APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Chainani

1952 March 31

BHAGWANT RAMBHAU KHESE (ORIGINAL PLAINTIFF), APPELLANT *v.* RAMCHANDRA KESHAO PATHAK (ORIGINAL DEFENDANT), RESPONDENT.*

Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. LVII of 1947), ss. 12 (3), 50—Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance (Bom. Ordinance No. I of 1949), s. 4—Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act (Bom. III of 1949), s. 13—Suit in ejectment filed before Act LVII of 1947 came into force—Prospective effect of s. 12 (3)—Amendment of Act pending appeal—Effect of amendment —whether Act made retrospectively applicable.

As held in *Nilkanth Ramchandra* v. *Rasiklal,*[1] sub-ss. (2) and (3) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, are in terms prospective, and this position has not been affected by the amendment of the Act by the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1949.

A landlord sued his tenant to recover possession of the premises let out to him on the ground that the tenant had committed default in payment of rent. The trial Judge found the default proved but he dismissed the suit on April 18, 1946, taking account of the fact that the entire amount of rent due till then and the costs of the suit had been produced by the tenant in Court pending the hearing of the suit. The landlord preferred an appeal against that decree, and pending the appeal the Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947), came into force on February 13, 1948. The appellate Judge relying upon the decision of the High Court in *Surjit Lal* v. *Chandrasingh,*[2] held that the tenant was entitled to invoke the benefit of s. 12 (3) of Bombay Act LVII of 1947 even in appeal and therefore he dismissed the appeal on August 30, 1948. The landlord appealed to the High Court but before his appeal came on for hearing Bombay Act LVII of 1947 was amended on February 3, 1949, by Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance (I of 1949). On March 31, 1949, the Ordinance I of 1949 was repealed by the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act (III of 1949), which incorporated all the amendments made by the Ordinance. The decision of the High Court in *Surjit Lal* v. *Chandrasingh*[2] was also in the meantime reversed by the Supreme Court in *Chandrasingh* v. *Surjit Lal.*[3] In appeal:

Held, (*i*) that although the decision in *Surjit Lal* v. *Chandrasingh*[2] relied upon by the lower Court was reversed, the dispute between the parties ought to be decided in the light of the amendments made by

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*Second Appeal No. 122 of 1949

[1] (1948) 51 Bom. L. R. 280 (F. B.)

[2] (1948) F. A. No. 365 of 1947, decided by Weston and Dixit JJ., on April 1, 1948 (unrep.)

[3] (1951) 53 Bom. L. R. 532, S. C.

Ordinance No. I of 1949 and Bom. Act III of 1949 which were expressly given retrospective effect;

(*ii*) that the words "suit or proceeding" occurring in the proviso to s. 13 of Bom. Act III of 1949 included appeals and execution proceedings, and the proviso applied to decrees passed in appeals as much as to decrees passed in suits;

(*iii*) that inasmuch as the decree under appeal was passed within the period mentioned in the proviso, the landlord was debarred thereunder from challenging it on the ground that the provisions of Bom. Act LVII of 1947 should not have been applied to his appeal in the lower Court;

(*iv*) that even if the provisions of Bom. Act LVII of 1947 applied generally, that did not preclude the landlord from contending that the provisions of a particular section of the Act relied upon by the tenant did not apply to his case;

(*v*) that whereas the proviso to s. 50 of Bom. Act LVII of 1947 made the provisions of the Act retrospective in a general way, sub-ss. (2) and (3) of s. 12 thereof were in terms prospective and that position was not altered by the amending Act;

(*vi*) that, therefore, the lower Court was wrong in applying s. 12 (3) to the suit which had been filed before the Act came into force, and its decision should be set aside.

SECOND APPEAL against the decision of L. Y. Ankalgi, Esquire, Judge of the Court of Small Causes with Appellate Powers at Poona in appeal from the decision of B. K. Khade, Esquire, Civil Judge (Junior Division) at Poona.

Suit in ejectment.

The suit premises which were situate at Poona belonged to one Bhagwant (plaintiff). Ramchandra (defendant) hired them at a monthly rent of Rs. 7, but as his rent fell in arrears the plaintiff gave him a notice, dated April 9, 1945, terminating his tenancy.

On July 4, 1945, the plaintiff filed the present suit against the defendant to recover possession of the premises. The defendant *inter alia* pleaded that after the plaintiff gave him the notice he had paid all the arrears of rent and that the notice was waived by acceptance of rent.

The trial Judge found against the defendant on all the pleas made by him but taking into account the fact that the defendant had produced in Court the entire amount of rent due till the end of March 1946 and costs of the suit, he allowed him to continue in possession on condition that he paid future rent on or before the 10th of each month. This decree was passed on April 18, 1946.

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On appeal, the Judge of the Court of Small Causes, Poona, with Appellate Powers, applied the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which had come into force in the meantime, and on August 30, 1948, he dismissed the plaintiff's claim for possession.

The plaintiff appealed to the High Court.

Y. V. Chandrachud, and *C. N. Bhalerao,* for the appellant.

P. S. Joshi, for the respondent.

GAJENDRAGADKAR J. The short question which this appeal raises is whether a tenant who had been sued in ejectment by his landlord before the Bombay Rents, Hotel and Lodging House Rates Control Act, Bombay Act LVII of 1947, came into force is entitled to the protection of s. 12 (3) of the said Act. The landlord had sued the tenant to recover possession of the premises let out to him on the ground that the tenant had committed default in the payment of rent and the tenancy had been duly determined by a notice given by the landlord in that behalf. The defence was that the rent had been regularly paid, that the notice which had been given by the landlord had been subsequently waived by him by accepting rent from the tenant and that the suit was not maintainable without the Rent Controller's certificate. The premises were let out to the tenant on a monthly rent of Rs. 7 inclusive of electricity charges. The trial Judge found against the defendant on all the pleas made by him. He, however, took into account the fact that the entire amount of rent due till the end of March 1946 and the costs of the suit had been produced by the tenant in the Court pending the hearing of the suit. He, therefore, held that the tenant had expressed his readiness and willingness to pay and so he refused to pass a decree for ejectment in favour of the landlord. He directed the defendant to pay the rent on or before the 10th of every month and added that if the defendant failed to pay the rent regularly, the landlord would be entitled to take possession by executing the decree. This decree was passed on April 18, 1946.

The landlord preferred an appeal against this decree. Pending the appeal Bombay Act LVII of 1947 came into force on April 13, 1948. The lower appellate Court agreed with all the findings of fact recorded by the learned trial Judge and would have reversed his decree but for the fact that a deci-

sion of this Court in *Surjitlal Ladhamal Chhabda* v. *Chandrasingh Manibhai*[1] was cited before him on behalf of the tenant. This was a judgment delivered by Weston and Dixit JJ., in *Surjitlal's* case in which they had applied the provisions of the new Act to a first appeal which had arisen from a suit filed long before the new Act came into force. Relying upon this judgment the lower appellate Court held that the tenant was entitled to invoke the benefit of s. 12 (3) of Bombay Act LVII of 1947; since the tenant had paid the whole amount of the rent due until the date of the trial Court's decree and the costs of the suit, the tenant was naturally given the protection of the provisions of the said sub-section. The result was that the appeal was dismissed and the decree passed by the trial Court was confirmed, though for entirely different reasons. This decree was passed on August 30, 1948. It is this decree which is challenged by the landlord before us in the present second appeal.

Now, in dealing with the question as to whether the provisions of s. 12 (3) of Bombay Act LVII of 1947 apply in the present case it is necessary to refer to another decision of this Court and the amendment of the Act to which it led. After Weston and Dixit JJ. had delivered their judgment in *Surjitlal's* case a Full Bench was constituted to consider the same question in *Nilkanth Ramchandra* v. *Rasiklal.*[2] The point which the Full Bench had to consider was whether having regard to the provisions contained in the proviso to s. 50 of the Act the other provisions of the Act were applicable to the suits which were not required to be transferred under the said proviso. This proviso as it originally stood required that all suits and proceedings except appeals and execution proceedings as described in the proviso which were pending in any Court shall be transferred to and continued before the Courts named in the Act and that all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings. Weston and Dixit JJ. had held that though the proviso expressly excluded appeals and execution proceedings from its purview, there was no justification for not allowing the application of the provisions of this Act to appeals, since appeals are in substance a continuation of the suits themselves. The Full Bench was

(1) (1948) F. A. No. 365 of 1947, decided by Weston and Dixit JJ., on April 1, 1948 (Unrep).

(2) (1948) 51 Bom. L. R. 280, F. B.

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called upon to consider whether this view was right. The Full Bench held that this view was not justified by the words of the proviso to s. 50. According to the Full Bench the condition precedent for applying the provisions of the Act to the suits and proceedings was that these suits and proceedings should be pending in Courts from which they were required to be transferred to other Courts named in the Act. Suits and proceedings which were not required to be transferred because they were already pending in Courts which were competent to try them even under the new Act fell outside the scope of the proviso altogether and so there was no occasion to apply the provisions of the new Act to such suits. Incidentally the Full Bench also considered the question as to whether s. 12 was retrospective or not. Section 12 (*1*) provides that the landlord would not be entitled to eject his tenant if the tenant pays or is ready and willing to pay standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Act. Sub-section (*2*) lays down that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in s. 106 of the Transfer of Property Act. The Full Bench took the view that this sub-section was clearly and unambiguously prospective, and that even if the other provisions of the Act were applicable to suits and proceedings which fell within the purview of the proviso to s. 50, s. 12 (*2*) would not be applicable. In other words, though the other provisions of the Act may be treated as applicable restrospectively to suits and proceedings mentioned in the said proviso, this particular provision of s. 12 (*2*) would be an exception and it would not apply restrospectively at all. The Full Bench reached the same conclusion with regard to the provisions contained in s. 12 (*3*). This last sub-section lays down that no decree shall be passed in any such suit if at the hearing of the suit the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit. The view that this sub-section also was prospective was a necessary corollary of the conclusion that s. 12 (*2*) was prospective. In

terms sub-s. (3) refers to "such suits", meaning such suits as are mentioned in sub-s. (2), and if sub-s. (2) was prospective there could be no doubt that sub-s. (3) is also prospective. In coming to this conclusion it was pointed out in the judgment of the Full Bench that the Legislature may not have intended to make any distinction between suits which were required to be transferred and those which were not required to be transferred under the provisions of the proviso to s. 50, and it was conceded that the distinction which had to be made between the two classes of suits on the words used in the proviso really amounted to an anomaly. The learned Chief Justice who delivered the judgment of the Full Bench, therefore, suggested that Legislature may put an end to this anomaly by making suitable amendments in the said proviso.

The Legislature in fact acted promptly and an Ordinance was issued on February 3, 1949; Ordinance I of 1949. It was stated in the Aims and Objects of this Ordinance that the object in issuing the Ordinance was to make it clear that the Bombay Act of 1947 applied to all suits and proceedings of the nature described in the proviso whether they were required to be transferred or not. In other words, the anomaly which resulted from the defective wording of the original proviso was corrected by the amendments made by this Ordinance. A large number of suits were pending in many Courts in the mofussil and they were not required to be transferred since the Courts where these suits and proceedings were pending were themselves competent to try similar suits under the provisions of this Act. This Ordinance effected another amendment whereby the brackets and words "(other than execution proceedings and appeals)" which had originally occurred in the proviso itself were taken out from the proviso and a provision was made in respect of these by a separate proviso. Thus this proviso laid down that nothing in the proviso to s. 50 shall apply to execution proceedings and appeals arising out of decrees or orders passed before the coming into operation of this Act and such execution proceedings and appeals shall be decided and disposed of as if the Act had not been passed. By cl 4 the Ordinance introduced another proviso, and by this proviso it was laid down that "the validity of any decree or order passed in any suit or proceeding referred to in s. 50 of this Act (Act LVII of 1947) between February 13, 1948, and the date on which this Ordinance comes into force (February 3, 1949) shall not be questioned only on the ground that such suit or proceeding

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should have been decided and disposed of in accordance with the provisions of this Act and not in accordance with the provisions of any of the enactments repealed by this Act or *vice versa.*" The proviso which has thus been added by cl. 4 of the Ordinance will hereafter be referred to as the new proviso. It would be noticed that the two dates mentioned in this proviso are significant. On February 13, 1948, the Act itself came into force, whereas the Ordinance came into force on February 3, 1949. This Ordinance was ultimately followed by Act III of 1949 which received the assent of the Governor General on March 31, 1949. This Act incorporates the amendments already made by the Ordinance and provides that the said amendments are intended to be retrospective and that they should be read as if they had been included in the original Act LVII of 1947 when it came into force.

Whilst these amendments were being made, the decision of Weston and Dixit JJ., was being challenged before the Supreme Court by the landlord (*Chandrasingh* v. *Surjit Lal*[1]). When this appeal was argued before the Supreme Court the judgment of the Full Bench of this Court in *Nilkanth Ramchandra* v. *Rasiklal*[2] was cited by the landlord and the Supreme Court in terms approved of the views expressed in the Full Bench judgment. Mr. Justice Mahajan who delivered the judgment of the Supreme Court held that as the proviso to s. 50 stood it could apply only to suits which were required to be transferred and he added that whatever the effect of the said proviso otherwise may be, the provisions of sub-ss. (*2*) and (*3*) of s. 12 were prospective and could not be applied to suits filed before the Act came into force. Incidentally, it may be mentioned that at the time of the arguments the provisions of the Ordinance were mentioned before the Supreme Court, but they had no occasion to consider the said provisions and have expressed no opinion on the effect of the amendments subsequently made by the Ordinance itself.

Mr. Chandrachud for the appellant contends that the only ground on which the lower appellate Court refused to pass a decree in favour of the landlord was that a Divisional Bench of this Court had applied the provisions of s. 12 (*3*) to a suit filed before Bombay Act LVII of 1947 came into force and his argument is, since the said decision has been reversed by

(1) (1951) 53 Bom. L. R. 532, S. C. (2) (1948) 51 Bom. L. R. 280, F. B.

the Supreme Court the decree passed by the lower appellate Court in the present case must be similarly reversed. In our opinion, however, that is not the correct position. The dispute between the parties must now be decided in the light of the amendments made by the Ordinance and by Act III of 1949 and the landlord would be entitled to succeed only if he is able to challenge the legality of the decree in spite of the provisions contained in the new proviso which has been recently introduced by the said Ordinance and Act.

As I have already mentioned, the effect of this proviso is that a decree passed in a suit or proceeding cannot be challenged only on the ground that the provisions of the new Act have been applied if the decree is passed between February 13, 1948, and February 3, 1949. In the present case the appellate decree falls within the period mentioned in this proviso. Mr. Chandrachud, however, says that a decree passed by the lower appellate Court cannot attract the provisions of this proviso because it is not a decree passed in a suit or a proceeding referred to in s. 50. Mr. Chandrachud seeks to make a distinction between suits and proceedings mentioned in s. 50 on the one hand and appeals and execution proceedings on the other. He contends that it is now made clear that nothing in the proviso to s. 50 will apply to appeals and execution proceedings and he says that the effect of this provision is to emphasise the distinction between suits and proceedings on the one hand and appeals and execution proceedings on the other. We are free to confess that we have found it very difficult to put a reasonable construction upon the new proviso. On the whole we are, however, disposed to take the view that a decree passed in appeal would come within the purview of this proviso because an appeal is a continuation of the suit. Besides, appeals and execution proceedings are themselves referred to in s. 50, though it may be for the purpose of laying down that the provisions contained in the proviso to the said section do not apply to such appeals and execution proceedings. The intention of the Legislature obviously was to avoid confusion in regard to suits and proceedings which had been filed before the new Act came into force, and it seems to us that we would merely be giving effect to that intention if we hold that the provisions of this proviso apply as much to suits filed before the Act came into force as to appeals arising from such suits, provided of course that the decree should have been passed within the period mentioned in this proviso. Besides, it has to be remembered that

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the original proviso to s. 50 as well as the subsequent amendments have expressly laid down that the provisions in the proviso would not apply to appeals and execution proceedings. This would be necessary only if the expression 'suits and proceedings' would ordinarily have included appeals and execution proceedings; if this expression had not included appeals and execution proceedings it would have been superfluous to lay down that the provisions of the proviso would not apply to appeals and execution proceedings. Therefore, the words 'suits and proceedings' must be deemed to include appeals and execution proceedings, and in that sense the new proviso must be held to apply to the decrees passed in appeals as much as to the decrees passed in the suits.

That, however, does not finally dispose of this matter. Mr. Chandrachud has further addressed to us an interesting argument on the effect of this proviso itself. Mr. Chandrachud says that all that this proviso does is to prevent a party from challenging the decree solely on the ground that the provisions of the new Act should not have been applied. Mr. Chandrachud says that he does not challenge the decree on the broad and general ground that the provisions of the new Act have been improperly applied to the appeal with which we are concerned. His argument is that even though the provisions of this new Act may in a general sense be held to be applicable, we must still be satisfied that the provisions of the particular section on which reliance is placed by the tenant apply to his case. In other words, the question as to whether the provisions of a particular section apply to a particular case either in fact or in law is outside the mischief of the proviso altogether. We think this argument is well-founded. Indeed, it is only when the provisions of the new Act are held applicable to the proceedings before us that the further question arises whether s. 12 (*3*) can be invoked by the tenant or not, and in dealing with this question we have to consider whether this section is retrospective. It is true that the effect of the provisions contained in the proviso to s. 50 is to make all the provisions of the Act generally applicable to the suits therein described and in that sense the policy of the Legislature was to make the provisions of this Act retrospective. But when we find that sub-ss. (*2*) and (*3*) of s. 12 are so worded that they cannot possibly be treated as retrospective, we must hold that these two sub-sections are an exception to the general rule deducible from the proviso

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to s. 50. That was the view which the Full Bench took in *Nilkanth's* case and that is the view which the Supreme Court have clearly approved in *Chandrasingh* v. *Surjit Lal.*[1] In our opinion as the words of ss. 12 (*2*) and (*3*) stand, there can be no doubt whatever that these two sub-sections are prospective and cannot at all apply to suits filed before the Act came into force. If that be the true position, we do not see how the appellant can be precluded from raising this point before us. The point thus raised does not amount to a plea that the provisions of the new Act should not have been applied at all. In fact, it assumes that the provisions of this Act are applicable, and on that assumption we are asked to consider whether the provisions of s. 12 (*3*) can apply. As we have already pointed out, the new proviso does not exclude the consideration of the plea that a particular section of the new Act has been improperly applied. In fact, if the trial Court or the appellate Court gives benefit of the provisions of s. 12 (*3*) to the tenant even though he has not complied with the requirements of the said sub-section, it would clearly be open to us to entertain the plea that on the facts the said sub-section has been misapplied. Similarly, if the tenant is given the benefit of this sub-section where this sub-section cannot in law apply, we would be justified in considering this plea as well. Therefore, in our opinion the new proviso does not bar the point raised before us by Mr. Chandrachud.

In construing the new proviso we have no doubt to bear in mind the fact that Legislature wanted to avoid confusion by enacting this proviso. Between the two dates mentioned in the proviso, Legislature was aware that the Courts in the State had taken two rival views as to the effect of the proviso to s. 50, and the object of the Legislature in introducing the new proviso was not to allow the decrees passed during the said specified period to be challenged only on the ground that the effect of the proviso to s. 50 had been misconstrued and the new Rent Act rather than the old had been applied or *vice versa.* But if the words used in the present proviso are clear and unambiguous, we must proceed to give them their natural meaning even though the result may be not wholly consistent with the object of the Legislature. It is well settled that if the words used in a statute are clear and unambiguous and they yield only to one meaning, Courts cannot refuse to give the words that meaning on the argument that the said

[1] (1948) 51 Bom. L. R. 280, F. B.

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meaning is not consistent with the hypothetical intention of the Legislature. If the words in question are ambiguous and are capable of two meanings, it would clearly be the duty of the Courts to assign them such meaning as would give effect to the Act and as would be consistent with the object of the Legislature in passing the Act. In the present case the challenge which is prohibited is in terms confined only to the ground that one Act rather than the other should have been applied, and as I have already mentioned the challenge before us cannot in our opinion fall within this prohibition. We have, however, carefully considered the question as to whether this view of the proviso would make the proviso altogether infructuous, and we are satisfied that it would not be so. We may in this connection incidentally refer to s. 13 of the Act. This section provides for the cases in which the landlord may recover possession of the property let out to the tenant. Amongst these cases is sub-s. (*1*) (*g*) where the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held. With regard to the class of cases falling under s. 13 (*1*) (*g*), sub-s. (2) has laid down that no decree for eviction shall be passed on the ground mentioned in cl. (*g*) if the Court is satisfied that having regard to all the circumstances of the case greater hardship would be caused by passing the decree than by refusing to pass it. Now, it is quite possible to take the view that the provisions of this sub-section can be retrospectively applied, and if they are so applied to a suit filed before the Act came into force, the party aggrieved may not be able to challenge successfully the decree passed under this subsection. In other words, this sub-section gives an illustration of the retrospective operation of one provision of the Act which cannot be challenged.

In this connection we may point out that the anomaly which apparently results from refusing the tenant the benefit of s. 12 (*3*) in cases filed before the Act came into force arises not by reason of the interpretation we are putting upon the new proviso to s. 51, but it arises from the manner in which s. 12, sub-ss. (*2*) and (*3*), have been enacted by the Legislature. When the Legislature enacted the proviso to s. 50, it was clearly intended to make the provisions of the Act applicable retrospectively. But in enacting this proviso it was not realised that there may be some sections in the Act which in terms were so clearly prospective that Courts would find it

impossible to apply those sections to suits covered by the proviso to s. 50. We have, therefore, to consider the position that whereas the proviso to s. 50 makes the provisions of the Act retrospective in a general way, s. 12, sub-ss. (*2*) and (*3*) in terms are prospective so that there can be no escape from the conclusion that despite the proviso to s. 50, s. 12, sub-ss. (*2*) and (*3*), must be prospectively applied and in that sense must be treated as an exception to the provisions of the said proviso. When the Legislature introduced the new proviso they must have been aware of this anomaly because this anomaly was pointed out in the judgment of the Full Bench in *Nilkanth Ramchandra* v. *Rasiklal*. Even so, it was not thought necessary by the Legislature to amend s. 12, sub-ss. (*2*) and (*3*), and the only action they took in the light of the said Full Bench judgment was to prevent a challenge to the decrees passed within the material period only on the ground that one Rent Act rather than the other should have been applied. We must, therefore, hold that the lower appellate Court was wrong in applying the provisions of s. 12 (*3*) to the suit which had been filed before the Act came into force.

There is one more point which may incidentally be considered and that is, whether the tenant is entitled to the protection of s. 114 of the Transfer of Property Act. This section gives jurisdiction to the Court to grant relief to the tenant against forfeiture for non-payment of rent and there can be no doubt that this power can be exercised even by the appellate Court. The difficulty in exercising this power in the present case, however, arises from the fact that it is not shown that forfeiture has been incurred as required by s. 111 (*g*) of the Transfer of Property Act. The word 'forfeiture' used in s. 114 has a technical meaning which must be ascertained by reference to s. 111 (*g*) of the said Act. Forfeiture in this technical sense is incurred in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter, and even in such a case the lessor has to give notice in writing to the lessee of his intention to determine the lease. The lease between the parties in the present case is not on the record and it is impossible to say that the requirements of s. 111 (*g*) of the Transfer of Property Act have been satisfied. No plea under s. 114 was made in the Courts below and it is obviously difficult to entertain this plea for the first time in second appeal. The plea clearly raises a mixed question of fact and law which we cannot decide in the absence of adequate material on the record.

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The result is the appeal succeeds and the decree passed by the lower appellate Court must be set aside. At our instance Mr. Chandrachud has, however, agreed not to execute the decree for six months from to-day. We would, therefore, decree the plaintiff's suit and direct that the defendant should deliver vacant possession of the premises to the plaintiff on or before October 1, 1952. During the time that the tenant would be in possession of the suit premises hereafter he will have to pay to the plaintiff by way of damages or compensation the same amount that he was paying before by way of rent. In the circumstances of this case we direct that the parties should bear their own costs throughout.

Appeal allowed.

M. W. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

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THE COMMISSIONER OF EXCESS PROFITS TAX ACT, BOMBAY NORTH (APPLICANT) *v.* KARAMCHAND PREMCHAND LTD. (RESPONDENTS)*

Excess Profits Tax Act (XV of 1940), ss. 7 and 9 (3)—Deficiency of Profits of a Company prior to its becoming a subsidiary Company—Profits made by the subsidiary Company—Whether the deficiency of profits could be set off against profits made after becoming a subsidiary Company.

In the year preceding the chargeable accounting period (Jan. 1 to Dec. 31, 1943) there was a deficiency of profits in the sum of Rs. 1,83,422 for the purpose of excess profits of Messrs. Sarabhai Ltd. During the chargeable accounting period Sarabhai Ltd. became a subsidiary company of the assessee company (Karamchand Premchand Ltd.) and made profits.

Held, that under s. 9 (3) read with s. 7 the profits of Sarabhai Ltd. for the chargeable accounting period could only be determined after deducting the deficiency of profits in the sum of Rs. 1,83,422 which under s. 7 Sarabhai Ltd. were admittedly entitled to carry forward to the next year if Sarabhai Ltd. had continued as a principal company.

In assessing the excess profits of the assessee company for the chargeable accounting period January 1 to December 31, 1943, the assessee claimed that the profits made by its subsidiary company Sarabhai Ltd., during the chargeable account-

*Income-tax Ref. No. 46 of 1951