occasions within a period of eighteen months, he would not be entitled to the benefit of Section 14. Both the exception and the exception thereto are contained in Sub-section (3) of Section 14 which is in the following terms:

14(3). If within the time fixed in the order under Sub-section (1), the tenant deposits in the Court the sum specified in the said order, the suit, so far as it is a suit for recovery of possession of the premises, shall be dismissed by the Court, in default of such payment the Court shall proceed with the hearing of the suit:

Provided that the tenant shall not be entitled to the benefit of protection against eviction under this section if he makes default in payment of the rent referred to in Clause (i) of the proviso to Sub-section (1) of Section 12 on three occasions within a period of eighteen months.

3. When the Legislature passed the Act of 1950, it was mindful of the fact that at the date the Act came into force, there would be some persons against whom a decree for ejectment had already been passed on the ground of a statutory extinction of their tenancies under Section 12(3) of the Act of 1948, but who had not yet been actually evicted. Against some others, suits bound to succeed on that sole ground would be pending. Provision for some relief to those two classes of persons was therefore made by Section 18 of the Act, as regards the former class, by Sub-sections (1) to (4) and as regards the latter, by Sub-section (5). But the language used in the section to describe the persons intended to be relieved was such that it was precisely they who were excluded: persons affected by a statutory extinction of their tenancies under Section 12(3) of the Act of 1948 and by decrees passed or suits pending on that ground were not covered by the language of Section 18 at all. When that strange result was pointed out in judicial decisions, the Legislature passed an amending Act, the West Bengal Premises Bent Control (Temporary Provisions) (Amendment) Act 62 of 1950. That Act, which came into force on 30-11-1950, altered the language of section. 18 and did it in such manner as not only to make it applicable to persons who had ceased to be tenants under Section 12(3) of the Act of 1948, but also to confine it solely to them.

For some reason which it is not easy to divine, the Legislature seems also to have thought that a separate provision was necessary in regard to persons against whom a decree had been passed between the dates of the main Act of 1950 and the amending Act and from whom possession had not yet been recovered. Such provision was made by Section 6 of the Amending Act.

4. It would appear from an examination of the law, as finally enacted, that the three different classes of persons affected by Section 12(3) of the Act of 1948 who have been dealt with by the main Act of 1950 and the amending Act, have been dealt with in different ways. To the first class belong those against whom a decree had already been passed before the commencement of the Act of 1950, but from whom possession had not yet been recovered. They are dealt with by Sub-sections (1) to (4) of Section 18 of the main Act of 1950 and the provision made with regard to them is direct and unqualified. It is provided that if such a person makes an application within a certain time, the Court shall determine the amount of rent due from him upto the month of the order, treating the tenancy as always subsisting, as also interest thereon at a certain rate, and shall fix a time within a certain limit for payment of the same and if the person concerned pays the amount within the time specified, the decree for ejectment shall be vacated. If he does not, it shall stand. The next class is constituted of persons against whom a suit was pending either in a Court of first instance or in a Court of revision or appeal, at the date of the commencement of the main Act of 1950. They are dealt with by Section 13(5) of the Act and the provision made with regard to them is of a somewhat roundabout character. It is provided that in the case of such persons,

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

The provision does not prescribe a straight and clear course but enjoins the Court to pay regard, in granting relief, to the provisions of Section 14. The last class is formed of those against whom a decree was passed between the date of the commencement of the main Act of 1950 and that of the amending Act, but from whom possession had not yet been recovered. They are dealt with by Section 6 of the Amending Act and the provision made with regard to them is not only of the same roundabout character as under Section 18(5) of the main Act, but also not mandatory. It is provided that if such a person makes an application within a certain time,

'the Court may rescind or vary the order or decree on such terms and conditions as it deems; necessary for the purpose of giving effect to the provisions of Section 18 of the said Act (i.e. the main Act of 1950), as amended by this Act.'

Unlike Sub-sections (3) and (5) of Section 18, not only does this provision make it discretionary with the Court to interfere with the decree or order for possession at all, but it also makes it discretionary even when the Court decides to interfere, to adopt a form of interference, short of rescission of the decree or order. Of the three classes of persons so dealt with by the two Acts and suffering from the same disability, the first, it would *prima facie* appear, is the most favoured and the third undoubtedly the least favoured. It seems clear that although Section 18 was amended with retrospective effect, a person against whom a suit was pending at the date of the Act of 1950 but no longer pending when the amending Act came into force, would be in a less advantageous position than a person against whom a suit was pending at the date of the main Act and also pending at the date of the amending Act. Apart from the extent of the relief provided for the former, the relief lies in the discretion of the Court.

5. In view of the broadness of the question we have to consider in the present case, it is pertinent to enquire how exactly Section 6 of the amending Act intends the persons covered by it to be dealt with. The section speaks broadly of decrees or orders for recovery of possession, but since it also speaks of 'giving effect to the provisions of Section 18', it must as a matter of language be taken to contemplate provisions contained in both sections 18(1) and 18(5). As I have already pointed out, the section gives only a discretion to the Court; it refers generally to Section 18 and not specifically to Section 18(1) or Section 18(5); and unlike Section 18, it refers to both decrees and orders for possession. It would therefore seem that the Court can interfere, whether the direction for ejectment is a decree or an order, and that it may apply either Section 18(1) or 18(5). Since the suit or proceeding has ended, Section 18(1) would seem to be the more appropriate provision, except for the reason that it had not ended before the Act of 1950, but I see no bar to or practical difficulty in applying Section 18(5) after rescinding the decree or order and treating the suit or proceeding as pending.

6. The question involved in the present reference is the true construction of Section 18(5) of the Act of 1950, as amended. That section, the material terms of which have already been quoted, directs the Court to exercise the powers of granting relief against ejectment, given to it by Section 14, by following the provisions of that section as far as may be necessary. Section 14 gives the power by Sub-section (3) which, however, contains a proviso, excluding the relief in certain circumstances, as has been seen. A question which has caused difference of opinion in this Court is, how much of Section 14 does Section 18 import? Does it import the whole of Section 14(3), including the proviso, or does it import only the main Clause of the sub-section, whereby the power of granting relief is given in a general and unqualified form? In -- 'United Commercial Press Ltd. v. Satyanarain Chamaria', 0043/1953 : AIR1953 Cal136 (A), it was held by Harries, C. J., and Benerji, J. that the proviso was also imported, and that defaults of the specified kind, whether occurring before the amending Act of 1950 or after its commencement, would operate to exclude the relief. On the other hand, in -- 'Balai Lal Das v. Manik Chand', : AIR1952 Cal898 (B), it was held by Das Gupta and Bachawat JJ. that what was imported by Section 18(5) out of Section 14(3) was only so much as was necessary for the purpose of granting relief and therefore only the main clause, without the proviso, was imported. In that view which the learned Judges took, it was not necessary for them to consider whether defaults occurring before the amending Act of 1950 and those occurring after it would have the same or different consequences.

7. It is in order to have the above conflict of opinion resolved that the present reference to a Pull Bench has been made. The 'Letter of Reference does not give the detailed facts of the case before the learned referring Judges. All that is stated is that the suit was brought on 6-1-1950, i.e., when the Act of 1948 was in force, and the .plaint alleged that the tenancy-rights of the defendant had been 'ipso facto' determined by reason of non-payment of rent for three consecutive months viz., July, August and September, 1949. Thereafter, in the course of the trial the defendant filed an application under Section 18(5) of the Act of 1950, as amended, which had in the meantime come into force. The Letter of Reference does not give the date of the application, but it appears from the Paper Book to the First Appeal that the application was filed on 18-1-1951. By an order dated 6-2-1951, the

learned trial Judge dismissed the application in the view that the proviso to Section 14(3) applied and by reason of that proviso, no relief could be given to the defendant. It appears from the Paper Book that the learned Judge relied on defaults which had occurred even before the main Act of 1950 had come into force. The suit was ultimately decreed on the 11th August, 1951 and the learned referring Judges, had it before them on First Appeal. They found that the question whether the proviso to Section 14(3) was applicable to proceedings under Section 18(5), called for decision in the appeal and in view of the divergence of opinion on that question, they referred it to a Full Bench in the following broad form:

Whether in a suit instituted while the West Bengal Rent Control (Temporary Provisions) Act of 1948 was in force and which was disposed of after the passing of the West Bengal Rent Control (Temporary Provisions) Act of 1950, the proviso to Section 14(3) of the Act would be applicable in order to give relief to the tenant under Section 18(5) of the Act.

8. It will be seen that the question has been framed in very wide terms and it comprises certain points which do not strictly arise out of the facts of the present case. The reference to disposal of the suit after the passing of the Act of 1950 covers cases where the suit was disposed of before the amending Act of 1950, as well as cases where the disposal was after the amending Act had come into force. The question whether the proviso to Section 14(3) is applicable in giving relief under Section 18(5) is again divisible into two parts, (a) whether the proviso applies at all and (b) even if it applies, whether it applies only so as to make defaults occurring after the amending Act of 1950 a bar to relief or whether prior defaults are also contemplated by it and equally attract its operation.

9. To what extent Section 14 is intended to be utilised in applying Section 18(5) must be ascertained primarily from the language of the section, though in case of obscurity or ambiguity, the aim and object of the section may properly be referred to. So far as language goes, the general direction contained in the section is that in suits to which it refers, the Court shall grant relief against ejection. The method enjoined is that it shall do so by 'following the provisions and procedure' of Section 14 'as far as may be necessary'. What it will exactly do by following such

provisions and procedure is that it 'shall exercise the powers of granting relief against ejectment given by Section 14'. What does that language mean? As has been seen, the power of granting relief against ejectment is contained in Sub-section (3) of Section 14, but there is a proviso to the effect that if within a period of eighteen months, the tenant makes default of the nature mentioned in proviso (i) to Section 12(1) on three occasions, he shall not be entitled to the relief. Whether or not in applying Section 14(3) under Section 18(5), the proviso should be taken into account, must depend upon, what the expression 'powers of granting relief against ejectment given by Section 14' means.

10. Of the two rival constructions which have found favour with the Courts, one proceeds on the view that the governing words in the expression are 'granting relief', while the other proceeds on the view that the governing words are 'given by Section 14'. The reasons which can be given in support of either view bear on the construction of both Section 18(5) and Section 14. Those in favour of the second view are that the use of the words 'given by Section 14' in Section 18(5) must have the consequence that the Court is intended to exercise only that power of granting relief which Section 14 confers and not any other or larger power. Accordingly whatever may be the power under Section 14 itself, that must also be the power which can be exercised under Section 18(5). The next step in the reasoning is that the power given by Section 14, which is to be found in Sub-section (3), is only a limited power, conditioned as it is by the proviso which is a part of the provision where the power rests. It is not the main clause of Section 14(3), taken by itself, which gives the power, but that clause, read with the proviso, and therefore the words 'powers given by Section 14', appearing in Section 18(5), cannot be read as contemplating only the power given by the main clause without the limitation which the proviso imposes on it. If the true content of the power given by Section 14(3) is itself power, as circumscribed by the proviso, it is clear that in construing Section 18(5) which speaks of 'powers given by Section 14', the proviso must equally be taken into account.

This is the view which commended itself to P. B. Mukharji J. in -- 'S.B. Trading Co. Ltd. v. Shyamlal Ram Chandra', : AIR1951 Cal539 (C). It was acted on -by Harries C. J. and Banerjee, J. in --' : AIR1953 Cal136 (A)', where no reasons were given.

The same view of Section 18(5), before its amendment, was taken by Bose, J. in -- 'Amarnath Misra v. Sreenarain Mansingka', : AIR1951 Cal442 (D) and on appeal by Harries, C. J. and Banerjee J. in -- 'Sreenarain Mansingba v. Amar Nath Misra', : AIR1952 Cal433 (E).

11. The reasons in favour of the other view are that Section 14 does not apply of its own force to suits contemplated by Section 18(5) and all that the Court is enjoined to do is to exercise the powers given by that section by following its provisions. The powers required to be exercised have been specified; they are 'powers of granting relief against ejectment'. There is thus no need to apply Section 14 in strict conformity with all its provisions, as would have to be done if the section applied directly; and since the powers to be exercised under Section 18(5) are powers of 'granting relief', the section may legitimately be read as contemplating only so much of the powers given by Section 14 as would enable the Court to relieve against ejectment. On that construction, the proviso to Section 14(3) which bars relief in certain circumstances, cannot be within the contemplation of Section 18(5). This is the view which commended itself to Das Gupta and Bachawat JJ. in -- ' : AIR1952 Cal898 (B)'.

12. It will be noticed that the view taken by Das Gupta and Bachawat JJ. presupposes that it is possible to dissect the provisions of Section 14(3) and proper to take, for the purposes of Section 18(5), only the main clause. The view taken by P.B. Mukharji, J. is that a proviso, being an integral part of the main provision, cannot be so severed and that when a section contains a proviso, its true effect must be ascertained from taking it as a whole. 'That undoubtedly is the general rule regarding the construction of sections, carrying a proviso, but it may perhaps be said in the present case that, here, the proviso is rather of the nature of an exception than of a proviso, properly so called. The main clause of Section 14(3) directs the Court to dismiss the suit, so far as it is a suit for ejectment, and that clause, as also Sub-sections (1) and (2) of the section, is so expressed as to refer to the powers and duties of the Court. The proviso, on the other hand, expresses itself by reference to the rights or rather a disability of the tenant. The structure of Section 14(3) would therefore appear to be that the Court's powers of granting relief against ejectment are contained in the main clause and all that the

proviso does is to enact that the tenant will not be entitled to such relief in certain circumstances. In form at least, the proviso does not purport to modify the powers of the Court, but only bars the tenant from the benefit of the powers in the circumstances stated, so that the resultant effect may be said to be that the powers of the Court are as provided in the main clause, while the proviso affects only the tenant and therefore the proviso is not an integral part of the section in so far as it provides for the powers of the Court, but only an exception to the main clause, excluding a certain area from the sphere of the exercise of the powers. 'That might be said to appear further from the language of the proviso itself which says that, in certain circumstances, the tenant shall not be entitled to the 'benefit of the protection against eviction under this section', implying thereby that the whole benefit, i.e., relief against ejection, has already been given by other provisions, apart from the proviso.

It is true that whether the proviso is regarded in the one way or the other, the practical result of applying Section 14(3) as a whole will be the same, but the question we are considering here is whether the proviso is severable. It seems to be at least arguable that there is nothing in the structure of Section 14(3) which militates against the severability of the proviso. Even if it be not severable, the other justification for leaving it out in construing Section 18 (5) remains. It may be said that the integral character of the proviso is a relevant consideration only when Section 14(3) is to be applied in accordance with its strict terms; but when another section directs the Court to exercise the powers given by Section 14(3) and particularises what powers are to be exercised, there is no bar to exercising only such powers as are covered by the description and indeed it is legitimate so to exercise them. That is the reasoning on which *Das Gupta and Bachawat JJ.* proceeded.

13. It appears to me that on the pure question of the textual construction of Section 18(5), each of the above two views is a plausible one and a possible view to take. To decide which of them ought to be preferred, it will therefore have to be seen which of them accords better with the object of the section and in order to do so, the practical results of applying Section 14(3) with and without the proviso may be compared. The practical result of applying the section for the purposes of

Section 18(5) without the proviso will be that relief must be given to the defendant, irrespective of whether the proviso would bar relief in his case. The practical result of applying the section with the proviso will be that the defendant can be given relief against ejectment only if such relief is not barred by the proviso. In the first case, there are no further complications, because if the proviso is to be disregarded, relief will have to be given in all cases. But the second case is not so simple. It would appear that even if the proviso is to be taken into account in applying Section 14(3) for the purposes of Section 18(5), there are cases where the proviso would exclude itself by its own terms. This was pointed out by P.B. Mukharji, J. in --- ' : AIR1951 Cal539 (C)' to which reference has already been made. The view taken by the learned Judge was that although, as a matter of construction, he felt bound to hold that in interpreting the words 'powers.....given by Section 14' in Section 18(5), the proviso to Section 14(3) could not be disregarded, he felt bound also to hold that in the case of defaults occurring before the amending Act of 1950, the proviso could not be applied without making Section 18(5) itself wholly nugatory. The position may be explained.

14. The suits contemplated by Section 18(5), as amended, are suits pending at the date of the Act of 1950 against persons who had committed default in respect of the rent for at least three consecutive months before that date. Having committed such default, they had ceased to be tenants and having ceased to be tenants, they could not thereafter be under any liability to pay rent, till the status of a tenant was restored to them. Necessarily, they could not commit any 'default' during such period, even if they made no further payment. With that consideration in mind, we may examine the various classes of case which may come to be dealt with under Section 13(5). The following classes can be thought of:

A. Cases pending at the date of the Act of 1950 and also pending at the date of amending Act:

(1) Cases in which the defendant had committed default in respect of the rent for three consecutive months before the institution of the suit, i.e., before the Act of 1950, but not also default for two months on three occasions within a period of eighteen months;

(2) Cases in which the defendant had committed both kinds of default;

(3) Cases in which the defendant, whether coming under (1) or (2) above, had resumed payment after the amending Act of 1950 and had not been in default for two months on three occasions within a period of eighteen months after the amending Act;

(4) Cases in which the defendant whether coming under (1) or (2) above had committed such default after the amending Act.

B. Cases coming under (1) or (2) above disposed of before the amending Act.

15. To cases coming under class B, Section 18 (5) would be applicable, if at all, through Section 6 of the amending Act. Those cases may be, for the time being, left out of consideration. As to cases coming under class A, the only sub-clauses which require consideration are Sub-clauses (3) and (4), because (1) and (2) are merged in them. It will appear that even if the defendant had committed default for two months on three occasions within a period of eighteen months before the Institution of the suit, those would be defaults committed before the Act of 1950, The proviso to Section 14(3) would not hit him on account of those defaults, because those would not be defaults 'referred to in Clause (i) of the proviso to Section 12' of the 1950 Act. If such a defendant made no further payment till the amending Act of 1950, he would not be, on account of such non-payment, in default at all, because having ceased to be a tenant, he would not be under any legal liability to pay anything as rent. It was only the amending Act which made him again a tenant and although it is true that it restored him to the status of a tenant with retrospective effect, it could not possibly be said that he must be deemed not only to have been a tenant, but also to have committed default even before the restoration took place. Before the amendment was actually enacted, the defendant could not have paid rent and he cannot obviously be regarded as having defaulted in doing something which he could not have done at the time. Upto the date of the amending Act, therefore, there is no possibility of any default. But once the amending Act came into force, the defendant again became a tenant and if he had thereafter been in default for two months on three occasions within a period of eighteen months, the proviso would hit him, if Section 14(3) were applied

along with the proviso. The practical difference between applying Section 14(3) for the purposes of Section 18(5) with and without the proviso, therefore, is that in the former case, only defendants who had committed default of the requisite nature and number after the amending Act, would be excluded from relief whereas, in the latter case, relief would have to be granted to even such a defendant.

16. It may be added that, as pointed out by P.B. Mukharji, J. in -- ' : AIR1951 Cal539 (C)', a ridiculous result will follow if the amending Act is taken to place the defendant under a liability to pay rent from the date of the main Act of 1950 and to make him a defaulter if he had not paid or paid in due time. The main Act came into force on 31-3-1950 and the Amending Act on 30-11-1950. The interval was eight months. It may be presumed that no defendant whose interests in the tenancy had been automatically extinguished and against whom a suit for ejectment had been brought, had made any payment between the dates of the main Act and the amending Act. But if the effect of the amending Act be to make him not only liable for the rent for the intervening period but also liable to pay it, as it accrued, month after month, he would necessarily be in default for two months on three occasions within a period of eighteen months at the date of the amending Act and therefore the relief provided for by Section 18(5) would not at all be available to him, if Section 14(3) was applied together with the proviso. The position would be a truly farcical one. It would be that the Legislature had proceeded to pass an amending Act in order to give relief to persons whose tenancies had been extinguished by law and against whom ejectment suits were pending, but fashioned the relief in such form that the very persons who were intended to be benefited were excluded from it. This certainly can be an argument in favour of the view that Section 18(5) does not intend the proviso to Section 14(3) to be applied, but in my opinion the question of any default occurring during the intervening period does not arise at all, because default in doing a thing which could not be done at the time is an impossible notion,

17. In -- ' : AIR1953 Cal136 (A)', it was held by Harries C. J. and Banerjee J. that the proviso to Section 14(3) applied also to defaults committed before the amending Act. As the learned Judges themselves pointed out, it was not necessary for them to rely in that case on pre-amending Act defaults, for there

were sufficient defaults committed after the amending Act. But since a considered opinion was given, I cannot properly brush, aside the observations made by the learned Judges as mere 'obiter dicta'. I would respectfully dissent from them.

18. To cases coming under Class B above, Section 18. (5) does not directly apply. They are dealt with in Section 6 of the amending Act and Section 18 (5) can apply to them, only if the reference to Section 18 of the main Act in Section 6 of the amending Act covers Section 18(5) and if the Court applies it in exercise of its discretion. In such cases, even if there were defaults for two months on three occasions within a period of eighteen months, those could only be defaults committed before the Act of 1950 or nonpayment after that Act but before the amending Act. In neither case could there be defaults of the nature 'referred to in Clause (1) of the proviso to Sub-section (1) of Section 12', for reasons I have already explained, and therefore even if Section 14(3) were to be applied to such cases along with the proviso, it would be found that the proviso was excluded by its own terms and by the facts.

19. It is now clear on a review of all possible cases that even if Section 18(5) be read as not requiring the application of Section 14(3) with the proviso thereto omitted, the proviso can apply and bar relief only in cases where defaults of the requisite number and nature have been committed after the amending Act came into force. Defaults committed before the Act of 1950 or non-payment between the dates of that Act and the amending Act would not attract the proviso and are therefore immaterial.

20. Such being the scope of the proviso and the language of Section 18(5) being equally capable of being read as requiring its exclusion or inclusion in. applying Section 14(3), the question we have to ask ourselves is this: Could the Legislature have intended that even if the defendant committed default after the amending Act had restored him to the status of a tenant and made him liable to pay rent, he would still not be affected by the disability created by the proviso? No tenant sued after the Act of 1950 can escape the proviso and get relief against ejectment under Section 14, if he has been in default to the extent mentioned. Was it intended that, nevertheless, persons against whom suits were pending at the date of the Act

would be immune from the operation of the proviso and entitled to relief under Section 14, irrespective of the defaults they might commit? I can find no reason to take such to have been the intention of' the Legislature. It is true that a consideration is pointed out by Das Gupta and Bachawat JJ. in -- 'Am 1952 Cal 898 (B)' which would seem to indicate at first sight that the contrary view also would involve some inequality of treatment. If of two suits brought during the Act of 1948, one terminated in a decree before the Act of 1950 and was not further proceeded with, Section 18(1) would apply to it and there could be no question of any defaults restricting the relief; but if the other suit was still pending in the trial Court at the date of the Act of 1950 or having been disposed of by the trial Court before that date, was even pending in a superior Court in appeal or revision, it would be governed by Section 18(5) and if the proviso to Section 14(3) was applied to it, the relief available to the defendant would be restricted by the proviso. The position of the defendants in two suits, brought at the same time, would thus be different, according as the suit was pending or not pending at the date of the Act of 1950, although in both the suits, a decree by the trial Court might have been passed.

With great respect, it appears to me that the Legislature did intend to make a distinction between the two cases and also that the discrimination pointed out is only apparent and not real. In the case of suits terminated by a decree before the Act of 1950 and resting there, the Legislature made a simple provision in Section 18(1) that on payment of all arrears, together with interest, upto date, as determined by the Court on an application made within a certain time, the decree for ejectment would be vacated. If it was intended that in pending suits too, the claim for ejectment would be similarly dismissed, if the defendant simply paid up all arrears of rent, as determined by the Court, there was no reason why the Legislature should not have made a simple and direct provision to that effect, but should have imported Section 14 and provided for relief through that section. The importation of Section 14 is, to my mind, a clear indication that some limitation was Intended in the case of pending suits. As to discrimination, there is, to my mind, none. The defaults to which the proviso to Section 14(3) can apply in cases coming under Section 18(5) being only defaults committed after the amending Act, it is clear that if the proviso is applied to suits pending at the date of the Act of

1950, the defendant is put under a liability only for some further defaults which the defendants in a suit terminated before the Act could not have committed. It is thus not that persons similarly circumstanced have been differently treated.

In order to have the relief provided for in Section 18(1), the defendant, against whom a suit had terminated in a decree before the Act of 1950, had to apply within 60 days of the amending Act. If he is treated by the Act in one way and the defendant in another suit, brought at the same time but going on for at least eighteen months even after the amending Act, is treated in a different way, when after being restored to the status of a tenant and made liable to pay rent, he again commits defaults, I do not think it can be said that equals are treated unequally. On the other hand, equals would be treated unequally, if a defendant in a suit brought after the Act of 1950 were to be under the restriction of the proviso, as he must be, but the defendant in a suit, brought before the Act and continuing after the amending Act, were to be free of it, although after the amending Act, he too would be under a liability to pay rent as much as the defendant in the other suit.

If Section 18(5) is read as requiring the application of Section 14(3), together with the proviso, the effect will be to place the defendants in all suits pending at the date of the amending Act in substantially the same position, while there will be no discrimination against the defendants in suits which had ended before the Act of 1950. To the latter class of defendants and to defendants in suits ended before the amending Act, the proviso will not apply on the facts, being excluded by its own terms, although Section 14(3) may be applied together with the proviso. Indeed, even on such construction of Section 18(5), the defendants in suits, pending at the date of the main Act of 1950 and also pending at the date of the amending Act, will be in a slightly favoured position, because in their case only default committed after the amending Act will count, whereas prior defaults will also count in the case of persons sued after the date of the main Act.

21. Reverting now to the object of Section 18, as amended, it appears to me that the object was to extend to persons whose tenancies had been extinguished by the previous law and who had been sued in ejectment, the benefit of the new law on the conditions it carried. The object was not to provide anything more. That

view solves all difficulties. The new Act provides for relief against ejectment on condition that all arrears of rent are paid up, but withholds that, relief from cases where there have been defaults of a certain kind which the Act creates and specifies. The relief goes under Section 18(1) to persons against whom a decree had been passed under the old Act and the suit had ended, because the circumstance which would exclude the relief is not and cannot be present in their case. It also goes under Section 18(5) to persons against whom a decree had been passed between the dates of the main Act of 1950 and the amending Act and does so for the same reason. It goes under the latter section to persons against whom the suit was still pending at the date of the amending Act only if the disabling circumstance is not present, for that circumstance can be present in their case. So applied, the new Act deals with the persons sued under the old Act exactly as they would be dealt with if a suit under the new Act had been brought against them, but applied without the proviso to Section 14(3), it would be according to them a specially favourable treatment.

22. For all the reasons given above, I am of opinion that the construction that Section 18(5) intends the whole of Section 14(3), including the proviso, to be applied is to be preferred. 'Powers of granting relief against ejectment given by Section 14' means powers such as Section 14, circumscribed and conditioned by the proviso, gives.

23. This conclusion is in no way opposed to an observation made in the Pull Bench case of --'T.S.R. Sarma v. Nagendra Bala Debi', AIR 1953 Cal 879 (P), where the majority judgment was delivered by myself. With reference to Section 14(4), it was then stated that Section 18(5) had not the effect of attracting its terms and in that connection it was observed that the words by which the reference to Section 14 in Section 18(5) were qualified, suggested positively that the onerous parts of the section were not to be applied. But that observation was made with reference to a part of Section 14 which is only onerous and has nothing to do with granting relief against ejectment.

24. In the result, I would answer the question referred in the following form:

(i) In exercising under Section 18(5) of the Rent Act of 1950, as amended, the powers of granting relief against ejectment given by Section 14 in suits brought during the Act of 1948 and pending at the date of the main 1950 Act, Sub-section (3) of Section 14 is to be applied with and not without the proviso.

(ii) The proviso, however, would not have effect in the case of such suits disposed of and terminated before the amending Act of 1950, because in such cases there would be no defaults, as contemplated by the proviso.

(iii) The proviso will have effect in the case of such suits pending at the date of the amending Act, but only with respect to defaults committed after the date of the said Act.

Das, J.

25. I agree with the answers given by My Lord The Chief Justice.

Das Gupta, J.

26. After the amendment by the amending Act--Act 62 of 1950--Section 18(5) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, runs in these words:

'If at the date when this Act comes into force, a suit for ejectment of a tenant is pending whether in trial Court or in Court of first or second appeal in which no decree for ejectment would be passed except on the ground that the interest of the tenant in such premises has been ipso facto determined under the provisions of Sub-section (3) of Section 12 of the West Bengal Premises (Temporary Provisions) Act, 1948, the Court shall exercise the powers of granting relief against ejectment given by Section 14 of this Act following the provisions and procedure of that section as far as may be necessary, and for the said purpose shall make such order for amendment of pleadings, production of evidence, remand, payment of costs as may be necessary or just.'

The question is: by enacting these provisions did the legislature intend that such power of granting relief will be exercised only in the cases where there has been no 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 eighteen months; or did it intend that the Court shall exercise the powers of granting relief against ejectment in all cases that are pending in which no decree for ejectment would be passed except on the ground of ipso facto determination of tenancy under Sub-section (3) of Section 12 of the 1948 Act. Whether the intention was one or the other has to be ascertained from the actual words used in Section 18(5) of the Act. It is hardly necessary to add that for ascertaining the meaning of the words used in Section 18(5) it is necessary also to refer to the wording of the entire Section 14. What is important to remember is that if the intention of the legislature can be ascertained from the words used in the section the law does not permit the Court to travel beyond them for ascertaining such intention.

27. It has been pointed out again and again that if the legislature expresses one intention on the ordinary meaning of the words, the Court has no power to ascribe to the legislature any other intention that other circumstances may show; and that even if such other intention may clearly be shown to have existed, the Court is bound to hold that the legislature meant what it said and that the legislature's intention is as expressed in the words. Vide -- 'Nalinaksha Bysack v. Shyam Sunder Halidar', : [1953]4SCR533 (G).

28. For finding the correct answer to the question before us it is necessary, therefore, to turn to the words of Section 18(5) to find out what they mean on the ordinary natural sense of the words used. The important words in the section in ascertaining the intention are:

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

It will be convenient to consider first the meaning of the words 'the powers of granting relief against ejectment given by Section 14 of this Act' and then consider the future phrase 'following the provisions and procedure of that section as far as

may be necessary' in any way confirm or modify that meaning.

29. Section 14 of the Act is in these words:

'If in a suit for recovery of possession of any premises from the tenant the landlord would not get a decree for possession but for Clause (1) of the proviso to Sub-section (1) of Section 12, the Court shall determine the amount of rent legally payable by the tenant and which is in arrears taking into consideration any order made under Sub-section (4) and effect thereof up to the date of the order mentioned hereafter, as also the amount of interest on such arrears of rent calculated at the rate of nine and three-eighths per centum per annum from the day when the rents became arrears up to such date, together with the amount of such costs of the suit as is fairly allowable to the plaintiff-landlord, and shall make an order on the tenant for paying the aggregate of the amounts (specifying in the order such aggregate sum) on or before the date fixed in the order.

'(2) Such date fixed for payment shall be the fifteenth day from the date of the order excluding the day of the order.

'(3) If within the time fixed in the order under Sub-section (1), the tenant deposits in the Court the sum specified in the said order, the suit, so far as it is a suit for recovery of possession of the premises, shall be dismissed by the Court. In default of such payment the Court shall proceed with the hearing of the suit:

'Provided that the tenant shall not be entitled to the benefit of protection against eviction under this section if he makes default in payment of the rent referred to in Clause (i) of the proviso to Sub-section (1) of Section 12 on three occasions within a period of eighteen months.

'(4) If the tenant contests the suit, as regards claim for ejectment, the plaintiff-landlord may make an application at any stage of the suit for order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any, and the Court after giving an opportunity to the parties to be heard may make an order for deposit of rent at such rate month by month and the arrears of rent, if any, and on failure of the tenant to deposit the

arrears of rent within fifteen days of the date of the order or the rent at such rate for any month by the fifteenth day of the next following month, the Court shall order the defence against ejectment to be struck out and the tenant to be placed in the same position as if he had not defended the claim to ejectment. The landlord may also apply for permission to withdraw' the deposited rent without prejudice to his right to claim decree for ejectment and the Court may permit him to do so.

'(5) The power given under Sub-section (4) may be exercised by Courts of appeal with necessary adaptation.'

30. We find that this section gives two different kinds of powers to the Court. One power is the power to give relief to tenants by dismissing the suit in so far as it is against ejectment. The other power is the power to give relief to landlords by directing deposit of rent by the tenant on pain of the defence against ejectment being struck out on the deposit ordered not being made. It has been held by a Full Bench of this Court in --' : AIR1952 Cal879 (F)', that the Court's powers to direct such deposit of rent cannot be exercised in pending suits originally instituted before the 1950 Act came into force and that further the exercise of such powers is restricted to suits for recovery of possession in which the landlord would not get a decree for possession but for Clause (i) of the proviso to Sub-section (1) of Section 12.

31. The other power, namely, the power of granting relief to tenants against ejectment, is provided in Sub-section (3) the first portion of which provides that if the tenant deposits in Court certain sums as ordered:

'the suit, so far as it is a suit for recovery of possession of the premises, shall be dismissed by the Court.'

These words are followed, by the words:

'In default of such payment the Court shall proceed with the' hearing of the suit,'

and then comes the proviso in the following words :

'Provided that the tenant shall not be entitled to the benefit of protection against eviction under this section if he makes default in payment of the rent referred to in Clause (i) of the proviso to Sub-section (1) of Section 12 on three occasions within a period of eighteen months.'

32. If a person who has read the entire Section 14 of this Act is asked the question 'what are the powers of granting relief against ejectment that Section 14 gives to the Court' -- will his answer be: The powers are if the tenant deposits in the Court the sum calculated as due in accordance with the provisions of subsection (1) of the Act, the Court shall dismiss the suit; or will his answer be: The powers are that in cases in which there has been no default on three occasions within a period of 18 months in payment of the rent referred to in Clause (1) to the proviso to Sub-section (1) of Section 12, the Court shall dismiss the suit, if payments as directed are made; or will he say: 'The powers are that suits for recovery of possession of premises in which the landlord would not get a decree for possession but for Clause (i) of the proviso to Sub-section (1) of Section 12 and in which further there has been no default in the payment of rent as referred to in Clause (i) of the proviso to subsection (1) of Section 12 on three occasions within the period of 18 months, the Court shall dismiss the suit on certain payments being made'.

33. In my judgment nobody will give either the second or the third alternative of the answers suggested above and that a person who attaches the ordinary meaning of the words to the question--'What powers are given by Section 14 to the Court to grant relief against ejectment?' will give only the first of the three answers mentioned above, namely, that the powers are that if the tenant deposits in the Court the sum calculated as due in accordance with the provisions of Sub-section (1) of Section 14 of the Act the Court shall dismiss the suit, in so far as it is for ejectment.

34. It is said however that the words 'given by Section 14' necessarily import the proviso to Section 14(3) into the meaning of the word 'powers', and so the words 'powers of relief against ejectment given by Section 14', must mean powers of such relief as circumscribed by the proviso. There can be no doubt that the proviso to Section 14(3) is as much a part of Section 14 as the main clause of the sub-

section and if the proviso had given to the Court any power of giving relief, that power would have been included in the word 'powers' as used in Section 13 (5). Thus, suppose the proviso had been in these words, 'provided that in the case of tenants who are refugees from Eastern Pakistan, the Court shall dismiss the suit for ejectment, on half the amount in arrears being deposited'. Here the power given by the proviso would be as much a power of granting relief against ejectment as the power in the preceding words of Section 14 (3); and would certainly be included in the words 'powers.....given by Section 14', as used in Section 18 (5). As the Act stands however, the proviso gives no power of relief against ejectment. . The fact that the proviso is part of the section cannot therefore in my opinion in any way affect the interpretation of the word 'powers' in Section 18 (5).

35. The very language of the proviso throws considerable light on the question. When Section 18 (5) says: 'the Court shall exercise the powers of granting relief against ejectment given by Section 14 of this Act.....' obviously it means the powers given to the 'Court'. The first part Of Sub-section (3) of Section 14 does give a power to the Court. The proviso, it is important to notice, does not even mention the word 'Court'. It does not say that the Court shall not have any such power. It merely mentions some cases in which the tenant shall not be entitled to the benefit of the exercise by the Court of the power mentioned in the main part of the sub-section. The manner in which the power is given to the Court in the first portion of Sub-section (3), while the proviso, without saying anything about the Court's powers, says that 'the tenant shall not be entitled to the benefit thereof' in certain cases, cannot, in my judgment, be lightly brushed aside. The very form of the proviso justifies the conclusion that all the power for granting relief against ejectment is given in the first part of the sub-section and that the words in the proviso have nothing to do with the connotation of that power. The giving of power and the definition of the scope of the exercise of the power are to my mind two distinct and different things.

36. What is perhaps even more significant is the use of the words 'the benefit of protection against eviction under this section' in the proviso. These words clearly show that the legislature has in its mind a clear picture of the totality of the benefit

of protection Under Section 14; and then goes on to say that certain tenants will not get the benefit of that protection. When the legislature with this clear picture in its mind of the totality of 'the benefit of protection against eviction' under Section 14, uses in a later section, namely, Section 18 (5) of the Act, the words 'the powers of granting relief against ejectment' given by Section 14', I find it impossible to say that it meant different things. To my mind 'the benefit of protection against eviction under this section' as used in the proviso to Sub-section (3) of Section 14 is exactly the same as benefit of the 'power of granting relief against ejectment given by Section 14'. I do not see how it can be possibly said that the legislature in using the words 'the benefit of protection against eviction under this section' in the proviso, was including the limitation of the proviso in the connotation of the words used. It must necessarily follow that the words 'the powers of granting relief against ejectment given by Section 14 of the Act' used in Section 18 (5) as well as the words 'benefit of protection against eviction' used in the proviso to Sub-section (3) of Section 14 mean the power of the Court to dismiss the suit on the tenant depositing the sum specified in an order within the time fixed in an order, the sum being calculated in accordance with the provisions of Sub-section (1) of Section 14.

37. My conclusion, therefore, is that on the plain and natural sense of the words used, the phrase 'the powers of 'granting relief against ejectment given by Section 14' mean the power of dismissing a suit for ejectment on payments of arrears of rents with interest and costs, calculated 'in accordance with the provisions of Section 14 (1), being made within the period fixed by an order in accordance with the provision of Section 14 (2) wholly regardless of whether there have been three defaults of two months each within the last eighteen months.

38. Turning now to the words 'followed the provisions of that section as far as may be necessary', I am of opinion that these words do not in any way modify the meaning indicated above. For myself, I am inclined to the view that the use of the words 'as far as may be necessary' is merely short for 'as far as may be necessary for granting relief, and indicates that the legislature did not intend that those provisions of Section 14 -- whether enacted in the form of a proviso or not -- which are not necessary for the purpose of granting relief, should be applied. In this view,

I hold that this further phrase 'following the provisions and procedure of that section as far as may be necessary', confirms my conclusion mentioned above as regards the meaning of the words 'powers of granting relief against ejectment given by Section 14', instead of modifying it.

39. It is said, however, that if the intention of the legislature was that the powers of granting relief against ejectment given by Section 14 of the Act should be exercised in all cases which otherwise come under Section 18 (5) -- irrespective of any defaults within the meaning of the proviso to Section 14 Sub-section (3), the obvious way of expressing that intention would be by saying in Sub-section (5) that the Court shall grant relief in the same manner as on an application under Section 18 (1). It is, in my opinion, wholly fallacious to argue that words should not be held to have a particular meaning because other words could have been used to express that meaning. It seems to me that a very good reason for giving a reference to 'the powers of granting relief against ejectment given by Section 14 of the Act' in Sub-section (5) instead of mentioning the powers of relief on an application under Section 18 (1), would be that in Sub-section (5) of Section 18 pending suits are being provided for and pending suits are also the subject-matter of Section 14 of the Act.

40. It is next argued that the intention of the legislature could not possibly be that in all cases under Section 18 (5) the powers of granting relief against ejectment shall be exercised regardless of the fact that there had been defaults within the meaning of the proviso to Sub-section (3) of Section 14, as this would result in a discrimination between tenants against whom a suit was pending within the meaning of Section 18(5) and a tenant against whom a suit is brought after the 1950 Act came into force. Assuming 'A' to be a tenant against whom a suit within the meaning of Section 18 (5) is pending -and 'A' has made three defaults of two months each in payment of rent after 30-11-1950, and 'B' a tenant against whom a suit is- brought after 30-3-1950, for ejectment, and who has made three similar defaults of two months each in payment of rent. 'B' will clearly not be relieved against ejectment under Section 14, but 'A' will be entitled to such relief on the interpretation of Section 18 (5) which I have given above. It is contended that this would be unreasonable discrimination in favour of the tenant against whom the

suit had been brought when 1948 Act was in force, and could not have been intended.

41. In the first place, I must say that the canons of construction of Statutes do not permit the Court to take the reasonableness or unreasonableness of the consequence of interpretation as a factor for deciding on the correct interpretation. Whether the result is reasonable or not is in substance a question of expedience and it is not for the Court to dabble in it. It is, in my judgment, always useful for Courts to remember the observations of Lord Halsbury in --'Janson v. Driefontein Consolidated Mines Ltd.', (1902) AC 484 at p. 491 (H), where he said;

'What politicians call expedience often depends on momentary conjunctures, and is frequently nothing more than the finespun speculations of visionary theorists, or the suggestions of party and faction. If expedience, therefore, should ever be set up as a foundation for the judgments of Westminster Hall, the necessary consequence must be that a Judge would be at full liberty to depart to-morrow from the precedent he has himself established to-day; or to apply the same decisions to different, or different decisions to the same circumstances, as his notions of expedience might dictate.'

In the same vein are the oft-quoted observations of Parke B., In -- 'Egerton v. Brownlow', (1853) 4 HLC 1 (I):

'It is the province of the statesman, and not the lawyer, to discuss, and of the Legislature to determine, what is the best for the public good, and to provide for it by proper enactments. It is a province of the Judge to expound the law only; the written, from the statutes; the unwritten or common law, from the decisions of our predecessors and of our existing Courts, from text-writers of acknowledged authority, and upon, the principles to be clearly deduced from them by sound reason and just inference: not to speculate upon what is the best, in his opinion, for the advantage of the community.'

As was said by Lord Halsbury in -- 'Inderwick v. Tatchell', (1903) AC 120 at p. 123 (J):

'..... even if I thought the result was unjust there is no canon of construction which entitles me on that ground to alter my construction of the words as they stand.'

It is well to remember that these observations are as true for the Indian system of law as they are in England. In the voyage of discovery of the intention of the legislature, we should, if possible, avoid the rock of 'consideration of reasonableness of the consequences'.

42. Even, therefore, if I thought that the interpretation which I have held should be given to the words of Section 18 (5) on a proper natural meaning of the words has the consequence of apparently unreasonable discrimination between tenants in suits brought when the old Act of 1948 was in force and tenants in suits brought after the 1950 Act came into force I would not consider it a ground for altering that interpretation.

43. In my opinion, however, it is not right to say that there can be no good reason for making a distinction between tenants against whom suits were brought when the 1948 Act was in force and tenants against whom suits are brought after the 1950 Act came into force. In many, at least, of the suits which are pending from before the date on which 1950 Act came into force it is likely that the long pending litigation has itself made it difficult for the tenant to pay rent regularly; in suits brought after the Act of 1950 came into force the reasons for these defaults might have appeared to the legislature to be considerably less. Again, in many of the cases coming under Section 18 (5) the position will be that a decree for ejectment has already been passed. Defaults in payment of rent in such cases even after the amending Act can hardly be considered to be of the same degree of culpability in payment of rent in pending suits brought under the 1950 Act. It does not seem to me at all unreasonable that considerations such as these would weigh with the legislature in making a distinction between persons against whom suits have been brought when the 1948 Act was in force, and persons against whom suits are brought after the 1950 Act came into force, as regards the penalty for defaults in payment of rent.

44. As I have already emphasised, the reasonableness or otherwise of the consequence should not be taken as a guiding factor in the interpretation of

statutes. If indeed reasonableness of the consequence were to be considered, I would point out that on the interpretation that powers of granting relief against ejectment mean 'power subject to the proviso to Section 13(3)', the position would be that if a tenant 'A' against whom a suit within the meaning of Section 18(5) is pending has not paid the rent for, say, April 1950 to September 1950, he would not be protected against eviction. Before the amending Act--Act 62 of 1950--the nonpayment of what was formerly rent for the premises could, not be considered default in payment of rent, as the tenancy had already been ipso facto determined. The Amending Act, however, substituted for the definition clause of the word 'tenant' a new clause under which 'every person whose interest in the premises has been ipso facto determined under Sub-section (3) of Section 12, West Bengal Premises Rent Control (Temporary Provisions) Act, 1948) is a tenant. It is important to note that the Amending Act further provides that the new definition clause 'shall be deemed always to have been substituted'. The consequence of this last provision requires careful consideration. Obviously, in view of this provision, we have to 'deem' that 'A' whose tenancy had been ipso facto determined under Section 12 of the 1948 Act, was still a 'tenant' in April 1950; we have also to 'deem' that rent was payable by 'A' for April 1950; and if the rent remained unpaid up to the 15th May--or within the time specially fixed,--we are bound in law to deem that there was default in payment of rent of April 1950. Similarly, if the rents for May, June, July, August, September and October have remained unpaid, when the suit against 'A' comes before the Court for consideration under Section 18(5) on or after 30-11-1950, we are bound to 'deem' in law that there have been defaults in payments of rent of these months. If the correct interpretation of Section 18(5), is that the powers of granting relief are to be exercised subject to the proviso in Section 14(3), the Court is bound to refuse relief to 'A'.

45. That this is the position in law, was recognised by P.B. Mukharji J. in -- ' : AIR1951 Cal539 (C)' and very rightly--I say with great respect--His Lordship considered this to be a 'nonsensical result'. P.B. Mukharji, J. considered that this nonsense resulted from the fact that the Legislature committed a 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. His Lordship further considered that in this 'desperate position', it was the Court's duty to relieve people of the consequences of the blunder, and decided to hold that

'retrospective condonation of the 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 and 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.'

46. With very great respect, I think that His Lordship has not here been able to resist the temptation to legislate the object being the very laudable one of preventing a 'nonsensical result'. I would respectfully add that the 'nonsensical result' is the consequence of putting a strained Interpretation in disregard of the plain and natural sense of the words, on Section 18(5), & not any 'blunder' of the legislature. If I had thought that the plain and natural sense of the words of Section 18(5) meant that the 'powers' are to be used subject to the proviso in Section 14(3) and could not mean anything else, I should have felt bound to allow the result which P.B. Mukharji, J. rightly characterises as 'nonsensical'--to ensue. The observations of the Supreme Court in -- 'Nalinaksha Bysack's case (G)' may in this connection be usefully borne in mind. Delivering the judgment of the Court, Das J. said: 'It must always be borne in mind, as said by Lord Halsbury in -- 'Commissioner for special purpose of Income Tax v. Pensel', (1891) AC 531 at p. 549 (K) that it is not competent to any court to proceed upon the assumption that the Legislature has made a mistake. The Court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature, the Court cannot, as pointed out in -- 'Cranferd v. Spooner', 4 Moo Ind App 179 (L), aid the Legislature's defective phrasing of an Act, or add and amend, or by construction, make up deficiencies which are left in the Act. Even where there is a 'casus omissus', it is, as said by Lord Russell of Killowen in -- 'Hansraj Gupta v. Dehra Dun Mussoorie Electrical Tramway Co. Ltd.', , for others than the Court to remedy the defect', -- ' : [1953]4SCR533 (G)'.

47. Another result that will follow from the view that powers in Section 18(5) have to be exercised subject to the proviso in Section 14(3), will be a distinction between a tenant against whom a decree for ejectment has been passed, and who has thereafter filed an application under Section 18(1) which remains pending on 30-11-1950, and a tenant against whom a similar decree has been passed, but who has filed an appeal, which is pending on 30-11-1950, and who therefore comes within Section 18(5) of the Act, as amended. In the former case, the tenant would be entitled to relief against ejectment, on payment of arrears up-to-date with costs and interest, even though he did not pay the rents from April to October 1950; in the latter case, he would not be so entitled. I cannot persuade myself that the fact that one tenant has filed an appeal against the decree for ejectment and the other has not, could be considered by the legislature a good reason for which the law should be so very different for the two. For, I cannot believe that the legislature would think of punishing people for exercising the right of appeal that the law has given.

48. If I thought it necessary to consider for ascertaining the object of the legislature, the reasonableness or otherwise of the consequences that flow from the two rival interpretations of Section 18(5), I would hold without hesitation that the interpretation that the powers are to be exercised subject to the proviso would produce nonsensical and unreasonable consequences, while the interpretation that the powers are to be exercised regardless of the proviso would not produce any unreasonable consequence. If reasonableness & unreasonableness of consequences has to be accepted as a guide, I am therefore led to the conclusion that the correct interpretation is that 'powers' in Section 18(5), are not subject to the proviso to Section 14(3).

49. My own view, however, is that it is neither necessary nor proper for the Court to interpret a statute, according to its own view of the reasonableness of consequences. The 'reason' of the legislature is not necessarily the 'reason of the Court'; and to think that what we as Judges consider reasonable must have been the intention of the legislature is wholly fallacious.

50. In the present case, I have no hesitation in coming to the conclusion that if the words in Section 18(5) are read in their natural and ordinary sense, without attempting to read hidden meanings therein, they clearly mean that the exercise of powers of granting relief are not subject to the proviso to Section 14(3).

51. I have only to add that in my view, even if it were held that on the language of the section, 'the powers under Section 18(5)' mean powers, subject to the proviso, the practical position will be that it will be impossible to apply the proviso. For, if I assume, as I must, that the view as laid down in a number of decisions of this Court, -- 'Debendra Kumar v. Harinath Das', Civil Revn. No. 877 of 1951 (Cal) (N); -- 'Krishna Gopal v. Banerjee Mukherjee and; Co.', Civil Revn. No. 769 of 1951 (Cal) (O); -- 'Krishna Chandra v. Bepiri Senary', S. A. 1031 of 1951 (Cal) (P) and -- 'Amal Krishna v. Chandi Charan', : AIR1953 Cal145 (Q), that only defaults prior to the institution of the suit come within the proviso to Section 14(3), the defaults committed after the 1950 Act being ex hypothesi 'after' the institution of the suit will not come within the proviso. Defaults prior to the 1950 Act, will not come within the proviso, because they are not defaults under Section 12(1)(i). The practical consequence obviously is that it will not be possible to apply the proviso to any case under Section 18(5).

52. In my view the cases, -- ' 0043/1953 : AIR1953 Cal136 (A)' and -- ' : AIR1951 Cal539 (C)', in so far as they held that the proviso to Section 14(3) applied to the exercise of the powers under Section 18(5), West Bengal Premises Rent Control Act of 1950, were wrongly decided.

53. My answer to the question referred to the Full Bench therefore is:

In exercising powers under Section 18(5) of the Rent Act of 1950, as amended, the Court must disregard the proviso to Sub-section (3) of Section 14, and must dismiss the suit in so far as it is against ejectment, on payments of arrears of rent, interest and costs, calculated according to Section 14(1) within the time fixed by the Court in accordance with Section 14(2)--whether or not there have been three defaults in payment of rent referred to in Clause (i) of the proviso to Sub-section (1) of Section 12.

P.b. Mukharji, J.

54. To the West Bengal Premises Rent Control Act belongs the signal distinction in this age of being the most misunderstood statute of the State. On the interpretation of all its important sections, Courts and Judges have widely and frequently disagreed. Its meaning lies in the lap of the clouds of heavens beyond the ken of the astutest judicial vision. In the struggle for construction, judicial heroism has valiantly battled in difficult situations, to produce swans out of geese. One such situation is now before this Full Bench. The goose is the proviso of Section 14(3) of the Rent Act of 1950.

55. Landlords and tenants are condemned by this statute to the vaguest speculation of their essential rights in an atmosphere of needless uncertainty. Frequent Full Bench and Special Bench had to be constituted to discover and re-discover the meaning of this Act over which other learned Judges had differed. Those unfortunate enough to have to receive the impact of this Act have the unenviable task of finding their way in a perilous voyage through the ocean of bewildering and conflicting judicial opinions, Full Bench and Special Bench constructions, not to speak of the shoals of bad drafting that swim all over and across the Act.

56. Notwithstanding such divergence of judicial opinions on almost all its significant provisions, the Legislature in its swift wisdom has just recently ordained that this state of oppressive uncertainty shall continue for another year. In, not understandably conscientious and not appreciably laborious discharge of its duties, the State Legislature by asking the people of the State to read 1954 for 1953 has chosen to continue this Act as it is with all its manifest and repeatedly declared uncertainty for thousands of people whom this Statute affects. At the moment public time of this. Court is being taken in this Full Bench of five Judges for discovering the meaning of Section 18(5) of the Act as amended and over which five other Judges have expressed themselves differently. The heavy pressure upon the Courts today to do what ought to be the work of Legislatures, is a growing, hindrance to normal administration of justice. All normal judicial work is frequently held up to find meaning of Statutes which should have been plain, and

on that ground alone to-day, there is a colossal waste of judicial time. Unless a much greater care, then so far evinced, is exercised by those solemnly charged by the Constitution with the responsible task of framing the Statutes of the land, the Courts will soon be reduced to become suburban adjuncts of an inadequate Legislature, for publishing commentaries on ill drafted and immaturely expressed Statutes in the vain hope of injecting meaning into the meaningless and of explaining the inexplicable.

57. Before the Full Bench the point of law referred for decision is:

'Whether in a suit instituted while the West Bengal Premises Rent Control (Temporary Provisions) Act of 1948 was in force and which was disposed of after the passing of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950, the proviso to Section 14(3) of the Act of 1950, would be applicable in order to give relief to the tenant under Section 18(5) of the Act.'

58. The learned Subordinate Judge from whose decision this appeal arises followed the decision of the learned single Judge of this High Court in --' : AIR1951 Cal442 (D)'. There in that case Bose J. held that the Court's power of granting reliefs under Section 14 of the Rent Act, 1950, was limited. by the proviso in that section and that Section 18(5) of the Rent Act of 1950 made the entire Section 14, including the proviso, applicable to pending suits. In an appeal from that judgment, S.N. Banerjee J. delivering judgment in the Court of Appeal in -- ' : AIR1952 Cal433 (E)' observed

'The plain meaning of Section 18(5) of the Act of 1950 is this. If you want the relief you must come within the four corners of Section 14.'

Now both these decisions of Bose J. and of the Court of Appeal were rendered on the original Section 18(5) of the Rent Act of 1950 without the amendment which now raises special difficulties on the way of applying the proviso of Section 14(3) under Section 18(5) of the amended Rent Act of 1950.

59. The conflict of judicial opinion which has led to this reference before the Full Bench is to be found in two cases. One is -- 'United Commercial Press Ltd. v.

Satyanarayan', decided by Harries, C. J. and Banerjee, J. on 9-1-1952 and reported in -- ' 0043/1953 : AIR1953 Cal136 (A). The other is -- 'Balai Lal Das v. Manick Chandra', decided, by Das Gupta and Bachawat JJ. in February 1952, reported in --- ' : AIR1952 Cal898 (B).

60. In the first decision of -- 'United Commercial Press Ltd. v. Satyanarayan Chamaria', (A) which was an appeal from one of my judgments, Harries C.J. came to the conclusion that the proviso of Section 14(3) of the Rent Act must be applied in granting relief in pending suits for ejectment under Section 18(5) of the amended Rent Act of 1950. The default in that case continued, for the period prescribed in the proviso of Section 14(3) even after the amended Act came into operation, and I held that the tenant, on that ground, was disabled from getting any relief. Harries C.J. while upholding my decision made the observation that the proviso should even include pre-amendment Act defaults, a conclusion which, I thought, was unnecessary in that case having regard to the view I took.

61. In the second decision of -- 'Balai Lal Das v. Manick Chandra (E)', the learned Judges dissented from the decision of -- ' : AIR1952 Cal433 (E)' and came to the conclusion that the proviso to Section 14(3) of the Act should never be applied when granting reliefs to tenants in pending suits under Section 18(5) of the amended Act.

62. There are, therefore, these two extreme views. One extreme view is that the proviso should be applied to all defaults whether before or after the amended Rent Act of 1950, so long as such defaults are 'for the time stated in the proviso. The other extreme view is that the proviso should never be applied in pending actions under Section 18(5) of the amended Act, whatever the defaults and whenever they may have occurred.

63. There is an intermediate view which I took in -- ' : AIR1951 Cal539 (C)'. There I held that while the proviso of Section 14(3) of the Rent Act of 1950 should not be applied to attract the pre-Amendment Act defaults, it should nevertheless be applied to attract post-Amendment Act defaults, provided of course the defaults continued after the Amendment Act came into force, for the period mentioned in the proviso. To me that still remains the only logical and permissible conclusion

justified not only by the principles of construction as I understand them, but also by the effect that such construction produces.

64. A critical examination of the reasons in support of these different views is essential to decide on the applicability of the proviso of Section 14 (3) of the Rent Act of 1950 to pending actions within the meaning of Section 18(5) of the Act.

65. I will take first the one extreme view which favours the application of the proviso to both pre-Amendment Act defaults and post-Amendment Act defaults and which view is represented by the decision in --- ' 0043/1953 : AIR1953 Cal136 (A)'. In my opinion the main defect of that view is that the construction adopted there will nullify completely the only effect which it was the avowed object of the Legislature to achieve by the amendment. A construction of a Statute which completely destroys the only purpose for which the Statute was enacted is to be discarded. The reason for saying that this construction will defeat the Statute requires to be illustrated. The Rent Act of 19150 came into force on 30-3-1S50. Retrospective condonation of the statutory forfeiture (under the Rent Act of 1948) on 30-11-1950 by the Amendment Act could not enable the tenant of the particular class, intended to be relieved by the amendment, to deposit or pay in the meantime, between the 30th March when the Act came into force and the 30th November, 1950 when the Amendment Act came into force. Neither legislative omnipotence nor judicial prowess can make time stand still. The result, therefore, is that within this period from the 30th March to the 30th November, 1950 these tenants could neither pay nor deposit rent. This period being one of 8 months would, therefore, include two monthly defaults on three occasions within a period of 18 months from the passing of the Act under the proviso of Section 14(3). No tenant, therefore, could get any relief under Section 18(5). The whole object of amendment of Section 18(5) of the Act would, therefore, be defeated by applying the said proviso to pending actions under Section 18(5) of the Act if the proviso is made to cover pre-Amendment Act defaults.

On this ground alone, I do not support the view taken by the Court of Appeal in -- ' 0043/1953 : AIR1953 Cal136 (A)', only in so far as it holds that the pre-Amendment Act defaults are attracted by the proviso of Section 14(3) in

considering reliefs to tenants in pending actions under Section 18(5) of the Amended Act of 1950. To that extent I hold the decision in -- ' 0043/1953 : AIR1953 Cal136 (A)', to be wrong and I overrule it on that point.

66. Coming now to the other extreme view represented by the decision in -- ' : AIR1952 Cal898 (B)', I find myself unable to reach the extremity of that decision. I will analyse the reasons given in that decision for holding that the proviso should never be applied at all to a case of pending action, under Section 18(5) of the Amended Act in order to show why I disagree with its wide conclusions.

67. The ground put forward in that decision is that this proviso does not aid relief but defeats relief. The language of Section 18(5) of the Amended Act is emphasised as having said 'powers of granting relief against ejectment'. It is, therefore, said that the proviso does not represent such power. This is the first reason set out in that judgment for not applying the proviso to suits under Section 18(5),

68. The next reason in that judgment is that the language of Section 18(5) of the Amended Act says 'following the provisions and procedure of that section as far as may be necessary' with special emphasis on the words 'as far as may be necessary'. The idea is to say that not the entirety of Section 14 of the Act but only the necessary portion of Section 14 of the Act is to be followed and in determining what is necessary, one has only to see what is necessary to grant the relief and not to defeat the relief. It is a kind of combined utilitarian and eclectic application of Section 14.

69. These are the two main reasons in that judgment on the problem of construction.

70. The third reason in that judgment is one of imagined parity between Section 18(1) and Section 18 (5). It is said that the application of the proviso of Section 14(3) of the Act to pending actions under Section 18(5) of the Act as amended will make a great difference between the cases where decrees have been made under Section 18(1) and the cases where suits are pending under Section 18(5). The argument is to suggest that if in cases where decrees have already been made the

Court is given power to vary or rescind such decrees under Section 18(1) of the Act without considering the default mentioned in the proviso of Section 14(3) then how very much more should the proviso of Section 14(3) be excluded in granting relief under Section 18(5) of the Act as amended where the suit is pending and no decree has been made at all.

71. On a very careful and close consideration of these various reasons, I am unable to accept any one of them as sound and compelling. Dealing with the reasons in the way that I have set out above, I will take up, first, the points of construction.

72. The proper construction of the words 'the powers of granting relief against ejectment given by Section 14 of this Act' occurring in Section 18(5) of the amended Rent Act of 1950 is the basic question in this controversy. In my view the correct approach for this purpose is to examine the whole of Section 14 with all its parts and read them together in order to find out what the powers of granting relief against ejectment are under that section. In order to do so, I am of the opinion that the proviso should be read along with the other substantive parts of the section. In my judgment, the 'powers of granting relief against ejectment given by Section 14 of the Act' cannot be dissociated from the proviso of Section 14(3) because I consider that proviso to define the basic content of the court's power of relief. Limitation on the power provides the very context of the power itself. The antithesis defines the thesis.

In construing and deducing the power to grant relief against ejectment, Section 14 of the Act must therefore be read with particular reference to this proviso. Power to grant relief cannot be considered in the abstract. Such power must be understood with reference to the objects for whom the power to grant relief is exercised. That object here is always the tenant. To say that the proviso is framed 'tenantwise' in the sense that tenants with particularly specified defaults are disabled from obtaining the benefit of protection against eviction whereas the other sub-sections of Section 14, specially Sub-sections (1), (2) and (3), are framed 'Courtwise' in the sense that they alone indicate what power of relief the Court exercises, is to make a distinction without a difference. That will be a verbalistic approach which misses

the substance for the form. The whole of Section 14 begins with the marginal note 'when a tenant can get the benefit of protection against eviction' and the one and only provision where it is said that he cannot get such protection appears to me to be the very central core of that section when its power to grant relief is being deduced. Power of the Court to grant relief postulates exclusion of non-relievable cases. Reduced in simple terms, the whole Section 14 read with the proviso means that there is no power of relief in the Court if the tenant has suffered defaults for the period specified in the proviso. Power to grant relief and the power to defeat relief, in this particular context of legal construction represent the two sides of the same medallion. One predicates the other.

73. In my opinion, there are inherent and inescapable indications in Section 18(5) of the amended Rent Act of 1950 to show that the proviso was intended to apply in case of post-Amendment-Act defaults. That internal evidence is supplied by the significant words 'for the said purpose shall make such order for amendment of pleadings'. In ordinary language these words mean that in this kind of pending actions, for the purpose of relief Court is given express power to amend the pleading. No power to amend pleading need have been given by a Special Statute because the Civil Procedure Code has given liberal powers of amendment to Courts. The reason here is obvious. Court's usual power to amend pleadings is not understood in relation to granting reliefs against ejectment. Why should pleadings require amendment for the purpose of granting relief? The only conceivable case is the one where in such pending action the disputed issue of fact is raised whether there has been default for the period mentioned in the proviso of Section 14(3) so as to disable tenant from obtaining the relief against ejectment. In order to determine if relief can be granted this issue should be raised properly on pleadings, specially when such issue is disputed. Being an action instituted under the 1948 Rent Act, and pending when Bent Act of 1950 came into force, the pleadings will naturally have no reference to such default of the proviso and will therefore require to be amended to raise the issue whether the defaults have occurred for the period mentioned in the proviso or not. There can be no other conceivable instance where pleadings can require amendment in such pending actions for the purpose of relief. This consideration, therefore, also supports the construction that the power of relief cannot be considered without the proviso in

the context of this section.

74. It has been argued on the strength of the word 'follow' in Section 18(5) of the Act that the Court shall exercise the powers of granting relief by 'following' the provisions and procedure of Section 14 'as far as may be necessary' and, therefore, the Court need not apply Section 14 but only 'follow' it. Whether one 'follows' or one 'applies' the provisions and procedure in Section 14 of the Act, it should not in substance make a difference in the consequence. The point is, as I have said before, what is the total power of granting relief under the section? Is that power of granting relief to be construed in the abstract or is it be construed in its total context under Section 14 which states in the proviso to Sub-section (3) that a tenant with a default for a particular period shall not obtain the benefit of protection under that section? The disability is basic and is statutory. It is in my judgment the inescapable mandate upon, the Court to see that in the garb of granting relief under Section 14 of the Act it does not grant it to a person who, the Statute says expressly, should not have the relief. To do more will be to legislate. To quote the recent words of the House of Lords in --'Magor & St. Mellows Rural District v. New Port Corporation', (1952) AC 189 (R) where Lord Simonds criticised the view of Denning L. J. which I quoted previously in my decision in -- ' : AIR1951 Cal539 (C)', Lord Simonds describes Lord Justice Denning's rule of construction as 'naked usurpation of legislative function' by the Court and observes at p. 191 of -- '(1952) AC 189 (R)':

'The Court having discovered the intention of Parliament and of Ministers too must proceed to fill in the gaps. What the legislature has not written, the Court must write. This proposition which restates in a new form the view expressed by the Lord Justice in the earlier case of -- 'Seaford Court Estates Ltd. v. Asher', 1949-2 All E R 155 (S), cannot be supported. It appears to me a naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an Amending Act.'

It will not do for the Court, therefore, to say that its power of granting relief is unqualified and only a certain class of tenants is disabled from getting relief. Court exercises its power and jurisdiction not in vacuum but in express relation to persons and subject matter. If the persons and subject-matter come within the meaning of the proviso, then the Court has no power of granting relief under Section 14 of the Act. It is not for the Court to dispense with or suspend the operation of parts of the Statute. That will be in the words of Lord Simonds 'naked usurpation of legislative functions' by the Court.

75. To hold that even If the defaults continued for the period mentioned in the proviso to Section 14(3) after the amended Act of 1950 came into force, such defaults should be disregarded in granting relief in pending actions to tenants under Section 18(5) on the ground that the proviso does not relate to power of relief but to its deprivation, will, apart from the question of construction, lead to the most illogical conclusion. That illogical conclusion is that if instead of prosecuting the pending suit under Section 18(5) of the Amended Rent Act of 1950, the plaintiff allows it to be struck off for non-appearance or default of the plaintiff and a new suit is filed by the plaintiff on the next day, then in such new suit there is no defence against ejectment on the same facts of default because the Amended Rent Act of 1950 is in operation and the ejectment decree must follow for the proviso to Section 14(3) will then be a clear bar to any relief against ejectment. Yet quite the opposite result is achieved by granting relief against ejectment if the plaintiff prosecutes the pending suit under Section 18(5) of the Act according to this construction which excludes the operation of the proviso even in case of such defaults. To my mind, this is too illogical a conclusion. A construction which produces such a result must on that ground also be rejected.

76. The general Scheme of the Rent Act of 1950 does not encourage this situation. In this connection the opening words of Section 12 of the Rent Act of 1950 and the scheme of exclusions provided therein are important. In simple terms they mean that no decree for the recovery of possession of any premises shall be made by any court except where the amount of two months' rent legally payable by the tenant is in arrears subject to provisions of Section 14 of the Act In the case, therefore, of a default mentioned in the proviso of Section 14(3) a decree

for ejectment can be made after the Act came into operation.

77. To adopt the construction laid down in --'Balai Lal Das v. Manik Chandra', (B) will be to adopt still more startling consequences. It makes defaulters under the amended Rent Act of 1950, have far worse terms than the chronic defaulters who began their defaults under the Rent Act of 1948 and continued them for the period mentioned in the proviso of Section 14(3) even after the operation of the Act as amended. By this interpretation the former will be ejected and the latter will be relieved against ejectment. I cannot persuade myself to believe that the legislature intended to produce these insensible results in this case and make such a raging discrimination.

78. Therefore this construction is not Justified by the consequences it produces.

79. Now about the argument of uniformity. The gist of this argument is based on the tacit assumption that relief against ejectment where there have been decrees for ejectment and where suits are still pending must be equated to the same level and same consideration and in that light Section 18(1) and Section 18(5) of the amended Act of 1950 must be so construed as to produce equal result under the two Sub-sections (1) and (5) of Section 18 although they are worded differently. In other words the point of this argument is that if in cases where decrees of ejectment have already been made, relief under Section 18(1) is granted against ejectment without considering the default mentioned in the proviso of Section 14(3), then there is all the greater reason to exclude the proviso of Section 14(3) in granting relief under Section 18(5) where the suit is pending and no decree has been made. The argument is more plausible than sound.

80. The obvious answer to this line of reasoning is that where the decrees have been made, they are rescinded and varied without the application of the proviso of Section 14(3) on the simple ground that such judgment-debtors could not act by paying or depositing the rent according to the amended Act of 1950 as tenants, whereas tenants in pending actions and pending appeals under Section 18 (5) of the amended Act of 1950 can pay or deposit and thus avoid the default mentioned in the proviso of Section 14(3) of the Act. Such payment or deposit can be made by reason of the definition of 'tenant' in Section 2(II)(ii) of the Amended Act of 1950

read with Ss. 19 and 20 of the Rent Act of 1950. A construction which permits one to take advantage of one's own wrong or to impair one's obligation under a current Statute should be discarded. In a pending suit or appeal of the class mentioned in Section 18(5) of the amended Act of 1950, it is in my judgment the duty of the tenant if he wishes to avoid ejectment after the amendment came into force on 30-11-1950 to pay or deposit the rent as he is entitled under the amended Act and not continue the default for the period stated in the proviso and thus disable himself from obtaining the relief. That is the crux of the reason why Judgment-debtors under Section 18(1) of the amended Act are relieved without application of the doctrine of default as contained in the proviso to Section 14(3), and tenants in a pending action under Section 18(5) of the amended Act are not. In the one case the tenants never get a chance, and in the other the tenants do, That is good enough reason for making this difference. This I consider to be a complete answer to this argument of uniformity because it has been suggested in the judgment under consideration and elsewhere that Section 18(5) and Section 18(1) must be put on a par and should be regarded as entirely complementary. To do so would be, in my opinion, not to construe these sections but to legislate according to our private notions of some fancied analogy between Section 18(1) and Section 18(5), a course which, in my view, this Court is not permitted to adopt. As Lord Simonds observed, elsewhere quoted in this Judgment:

'And it is the less justifiable when it is guess work with what material the Legislature would, if it had discovered the gap, have filled it in.'

The basic assumption, therefore, that Judgment-debtors and tenants in a pending action should be put on the same level is in that context entirely erroneous & if there is that intention, the Statute contains a gap and it is not for this Court to fill in but for the Legislature or else it will be mere speculation or what Lord Simonds calls 'guess work' which this Court should avoid. According to my interpretation there is no such intention in the Statute to pare off Sub-sections (1) and (5) of Section 18.

81. The other answer to this argument of uniformity between Section 18(1) and Section 18(5) of the Act is to say that if that was the intention of the Legislature,

then the simplest way to express such uniformity would have been to say in Section 18(5) that such tenants would also get the same relief as in the foregoing Sub-sections (2), (3) and (4) of Section 18. That would have meant about the same reliefs as under Sub-sections (1), (2) and (3) of Section 14 without the proviso. If uniformity between Section 18(1) and Section 18 (5) was the objective then the circumlocution adopted in Section 18(5) to say so would be quite inexplicable. The true answer is that they were not intended to be uniform and that for the reason I have discussed and that is why they are so differently expressed.

82. In my opinion, the intermediate view which I took in -- ' : AIR1951 Cal539 (C)' is the only view that can be consistently taken with regard to the construction of Section 18(5) of the amended Act with reference to the proviso of Section 14(3) of the Act. I have set forth, briefly, the reasons why in my view the proviso to Section 14(3) of the Rent Act of 1950 should not be applied to the defaults in pending suits under Section 18(5) of the amended Rent Act of 1950 where such defaults were only pre-Amendment Act defaults. The reason for not applying the proviso is the reason not to render Section 18(5) plainly impossible. I will, therefore, avoid that construction. But only to this extent to avoid making nonsense of the amendment and no more. To do more will, as I have said, be to legislate under the cloak of interpretation. I do not see however any reason why I should avoid application of the proviso if the defaults continue for the offending period after the passing of the amended Act of 1950 even though such pending actions are of the class mentioned under Section 18(5) of the amended Act. To exclude the operation of the proviso to such class of pending actions where the pre-Amendment Act defaults continue and extend for the period mentioned in the proviso of Section 14(3) of the Act after the amended Act comes into operation, will be in my judgment unjustified both by the principle of construction and by the results that such construction produces.

83. Section 14 of the Act relates to suits instituted under the Rent Act of 1950. Section 18(5) of the amended Rent Act expressly states that the Court should follow the powers of granting relief given in Section 14 in the case of pending actions mentioned under Section 18(5). A rational conclusion to draw from this express reference to Section 14 is that pending actions of the nature mentioned in

Section 18 (5) of the amended Act of 1950 are intended to be brought on a par with the suit for ejectment instituted under the Rent Act of 1950. If otherwise, there was no need for any express reference to Section 14 for the reasons I have already given. To hold that the proviso of Section 14(3) applies to cases of suits instituted after the Rent Act of 1950 where the defaults mentioned in the proviso have occurred, but that it does not apply to the cases of defaults under Section 18(5) of the amended Act where there were the same defaults which continued after the Act for the necessary period, is to pave the way for a discrimination which does not appear to be sensible. Why should such a difference be made between tenants with defaults after the amended Rent Act of 1950 and tenants with defaults starting from before the Rent Act of 1950 but continuing and existing for the period mentioned in the proviso even after the operation of the amended Act of 1950? It is said that in the case of statutory forfeiture for the non-payment of the rent for the three consecutive months under the Rent Act of 1948 there was forfeiture for a shorter duration than the period of non-payment for six months under the proviso which under the Rent Act of 1950 disables a tenant from the relief against ejectment. True that is so. It is, therefore, that the pre-Amendment Act defaults should not be taken into consideration under the proviso. The other reason for this exclusion of pre-Amendment Act defaults, is supplied by the fact of construction that the proviso by its very nature could not refer to the defaults under the Rent Act of 1948 for the simple reason that such defaults are created for the first time by the Rent Act of 1950. But then the answer is, therefore, irresistible that the proviso should apply to defaults occurring after the amended Act came into operation, specially when Section 14 is made expressly applicable to pending actions under Section 18(5) of the amended Rent Act of 1950. To make an eclectic construction of Section 14 of the Act by excluding the proviso on the ground that it does not relate to a power of relief, is indefensible on construction and is to suspend the Statute and, therefore, to legislate. After all, the Rent Act of 1950 is clearly enacted in express terms that a tenant with the default mentioned in the proviso is not entitled to any protection under Section 14 of the Act.

84. I, therefore, hold that -- ' : AIR1952 Cal898 (B)' was wrongly decided in so far as it held that the proviso of Section 14(3) was never applicable to pending actions under Section 18(5) of the amended Rent Act 1950, and the reasons given there

cannot be supported and should therefore be overruled.

85. My own view on this point is fully set forth at pages 548-551 in -- ' : AIR1951 Cal539 (C)'. The reasons I have given there are not met by any arguments that I have heard in this Pull Bench, and I am, therefore, unable to modify or alter the conclusion I reached there in that case. I have heard nothing in the arguments made at the Bar before this Full Bench and I have seen nothing in the decisions since my own in that case which either induces me to alter my views or which meets any of the reasons that I had set out in that judgment delivered long before the two conflicting decisions of the Court of Appeal leading to this Pull Bench.

86. For these reasons I, therefore, entirely agree with the answers given in the judgment just delivered by my Lord the Chief Justice to the question before this Pull Bench.

Sarkar, J.

87. I agree with the view entertained by my brother Das Gupta.

88. Section 12 (3), West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, provided that

'(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, if a tenant fails for three consecutive months to pay or deposit in accordance with, the provisions of this Act any rent payable by him in respect of any premises which has accrued due after the commencement of this Act, the interest of the tenant in such premises shall on such failure be ipso facto determined and he shall no longer be deemed to be a tenant.'

On 6-1-1950, the respondent in the appeal in which the present reference has been made, filed a suit against the appellant for ejectment on the ground that his tenancy under the respondent had been, ipso facto determined under this section by reason of non-payment of rent for the months July to September 1949. While this suit was pending in, the trial Court, an Act called the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 came into force on 31-3-1950 and

it repealed the Act of 1948. The Act of 1950 as it originally stood did not affect the suit. It was however amended on 30-11-1950 by Act 62 of 1950. Section 18 (5) of the Act of 1950 as amended by the latter Act, provides as follows:

'In all applications made under Sub-section (1) of Section 18 of the said Act, which are pending at the commencement of this Act and in all suits referred to in Sub-section (5) of the said section which are pending at such commencement, the said Act as amended by this Act shall apply and shall be deemed always to have applied.'

89. After the amendment, the section became applicable to the suit and thereupon the appellant made an application to the trial Court for relief under it. This application was dismissed on 6-2-1951 and the Court subsequently passed a decree in ejectment. From that decree an appeal has been taken to this Court. The Division Bench hearing the appeal finding itself faced with two conflicting Bench decisions of this Court mentioned in the order of reference, framed the following question for decision by a Full Bench:

'Whether in a suit instituted while the West Bengal Premises Rent Control (Temporary Provisions) Act of 1948 was in force and which was disposed of after the passing of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950, the proviso to Section 14 (3) of the Act of 1950 would be applicable in order to give relief to the tenant under Section 18 (5) of the Act.'

90. I think it is perfectly clear that Section 18 (5) does not make the whole of Section 14 applicable. That indeed was held in the Full Bench decision of (His Court in -- ' : AIR1952 Cal879 (P)', where it was said (p. 883) that the terms of Section 18 (5)

'do not provide that Section 14..... as such, shall apply but only that the Court shall exercise the powers of granting relief against ejectment given by Section 14 and, to that end, shall follow the provisions and procedure of the section as far as may be necessary.'

What then are the powers of granting relief against ejectment given by Section 14? That section, so far as is relevant, is set out below: (After Quoting Section 14 (1) (2) and (3), the judgment proceeded:).

91. The Court's power hence is to calculate the amount of arrears of rent and add thereto certain interest and costs and if the tenant pays the total amount within fifteen days, to dismiss the suit in so far as it is for ejectment. That is all the power of granting relief against ejectment given by Section 14. That is the power, therefore, that the Court acting under Section 18 (5) must exercise. It would follow that the proviso has no application when the Court is acting under Section 18 (5) because it does not give the Court any power to relieve against ejectment. That seems to be the plain meaning of the language used.

92. But it is said that the proviso is an integral part of the section and must be read with it and that, so read, the power contained in the section becomes as circumscribed by the proviso. The power to be exercised under Section 18 (5), therefore, is the power as so circumscribed. That is the view taken by P.B. Mukharji J. in -- ' : AIR1951 Cal539 (C). I feel the greatest difficulty in accepting that view. It may be true that in construing a section containing a proviso, the whole is to be read. But here we are not construing Section 14. We are concerned only with finding out the power of granting relief against ejectment given by Section 14. If the proviso does not help in ascertaining that power, it is of no consequence for our present purpose even though it is a part of Section 14. With such a part of Section 14 we are not now concerned.

93. Again, it appears to be a settled rule of construction that a proviso would not apply unless the section to which it is tacked, applies. That I find to be the uniform decision of the Courts of law in England. I will cite two of these decisions. In 1844 in -- 'Ex parte Partington' (1844) 6 QB 649 (T), the Court had to deal with a section which had given a certain power to the Commissioner in Bankruptcy and which contained a proviso limiting the scope of that power. It appeared that the Commissioner had done something which, if it had been done under the section, would have been illegal because of the proviso. The Court nevertheless, refused to apply the proviso as the Commissioner had not acted under the section but by a

power generally incidental to his jurisdiction. It was held that the proviso was in restraint of the power given by the section and not of any other power. In -- 'Thompson v. Dibdin, 1912. AC 533 U., Lord Ashbourne said at p. 544,

'Much, if not the main, reliance has been placed by the appellant's counsel on the first proviso to Section 1. I do not think that the argument founded on it is well founded. It is opposed to the settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso..... It is not a separate or independent enactment. The words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context.'

94. Now, the proviso in this case says that the power to grant relief against ejectment shall not exist in certain circumstances. Read as dependent on the main enactment to which it is attached and in the context in which it appears, as it has to be, it means that in these circumstances, the power to grant relief against ejectment which would have 'arisen under Section 14' shall not arise. If it circumscribes any power, it circumscribes only the power arising under the section. It cannot, therefore, affect or circumscribe a power to grant such a relief arising otherwise. To allow it to do that would be to treat it as an independent enactment and this is forbidden. In the case in hand the power of granting relief against ejectment arises under Section 18 (5): that indeed, is the hypothesis on which the question referred to the Pull Bench is based. Plainly, in the present case the power could not arise under Section 14, for the power under that section arises in a suit to which Section 18 (5) would not apply and, therefore, in a case contemplated by Section 18 (5) since the power could not have arisen under Section 14, it must arise under Section 18 (5). It follows that the proviso cannot affect the power arising under Section 18 (5). Section 14 has been referred to only as the place where the power is enumerated and not for finding out whether the power arises or does not arise. This rule of construction has also been expressly embodied in the proviso, for it states that, the tenant shall not be entitled to the benefit 'under the section'. It does not purport to touch a benefit not 'under the section' and hence a benefit under Section 18 (5).

95. Furthermore, it seems to me that the proviso does not really circumscribe the power given by Section 14. I have already stated what the power is. The proviso does not affect the quantum of that power. It only states that in certain circumstances, the power, which would have arisen under the section, shall not arise. It therefore circumscribes only the conditions relating to the existence of the power itself. I am not concerned now with the conditions relating to the existence or non-existence of the power contained in Section 14. The Court has the power because Section 18 (5) gives it and not because of anything contained, in Section 14. Considered symbolically the matter becomes clear. It was said that the power given by Section 14 was the net power, A-B, B being the proviso. What then is A? It must be, if anything, the circumstances which under Section 14, give rise to the power. With these circumstances I have nothing to do. The power does not arise because of them -- indeed they do not exist here -- but because of Section 18 (5) that is to say because of a wholly different set of circumstances. Thus A disappears and therefore A-B also disappears. The result is that there is no such thing as net power in Section 14, which only the Court acting under Section 18 (5) can exercise.

96. Nor do I think that the provision at the end of Section 18 (5) relating to amendment of pleadings leads to the conclusion that the proviso applies because, as it was said, amendments of the pleadings would be necessary to raise the issue as to whether the case comes within the proviso. It seems to me that if amendments are necessary for this purpose they will as well be necessary for deciding how much is in arrears and for inserting claims for rent in the place of claims for mesne profits. The provision for amendment does not inevitably point one way. That provision is therefore of no help in deciding the present question.

97. There seems to me to be yet another reason why the proviso should not be held to be applicable when the Court acts under Section 18 (5). In my view taking Section 14 by itself, the defaults mentioned in the proviso must have occurred before the institution of the suit mentioned in the section. Section 14, Sub-sections (1), (2) and (3) say that in a suit of a certain kind the Court shall give relief against ejectment. So in such a suit it is the defendant's right to get the relief. If this is the defendant's right in the suit, he has it as soon as the suit is filed. He can come the

next day the suit is filed and ask for the relief. Indeed the Court is bound to give it to him even without his asking. If the circumstances mentioned in the proviso exist at the institution of the suit, the tenant never acquires any right to relief against ejectment, neither is the Court bound to give him such relief. But suppose -- as will most often happen -- the Court is unable to attend to the matter till sometime later and by that time the circumstances mentioned in the proviso have come into existence. Is it to be said that the tenant has lost a right because the Court could not attend to the matter earlier? That of course cannot be. It is important to note that the section does not require the tenant to move the Court for the relief. It would be a somewhat strange construction of the section to say that it gave a shifting right, that under it a right arises at one stage of the suit and disappears at a later stage.

Section 14, Sub-sections (1), (2) and (3) without the proviso says that a tenant is entitled to the right. When does this title arise? Since it arises from the nature of the suit, it must arise at the institution of that suit. The proviso says that in certain circumstances the title shall not exist. When is it to be decided whether the title arises or not, if not, at the institution? Is it when the tenant seeks to enforce his right? Is it when the Court comes to consider the question? The section does not say either of these. It therefore has to be decided at the institution of the suit. If then it has to be decided at the Institution of the suit whether the right arises or not, the circumstances disentitling the tenant to the right must also have occurred at that time. This view has been expressed by some Judges of this Court. See --' : AIR1953 Cal145 (Q)'. Now it is impossible in a case contemplated by Section 18 (5) that the circumstances disentitling the tenant to the right could have happened at the institution of the suit. The proviso requires at least six months' rent legally payable to remain unpaid and in the case of a tenant whose tenancy has been ipso facto determined under the Act of 1948 at most three months' rent legally payable can remain unpaid before the suit for ejectment against him is filed under that Act. If then the proviso cannot in any event hit such a tenant, it cannot be Bald to apply to him.

98. I have so long considered the matter as one of construction and have arrived at the conclusion that the proviso is not applicable when the Court acts under

Section 18 (5). That conclusion. seems to me to receive support from the anomalous position that would result from the application of the proviso to a case of the kind in hand. I will now try to show this. The proviso says that the tenant shall not be entitled to the benefit of protection against ejectment if he makes default in payment of rent referred to in Section 12 (1), prov. (i) on three occasions within a period of eighteen months. Section 12 (1) prov. (i) is in these terms:

'(i) Subject to the provision of Section 14, where the amount of two months' rent legally payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract, or in the absence of such contract by the fifteenth day of the month next following that for which the rent is payable or by not having been validly deposited in accordance with Section 19.'

Therefore the rent in contemplation in Section 12 (1) prov. (1) and hence in the proviso to Section 14, is rent legally payable by the tenant. I want to note here two matters. First the default in payment of rent contemplated by the proviso must be failure to pay or deposit within the time limited by the contract of tenancy or by the Rent Act where there is no provision in the contract. If the tenant could pay or deposit all arrears at any time and thereby avoid being in default the proviso would be made nugatory. The Act makes this quite clear. Secondly, Section 19 of the Act of 1950 makes provision for the deposit of rent with the Controller in certain cases and Section 20 (3) provides that such deposit will, subject to certain conditions, amount to payment to the landlord.

99. Section 18 (5) deals with a case where the tenancy has been ipso facto determined before the Act of 1950 came into force. The tenant in such a case had failed to pay three months' rent legally payable by him and this had happened before the Act of 1950. After the failure to pay the three months' rent the tenancy was ipso facto determined by the Act of 1948 and thereafter, therefore, no rent could be legally payable by the tenant. Section 12 (3) of the Act of 1948 puts that beyond doubt. It is not necessary to decide whether the default contemplated by the proviso would include these three months' default. It seems to me, however, that it would not but I do not wish to be understood as having come to that finding. On 31-3-1950, when the Act of 1950 came into force therefore, default may be

said to have been made in payment of at most three months' rent. As it originally stood, the Act of 1950 made no alteration in the position of the tenant that we are considering, so that after 31-3-1950 he continued to be a person who was not a tenant. He could not, and, therefore, did not, pay any rent. This continued till 30-11-1950 when the amending Act, Act 62 of 1950, took effect. Section 2 of the amending Act provides as follows:

'2. In Section 2, West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (hereinafter referred to as the said Act), for Clause (11) the following clause shall be substituted and shall be deemed always to have been substituted, namely: (11) 'tenant' means any person by whom rent is, or but for a special contract would be, payable for any premises, and includes: (i) any person who is liable to be sued by the landlord for rent; and

(ii) any person whose interest in the premises has been ipso facto determined under Sub-section (3) of Section 12, West Bengal Premises Rent Control (Temporary Provisions) Act, 1943.'

100. Under this new definition, since 30-11-1950 the person we are dealing with, became a tenant and is to be deemed to have been a tenant from 31-3-1950 if not from an earlier date. It may be that it is to be deemed that rent was legally payable by him from the date last mentioned. If rent was not so payable by him of course no further question arises, for then the proviso to Section 14 can never hit him. I will, however, proceed on the basis that rent was and was deemed to have been payable by him. Up to 30-11-1950, he, however, had not paid rent because he could not do so. After 30-11-1950 assuming the contract was to pay the rent by the fifteenth of the following month, which would be a very liberal assumption to make, he could pay or deposit in respect of the previous period, only the rent for November, payment or deposit after 30-11-1950 for all other months prior to that month would be too late under the contract assumed or under the Act of 1950. On 30-11-1950, therefore, the position is that the tenant would be deemed to have made default in payment of rent for seven months—from April to October, 1950. In arriving at this figure I have left out the defaults occurring prior to 31-3-1950 for the sake of simplicity and avoiding disputed questions. On 30-11-1950, therefore, the

tenant has made such defaults that the proviso hits him. Now it will be remembered that Section 18 (5) was amended by Act 62 of 1950 and it was only thereupon that it was made applicable to the case of a tenant whose tenancy had been ipso facto determined. So the occasion for applying that section to a case of the kind in hand arose only on 30-11-1950 when the amending Act came into force. The position of the tenant on that date would, however, be that he would be inevitably hit by the proviso he having made default in paying 7 months' rent, assuming the proviso was intended to apply to him. The result of that would be to render Section 18 (5) nugatory. That of course could not have been the intention of the legislature. In order to give effect to Section 18 (5) it should, therefore, be held that the proviso does not apply to a case coming under that section. It is contended, however, that there is another way out. It is said that the defaults occurring between March 31, and November 30, 1950 are not to be taken into account in applying the proviso for the tenant could not have avoided committing them. It seems to me that this way out of the difficulty should not be preferred for it does violence to the plain meaning of the language used, specially as a more unobjectionable solution of the difficulty is possible, namely by saying that the proviso does not apply. The amending Act plainly makes the non-payment of rent between March 31 and November 30, 1950 defaults for the purpose of the proviso. The suggested method would make us ignore this plain meaning. Such a method is undesirable and should be avoided if possible. I have already shown that it is so possible.

101. However this may be, a greater difficulty arises when we consider the defaults occurring subsequently to 30-11-1950. It is said that in respect of these defaults there is no difficulty and the proviso would be applicable, since the tenant can prevent them from happening by paying the rent to the landlord or depositing it under Section 19 within due time. This may be so where the suit is pending in the trial Court. Section 18 (5), however, also applies where the suit is pending in appeal. Is it to be said that the tenant who is a party to the appeal can pay or deposit rent for the period subsequent to 30-11-1950 in a case where the appeal is pending after that date? I do not see that this can be said. How can rent be said to be legally payable by such a tenant? The amended definition of the word tenant includes a person whose tenancy has been ipso facto determined. But the

amended definition' does not include a person whose tenancy has not only been ipso facto determined but who has also suffered a decree in ejectment based on such determination. The tenant who is a party to the appeal which we are now considering, is such a person. The situation would be absurd if after the decree in ejectment the liability to pay rent subsisted and in this respect it can make no difference that an appeal from the decree is pending. We come, therefore, to the position that no rent is legally payable by a tenant who has suffered a decree in ejectment. When an appeal is pending from the decree the tenant continues not to be liable to payment and cannot hence commit any default within the meaning of the proviso in respect of any period after 30-11-1950 --that being the period which I now have under consideration. The result, therefore, is that when Section 18 (5) applies to an appeal the tenant can never be hit by the proviso. If he can never be hit by it, it is not applicable to him. It then comes to this that under Section 18 (5) the proviso would be applicable if the suit is in the trial stage but would not be applicable if it is pending in appeal. Such a position could not have been in the contemplation of the legislature and an interpretation which leads to it cannot be correct I am, therefore, again led to the position that the proviso is not applicable when the Court exercises its powers under Section 18 (5).

102. It is said that if it was intended that the proviso in Section 14 shall not apply why was it not said that the Court shall exercise the powers in Section 18, Sub-sections (1), (2), (3) and (4)? These subsections are set out below.

'18 (1) Where any decree for recovery of possession of any premises has been made on the ground that the interest of the tenant in such premises has been ipso facto determined under the provisions of Sub-section (3) of Section 12, West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, but the possession of such premises has not been recovered from the tenant, the tenant may apply to the trial Court within sixty days of the coming into force of this Act for vacating the decree for ejectment against him and within such period no order for delivery of possession shall be made by any Court, nor if an application is made by the tenant under this sub-section till the application has been dismissed under Sub-section (4).

(2) The Court shall, as early as may be, serve notice of the application on the landlord and after hearing the parties if the landlord appears, determine the amount of rent which would have been payable by the tenant and would be in arrears if the tenancy continued unbroken upto and including the month in which the order stated hereafter is to be made, and order the tenant to pay the said amount as also the amount of interest on such arrears of rent calculated at the rate of nine and three-eighths per centum per annum together with such costs, if any, as may be adjudged to the landlord, within such time, not later than forty days from the date of the order, as the court may fix.

(3) If the tenant pays the said sum within the time fixed, the court shall vacate the decree for ejectment with all consequential orders, and the tenancy shall continue as if it never terminated.

(4) On failure of the tenant to make the payment within time his application shall be, dismissed with such costs as the court may award to the landlord.'

103. It may be answered that if it was intended that the proviso shall apply why was it not said that Section 14, Sub-sections (1), (2) and (3) with the proviso shall apply. This sort of argument does not seem to me to help. In any event Section 18, Sub-sections (1), (2), (3) & (4) could not have applied to a case under Section 18(5) because under the earlier sub-sections provision had to be made for setting aside a decree.

104. It is also said that if the proviso does not apply to a case under Section 18(5), a distinction would be made between a person whose tenancy has been ipso facto determined under the Act of 1948 and a tenant who has made default under the Act of 1950 and that the former though a worse offender, would be put in a more favoured position. I am unable to see that the creation of a distinction is a sufficient ground for not following the plain meaning of the language of the statute and the recognised rules of construction -- matters which I have already discussed. In any event a distinction must exist between the two cases. In the former case the benefit is given though no payment was made between March 31 and November 30, 1950 but not so in the latter case. Furthermore why should a distinction not be made? Section 18(1) which deals with a case which may be worse than a case

under Section 18(5) does make the distinction, so why should Section 18(5) not make the same distinction? If the resulting distinction is to decide the question of interpretation, Section 18(1) contains sufficient indication of the legislature's intention that in cases of the kind in hand, the distinction shall be made. Again if the proviso is made applicable to a case under Section 18 (5) a distinction would be made between this sub-section and Sub-section (1) of the same section. How can that be justified?

105. The question as framed by the referring Bench would include a case where the decree had been passed between the commencements of the Act of 1950 and the amending Act. Such a case was not before that Bench and the question applying to such a case does not arise at all. I shall, therefore, confine my answer to the question framed as relating to a case where the decree is passed after the amending Act. I like, however, to express my views but only tentatively as no argument was heard on it, with regard to the case where the decree is passed between March 31 and November 30, 1950. It seems to me that in such a case the question as framed would not arise. Section 18(5) only applies when the suit or appeal is pending on 31-3-1950 and gives the Court hearing the suit or appeal as the case may be certain powers. Now when the decree is passed after 31-3-1950 a suit no doubt was pending on that date but it has been disposed of without reference to Section 18(5) -- indeed at a time when the section as then framed would not have applied to it. There is no more any suit in which powers under Section 18 (5) can be exercised. An appeal no doubt has been taken from that decree but Section 18(5) does not apply to that appeal, as it applies so far as appeals go, to appeals pending on 31-3-1950. In an appeal not pending on 31-3-1950 no question of acting under Section 18(5) arises at all. It may be that when a decree is passed between the two dates Section 6 of the amending Act would apply and that by its terms might bring in Section 18(5). It is not necessary to say anything more on the matter as the question as framed does not refer to a power arising under Section 18(5) of the Act of 1950 when Section 6 of Act 62 of 1950 applies.

106. I have now said all that I have to say on the matter and I am of the opinion that the question should be answered in the negative. In my view the case of -- '

0043/1953 : AIR1953 Cal136 (A)' so far as it decides the question referred to the Full Bench was wrongly decided and' that -- ' : AIR1952 Cal898 (B)' was correctly decided.

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