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We are, therefore, in agreement with the view of Mr. Justice Shah that payment to one of the several joint decree-holders cannot be recognised as a payment to all (unless he is authorised to to receive such payment on behalf of all), and does not amount to a *pro tanto* satisfaction even to the extent of what is regarded to be the share in the decree of the decree-holder who receives payment. It is, therefore, not correct to say that the remaining decree-holders can maintain the darkhast only to the extent of their own shares in the decree.

The result, therefore, is that we confirm the order of Mr. Justice Shah in First Appeal No. 284 of 1949 and dismiss this letters patent appeal with costs.

Appeal dismissed.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha, and Mr. Justice Vyas.

DAYARAM KASHIRAM SHIMPI (ORIGINAL DEFENDANT), PETITIONER *v.* BANSILAL RAGHUNATH MARWADI (ORIGINAL PLAINTIFF), OPPONENT.*

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Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. LVII of 1947), s. 12 (3)—Decree for eviction for non-payment of rent—Appeal—Tenant paying arrears of rent and costs of suit before hearing of appeal—Whether appellate Court precluded from confirming decree—"Suit" includes "appeal"—"No decree shall be passed," meaning of—Whether expression includes confirmation of decree by appeal Court—Transfer of Property Act (IV of 1882), s. 114.

The words "at the hearing of the suit" occurring in sub-s. (3) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, include the hearing of the appeal arising out of the suit. Therefore, if at the hearing of an appeal from a decree for eviction passed on the ground of non-payment of rent the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit and also of the appeal, the appeal Court is precluded from confirming the decree.

Nilkanth Ramchandra v. *Rasiklal*,[1] and *Chandrasinh* v. *Surjit Lal*,[2] relied on.

Muchaya Basaya v. *Nagapaya*,[3] dissented from.

* Civil Revision Application No. 38 of 1951.

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

[2] (1951) 53 Bom. L. R. 532.

[3] (1951) S. A. No. 422 of 1950, decided by Dixit J. on Feb. 14, 1951 (Unrep.).

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Habib Ahmed v. *Keoti Kuer*,[1] *Thirthaswamiar* v. *Rangappayya*,[2] *Shrikishanlal* v. *Ramnath*,[3] and, *Chudgar* v. *Valad*,[4] referred to.

When an appeal Court confirms a decree for eviction, it in effect passes a decree for eviction, and that is the only decree which is to be executed. Hence the words "no decree for eviction shall be passed" in the said s. 12 (3) also include the stage at which an appellate Court confirms a decree for eviction.

Sakhalchand Rikhawdas v. *Velchand Gujar*,[5] *Jowad Hussain* v. *Genden Singh*,[6] *Abdulla* v. *Ganesh Das*,[7] and *Ramgopal Shriram* v. *Ramgopal Bhutada*,[8] referred to.

Juscurn Boid v. *Pirthichand Lal*,[9] and *Martand Mahadev* v. *Dhondo Moreshwar*,[10] distinguished.

Civil Revision Application against the decree passed by V. R. Saraf, Esquire, District Judge, East Khandesh at Jalgaon in appeal from the decision of J. D. Sawe, Esquire, Joint Civil Judge, (Junior Division) at Chalisgaon.

Suit in ejectment.

One Dayaram (defendant) rented a room in a house situate at Chalisgaon from Bansilal (plaintiff) at a monthly rent of Rs. 5. The tenancy commenced on November 1, 1946, and was originally to last for eleven months.

In 1949 the plaintiff filed a suit against the defendant in the Court of the Joint Civil Judge (J. D.) at Chalisgaon to recover possession of the premises together with the arrears of rent amounting to Rs. 160. The defendant denied that he was in arrears but before the hearing of the suit he deposited Rs. 80 in Court.

The trial Judge found that the defendant was in arrears of rent as alleged and that he was not entitled to the protection of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as the amount deposited by him was not sufficient to cover the entire amount of rent due and the costs of the suit. He, therefore, decreed the suit on August 17, 1950.

(1) [1946] A. I. R. All. 328.
(2) (1913) 25 Mad. L. J. 486.
(3) [1944] A. I. R. Nag. 229.
(4) (1950) S. A. No. 261 of 1948, decided by Chainani J. on Aug. 10 and Sep. 2, 1950 (Unrep.).
(5) (1893) 18 Bom. 203.
(6) [1926] A. I. R. P. C. 93.
(7) (1933) A. I. R. P. C. 68.
(8) (1933) 36 Bom. L. R. 643.
(9) (1918) L. R. 46 I. A. 52.
(10) (1920) 45 Bom. 582.

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On September 21, 1950, the defendant preferred an appeal to the District Court of East Khandesh at Jalgaon and one day previous to that he paid a further sum in the trial Court making the total deposit equal to Rs. 200 which covered all rent then due and the costs of the trial Court. The District Judge held that the additional deposit was not proved and further observed that even if it was proved he had no power to relieve the defendant against the consequences of his failure to make the necessary payment into Court before the hearing of the suit. Therefore, on October 31, 1950, he dismissed the appeal.

The defendant applied to the High Court in revision.

V. N. Lokur, for the petitioner.

R. B. Kotwal, for the opponent.

RAJADHYAKSHA J. This application has come before a Division Bench as it involves decision of a somewhat important point of law in the matter of interpretation of sub-s. (3) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The applicant before us is the original defendant who had occupied the suit premises agreeing to pay a monthly rent of Rs. 5 to the opponent-plaintiff. The tenancy commenced on November 1, 1946, and was originally intended to last for 11 months. After the expiry of that period, the tenant continued to hold over. The tenant committed a default in the payment of rent and declined to vacate the premises in spite of a notice served upon him by the plaintiff-landlord. The plaintiff alleged that he required the suit premises for his own use and occupation. The claim was resisted by the tenant on the ground that he had paid all the rent that was due and also on the ground that the plaintiff-landlord did not require the premises for his own use and occupation. Both the trial Judge and the District Judge came to the conclusion that the premises were not required by the plaintiff for his own use and occupation. The trial Court, however, came to the conclusion that the defendant-tenant had not deposited into Court all the arrears of rent and costs of the suit, in which case alone the defendant would have been entitled to claim under sub-s. (3) of s. 12 of the Act that no decree for eviction shall be passed against him. The trial Judge accordingly passed a decree for eviction as prayed for by the plaintiff-landlord.

Against that decree the defendant-tenant filed an appeal in the District Court of East Khandesh. The learned District

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Judge upheld the finding of the trial Court that the defendant had not in fact paid the arrears of rent either before or during the pendency of the suit as contended by him. It appears, however, that on the day before the appeal was filed in the District Court on September 21, 1950, the defendant had deposited into the trial Court Rs. 200 which covered all the rent due till that date and the costs of the trial Court. Thereupon a prayer was made on behalf of the defendant in the appeal Court that the defendant may be relieved against the consequences of his failure to pay into Court the arrears of rent and the costs of the suit before the passing of the decree. The learned District Judge held that the defendant had not deposited into Court all the arrears of rent and the costs of the suit. But he further went on to say,

> "Assuming, however, that necessary amount has been deposited by the appellant after the decree was passed, I do not think that I have power to relieve the appellant against the consequences of his failure to make the necessary payment into Court within proper time as required by s. 12 (*3*) of Bombay Act LVII of 1947. It should be noted that the appellant was represented by a pleader in the Court below. It cannot therefore be said that he did not know what the consequences would be if he did not pay up all the arrears of rent and the costs of the suit at or before the date of hearing. For these reasons, I hold that the appellant is not entitled to be relieved and cannot be relieved."

In the result therefore the learned District Judge confirmed the decree for eviction which was passed by the trial Court and dismissed the appeal. Against that order this application has been filed in revision.

Mr. Lokur for the applicant-tenant first pointed out that the learned District Judge was in error in holding that the whole amount due on account of arrears of rent and costs of the suit had not been paid. It is true that the defendant did not produce in the District Court the receipt which was passed by the trial Court in acknowledgment of the payment of Rs. 200 on the 20th of September 1950. Mr. Lokur has not been able to give any reason as to why the receipt was not produced. But in view of the receipt it cannot be disputed that the payment was in fact made on September 20, 1950, i.e., one day before the appeal was filed in the District Court on September 21, 1950. There is a statement to that effect in paragraph 8 of the appeal-memo. and an affidavit was also filed in the District Court to the effect that the payment had been made. The learned District Judge appears to have overlooked this affidavit and it

has not been disputed before us that the payment was in fact made even before the appeal was filed.

But then the question remains whether the payment of all the arrears of rent and costs of the suit in the Court of appeal after the decree has been passed against him by the trial Court entitles the tenant to get the benefit of sub-s. (3) of s. 12 of the Bombay Rent, Hotel and Lodging House Rates Control Act 1947. In other words, whether the defendant-tenant is entitled to have the decree for eviction passed against him by the trial Court vacated on payment of all the arrears of rent and costs of the suit in the Court of appeal before the Appeal Court passes its decree. This is the only point which has been argued before us.

The question turns upon the interpretation of sub-s. (3) of s. 12 of the Act. Section 12 runs thus:

"(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the 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 this Act.

(2) 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 v. 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction 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.

Explanation: In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-s. (2), he makes an application to the Court under sub-s. (3) of s. 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

It has been argued by Mr. Lokur on behalf of the applicant-tenant that the words "at the hearing of the suit" occurring in sub-s. (3) of s. 12 include the hearing of the appeal arising out of the decree passed in the suit. On the interpretation of these words some guidance may be obtained from authorities on the interpretation of s. 114 of the Transfer of Property Act. Section 114 of the Transfer of Property Act which enables the Courts to grant relief against forfeiture for the non-payment

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for rent also contains similar words. Section 114 of the Transfer of Property Act is as follows:

"Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred,

The words "at the hearing of the suit" have been interpreted by several High Courts, and the majority of the High Courts have taken the view that these words include the hearing of the appeal also and that therefore the payment or tender may be made at the hearing of the appeal and relief against forfeiture may be claimed under this section. In *Habib Ahmed* v. *Keoti Kuer*,[1] the Allahabad High Court took a different view viz. that the word "suit" in s. 114 of the Transfer of Property Act did not include an appeal. It held that (p. 329):

"It would be unfair to the lessor if the lessee was allowed to take advantage of that provision after a decree has been obtained.

A contrary view was, however, expressed by the Madras High Court in *Thirthaswamiar* v. *Rangappayya*.[2] In that case it was held that

"The High Court even in second appeal was not precluded from granting relief against forfeiture, because the tenant did not make an application for it in the Courts below."

A similar view was taken by the Nagpur High Court in *Shrikishanlal* v. *Ramnath*,[3]. In the course of the judgment the Division Bench observed as follows (p. 230):—

"The next argument repelled by Niyogi J. is that the arrears of rent must be deposited in Court at the first hearing of the suit. Niyogi J. has relied on the decision in *Rama Krishna* v. *Baburava*[4] which was followed in *Thirthaswamiar* v. *Rangappayya*.[2] The first case, however, was a case where two Courts below had decided that no forfeiture had been incurred and it was when the second appellate Court reversed this decision that it relieved against the forfeiture. This fact was not noticed in the next Madras case. The point is one not without difficulty because if no attempt is made in the trial Court to obtain relief against forfeiture by paying money into Court and a decree for ejectment is therefore given, it may be difficult for an appellate Court to say that the decree of the trial Court is wrong, and we think that in many cases money not offered at the time of the trial should not be received to relieve forfeiture in appeal, the more especially when the case has been fought out on

(1) [1946] A. I. R. All. 328.
(2) (1913) 25 Mad. L. J. 486.
(3) [1944] A. I. R. Nag. 229.
(4) (1912) 23 Mad. L. J. 715.

other grounds, such as denial of the plaintiff's right to sue. Nevertheless, the hearing of the suit does continue throughout the stage of appeal. It is the appellate Court's decree which supersedes the decree of the trial Court, and we are not prepared to say that an appellate Court has no power under s. 114, T. P. Act, to grant relief against forfeiture. Much less are we prepared to say that when s. 114 does not apply in its terms to the case, an appellate Court is precluded from granting relief against forfeiture for non-payment of rent if on a consideration of all the facts it considers it to be equitable."

In a recent decision of Mr. Justice Chainani in *Chudgar v. Samanbhai* v. *Valand*,[1] the learned Judge has followed the view taken by the Madras and the Nagpur High Courts, viz. that s. 114 of the Transfer of Property Act can be availed of by the defendant even in appeal. That appeal was decided by the learned Judge after Act LVII of 1947 had come into force, and apparently no plea was taken before the learned Judge that as the arrears of rent and the costs of the suit had been paid, the decree of the trial Court for eviction could not be confirmed, relying on sub-s. (3) of s. 12 of the Act. All that was prayed for was that s. 114 may be pressed into service and the relief against forfeiture may be granted even at the appeal stage. The learned Judge examined the equities of the case, and although the arrears of rent and the costs of the suit had been deposited, he declined to relieve the defendant against forfeiture, because the conduct of the defendant showed that he was trying to raise disputes with the plaintiff on various points. He therefore did not think that that was a case in which he should grant relief under s. 114 of the Transfer of Property Act. Accordingly he confirmed the order of eviction and dismissed the appeal.

In view of these decisions, it must be held that under s. 114 of the Transfer of Property Act the defendant can be relieved against forfeiture even at the appeal stage; but that it is entirely in the discretion of the appeal Court whether to grant such relief or not. It has been argued by Mr. Kotwal for the opponent-landlord that the ratio of the decisions under s. 114 of the Transfer of Property Act should not be applied to cases arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, although both s. 114 of the Transfer of Property and sub-s. (3) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, contain the same words, viz., "at the hearing of the suit." He argued with a

[1] (1950) S. A. No. 261 of 1948, decided by Chainani J., on Aug. 10, and Sept. 1, (Unrep.).

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considerable degree of plausibility that sub-s. (3) of s. 12 of Act LVII of 1947 should receive strict construction and that the words "at the hearing of the suit" must not be interpreted to mean "at the hearing of the appeal." He pointed out that under s. 114 of the Transfer of Property Act it is entirely a matter of discretion whether relief against forfeiture should be given or not, whereas sub-s. (3) of s. 12 is mandatory and no decree can be passed against a tenant if he pays all the arrears of rent and the costs of the suit. It is easier to hold, according to Mr. Kotwal, that a suit includes an appeal in s. 114 of the Transfer of Property Act, because the appeal Court in considering whether relief should be granted to the tenant or not can look to the equities of the case and adjust the equities if it decides that relief should be granted to the defendant. But under sub-s. (3) of s. 12, the Court has no choice in the matter and even when it thinks that the conduct of the defendant is such that he does not deserve any concession, it would be bound to vacate the order of eviction if the words "at the hearing of the suit" are interpretated to mean "at the hearing of the appeal" and the tenant during the course of the appeal, pays all the arrears of rent and the costs of the suit. The kind of mischief that is likely to arise if the wider interpretation is given to the words "at the hearing of the suit" is illustrated by what happened in this particular case. In this case the defendant put up a story that the money was paid to the plaintiff's wife. Then he contended that the full amount had been paid, although there was no evidence forthcoming of his having paid any amount either to the plaintiff or the plaintiff's wife. He refused to make the necessary payment before the decree was passed against him in the trial Court. When all these contentions failed, and a decree for eviction was passed, then only he made the full payment at the time of filing the appeal. If the word "suit" in this section was construed as including an appeal, it would be open to the defendant to set up all kinds of false defences to the suit and after he finds that all his pleas are rejected, then to make the payment in appeal Court after an order of eviction has been passed against him. We see a great deal of force in this argument. Another argument which was advanced by Mr. Kotwal against a wider interpretation being placed on the word "suit" in sub-s. (3) of s. 12 of the Act is this. Section 114 of the Transfer of Property Act deals with obligations arising out of a lease by a contract between the

parties, while sub-s. (3) of s. 12 deals with statutory leases arising by operation of law. Under the Act even if a contractual lease comes to an end, the defendant can continue to be a statutory tenant. This is the first concession shown to him by the Act. The second concession which is shown to him is under sub-s. (2) of s. 12. Under that sub-section, no suit can be instituted against a tenant for recovery of possession on the ground of non-payment of rent until the expiration of one month next after a 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. Sub-section (3) of section 12 precludes a Court from passing a decree for eviction even though a notice has been served under sub-s. (2) of s. 12 of the Act 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. These two latter concessions were not available to the tenant under the repealed Acts of 1939 and 1944. It was therefore argued by Mr. Kotwal that in view of these concessions the provisions of sub-section (3) of s. 12 should receive a strict construction, and the expression "at the hearing of the suit" should not be interpreted as meaning "at the hearing of the appeal" so as to give the tenant an additional concession which presumably the Act did not intend to confer upon him. There is some force in this contention also and we might have been inclined to examine the matter further, but for the fact that there is a Full Bench decision of our own Court in the matter arising under this very Act, in which it has been observed that the words "at the hearing of the suit" are capable of bearing the interpretation "at the hearing of the appeal." In *Nilkanth Ramchandra* v. *Rasiklal*[1] the Full Bench had to consider the question as to whether the Act and particularly ss. 50 and 12 were retrospective in their operation. In that case the suit and the first appeal resulting in the eviction of the defendant tenant were decided before Act LVII of 1947 came into force on February 13, 1948. In the second appeal it was urged that the rights of the parties had to be determined by the provisions of Act LVII of 1947 and not of the Act which was in force when the suit was filed and the decree was passed in favour of the plaintiff. After consideration of the provisions of the new Act, the Full Bench took the view that the provisions of the

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

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new Act only applied to what was expressly stated in s. 50 of the Act and that s. 12 of the Act was prospective and not retrospective. The benefit of s. 12 (*3*) could therefore be given only to suits which were instituted after the Act came into force. One of the arguments advanced before the Full Bench was that sub-s. (*3*) of s. 12 used the words "at the hearing of the suit" and inasmuch as an appeal was a continuation of the hearing of the suit, sub-s. (*3*) of s. 12 could be applied to the appeals also. In dealing with this argument, the learned Chief Justice observed as follows (p. 286):

> "There is a decision of a Division Bench (Weston and Dixit JJ.) which has taken the view contrary to the one we have formed of the correct view of the law. The view taken by that bench was that the whole Act was intended to be retrospective and that all pending litigation was intended to come within the ambit of the new Act. And inasmuch as an appeal is a continuation of a suit, the mere fact that a decree has been passed would not preclude a Court of appeal from applying the provisions of the new statute to the appeal when it came before it, treating the appeal as the re-hearing of the suit, and passing a decree in accordance with the law as it applied to the parties at that date. With very great respect to these two learned Judges we entirely agree with the principles of law to which they have given expression. It is perfectly true that if the Legislature retrospectively affects pending proceedings, then it would be the duty of the Court of appeal to apply the law prevailing at the date of appeal which was pending before the Court. It is also perfectly true that the mere passing of the decree does not preclude a Court of appeal from taking into consideration the change in the law effected after the passing of the decree. But all these principles of law proceed on the assumption that the legislation which the Court is considering has been made retrospective by the Legislature."

It was because the learned Judges came to the conclusion that the legislation was not retrospective in its effect that they held that the provisions of the new Act could not be applied at the appeal stage. They did not dispute the contention that the appeal was a re-hearing of the suit and if the new Act had applied to both the suit and the appeal, then they would undoubtedly have given effect to sub-s. (*3*) of s. 12 and declined to confirm a decree for eviction if the arrears of rent and the costs of the suit were paid at the hearing of the appeal. In the present case, the suit was filed and the appeal decided after the Act came into force and therefore it must be held following the dictum of the Full Bench that the words "in the suit" in sub-s. (*3*) of s. 12 will include an appeal arising out of that suit. The Full Bench were hearing a second appeal arising out of a suit,

and it was at the hearing of the second appeal that the provisions of sub-s. (3) of s. 12 were sought to be pressed into service. If the Full Bench had been of the view that the word "suit" in s. 12 (3) did not include an appeal, then on that point alone the appeal could have been rejected. It was not necessary for them to examine elaborately whether the provisions of ss. 12 and 50 were retrospective in their operation. On the plain ground that the suit did not include an appeal, it was possible to reject the defendant's contention. But because they were of the view that the word "suit" includes an appeal on the ground that an appeal is nothing more than a rehearing of the suit, they felt compelled to examine as to whether the sections were retrospective in their operation. This decision of the Full Bench has been approved of by the Supreme Court in *Chandrasinh* v. *Surjit Lal*[1]. In that case the Supreme Court were hearing the appeal against the judgment of Weston and Dixit JJ. which was disapproved by the Full Bench. In view of these decisions we are bound to hold that the words "at the hearing of the suit" in sub-s. (3) of s. 12 include the hearing at the stage of appeal.

It is further obvious that in some cases at least the provisions of sub-s. (3) of s. 12 must apply even at the appeal stage. A suit filed by the landlord against a tenant for eviction may be dismissed by the trial Court. The landlord may go in appeal and it may be that the appeal Court may be inclined to grant the plaintiff's prayer for eviction. If, at that stage at hearing of the appeal the tenant pays into Court all the arrears of rent and the costs of the suit, the appeal Court would not be precluded from passing a decree for eviction if it were held that s. 12 (3) did not apply at the appeal stage. It is true that in such a case, the decree for eviction is being passed for the first time at the appeal stage. But it would be idle to contend that the defendant is not entitled to the benefit of the provisions of sub-s. (3) of section 12 merely because the decree for eviction was about to be passed for the first time in appeal. If then the defendant is entitled to claim the benefit of sub-s. (3) of s. 12 in order to prevent a decree for eviction being passed against him for the first time in appeal, this result can follow only if the words "at the hearing of the suit" are interpreted as meaning "at the hearing of the appeal." We are therefore of the opinion that the words "at the hearing of

[1] (1951) 53 Bom. L. R. 532.

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the suit" in sub-s. (3) of s. 12 must be interpreted as including the hearing of the appeal arising from that suit.

The only decision directly bearing on this point which has been brought to our notice is that of Mr. Justice Dixit in *Huchaya Basaya* v. *Nagapaya*.[1] In second appeal which came before him, the decree of the trial Court directing eviction of the defendant tenant was passed on September 17, 1948, i.e., after the new Act came into force. That decree was confirmed in appeal by the District Court. In second appeal, which came before Mr. Justice Dixit, it was contended that the case was governed by s. 12 (3) and that no decree for eviction could be passed against him on the ground that after the trial Courts decree was signed, the amount of rent and the costs of the suit were deposited into Court on October 6, 1948. It was contended that the provisions of s. 12 (3) could not apply at the stage of an appeal. In repelling this contention, Mr. Justice Dixit observed as follows:

> "Mr. Gumaste at one time suggested that the provisions of s. 12 (3) cannot apply to the stage of an appeal. But I think this contention is not correct because it may well happen that the trial Court may dismiss the suit in which case the plaintiff may appeal and the appellate Court may pass a decree for eviction. If at that stage at the hearing of the appeal which is but a continuation of the suit the defendant tenders the amount, it can hardly be suggested that s. 12 (3) is not complied with."

It would thus appear that the learned Judge accepted the view that the provisions of sub-s. (3) of s. 12 could be applied at the appeal stage. Even so, the learned Judge dismissed the appeal for the reasons which are embodied in the following quotation.

> "But the question still remains as to whether the conditions mentioned in s. 12 (3) are satisfied. If a strict view of the provisions of s. 12 (3) is taken, the defendant cannot be said to have fulfilled the conditions mentioned in the section and I think it is not possible to avoid the strict construction and this is especially so because of the expressions in sub-s. (3) viz. no decree shall be passed in such suit, so that the payment must be at the hearing which is antecedent to the decree and once the payment is made as provided in sub-s. (3), it prevents the Court from passing a decree. Howsoever favourably I may be inclined to consider the case of the defendant, I cannot avoid the conclusion that the conditions mentioned in sub-s. (3) are not complied with in this case."

With very great respect, we think that this conclusion of his is somewhat in conflict with his view expressed earlier in the

[1] (1951) S. A. No. 422 of 1950, decided by Dixit J., on Feb. 14, 1951 (Unrep.).

course of his judgment that sub-s. (3) of s. 12 applied even at the appeal stage. It is true that in the earlier part of his judgment Mr. Justice Dixit was visualising a case where the trial Court had dismissed the plaintiff's suit, and the appeal Court was inclined to decree it and to order eviction. In such cases the payment of arrears of rent and costs of the suit could, even according to Mr. Justice Dixit, prevent a decree for eviction being passed at the appeal stage, and that could be done only if the words "at the hearing of the suit" are interpreted to mean "at the hearing of the appeal."

Mr. Kotwal for the opponent has raised another point, viz. what the Court is called upon to decide is not merely the interpretation of the words "at the hearing of the suit", but also the words "no decree shall be passed". His argument is this. The words used in sub-s. (3) of s. 12 are, "no decree shall be passed." They should not be interpreted as if the section read, "No decree shall be passed, or, if passed, shall be confirmed if at the hearing of the suit or appeal the tenant pays or tenders in Court the standard rent and permitted increases then due together with the costs of the suit." His argument is that this interpretation distinctly amounts to adding to the section the words which are not there. In substance, his contention is that the relief under sub-s. (3) of s. 12 can be given only before the decree of the trial Court is passed, and he says that this interpretation also confirms his submission that the words "at the hearing of the suit" means "at the hearing of the suit" and not "at the hearing of the appeal." We have already expressed the view that the words "at the hearing of the suit" must be held to include the hearing of the appeal, and the question is whether the expression "no decree shall be passed" precludes such an interpretation being put upon those words. It has got to be noted that sub-s. (3) of s. 12 is general in its application. It is not confined to a decree passed in the Court of the first instance. It applies to decrees passed at all stages of the litigation provided they constitute a decree for eviction. The question therefore is whether when a decree for eviction is confirmed by the appeal Court, is the appeal Court passing a decree for eviction?

Mr. Kotwal has argued that when an appeal Court confirms a decree, the decree to be executed is the decree of the trial Court and when therefore there is a decree for eviction in the trial Court, the confirmation of that decree by the appeal

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Court does not mean that the appeal Court has passed a decree for eviction. We are unable to agree with Mr. Kotwal and are of the opinion that when an appeal Court confirms a decree for eviction, it in effect passes a decree for eviction. As has been pointed out by Sir Dinshah Mulla in his Notes on s. 36, Civil Procedure Code, when the appellate Court makes a decree, the decree of the original Court is merged in that of the superior Court, and it is the latter decree alone that can be executed. When an appeal is heard, Order XLI, r. 32, requires that the judgment should confirm, vary or reverse the decree from which the appeal is preferred and the decree capable of execution is the decree of the Court of appeal. When the decree of the Court of first instance is confirmed by the High Court and the latter decree by the Privy Council, the decree capable of execution is the decree of the Privy Council. It would thus appear that the trial Court's decree is merged in the appeal Court decree and a Darkhast has to be filed for the execution of the appeal Court decree even when the appeal Court merely confirms the trial Court's decree. In *Sakhalchand Bikhawdas* v. *Velchand Gujar*[1], it was laid down by this Court that

> "...when the appellate Court confirms the decree of the Court below, the latter becomes incorporated in the decree of the appellate Court, which is thenceforth the only decree to be executed."

It is true that the trial Court's decree can be executed even when an appeal against that decree is pending. But when the appeal is decided the decree to be executed is the appeal Court's decree. Mr. Kotwal has referred us to the case of *Juscurn Boid* v. *Pirthichand Lal.*[2] At page 56, the following observations occur:

> "...Their Lordships feel no doubt that as between these two decrees is the correct view, for whatever may be the theory under other systems of law, under the Indian law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal."

Relying on these observations, Mr. Kotwal has contended that the operation of the trial Court's decree continues uninterrupted even when there is an order of the appeal Court confirming the trial Court's decree. But it will be noticed that the observations of the Privy Council quoted above were made for the purpose of computing the period of limitation under art. 97 of the Indian Limitation Act. In that case consideration was held to have failed when the sale in the Patni Taluka was set

[1] (1893) 18 Bom. 203. [2] (1918) L. R. 46 I. A. 52.

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aside and the time having begun to run from the date of the sale, limitation could not be interrupted by the fact that the sale was confirmed in appeal. This case is no authority for the proposition that even if the appeal Court confirms the decree, the decree to be executed is the trial Court's decree. Mr. Kotwal has also relied on the case of *Martand Mahadev* v. *Dhondo Moreshwar*[1]. This case merely followed the decision of the Privy Council in *Juscurn Boid* v. *Pirthichand Lal*[2], and it was held that (p. 589):—

"under Indian Law, an original decree is not suspended by presentation of an appeal nor it its operation interrupted where the decree on appeal is one of dismissal."

But that again was a case where a mistake was discovered when the trial Court's decree was passed, and it was held that the limitation began to run under art. 96 of the Indian Limitation Act from the date of the trial Court's decree and could not be interrupted either by the filing of the appeal or by the decision of the appeal Court confirming the trial Court's decree. On the other hand, it was held in *Jowad Hussain* v. *Gendan Singh*[3] that—

"when an appeal has been preferred against a preliminary decree, the time for applying for final decree runs from the date of appellate decree."

In *Abdulla* v. *Ganesh Das.*,[4] their Lordships held that

"when an order is judicially made by an appellate Court which has the effect of finally disposing of an appeal, such an order gives a new starting point for the period of limitation prescribed by art. 182 (*2*)."

In *Ramgopal Shriram* v. *Basgopal Bhutade*[5], Mr. Justice Divatia made the following observations (page 647):—

"But, apart from that, we think that even according to the general provisions of the law the decree would mean the final decree in the proceedings between the parties, and it has been recently held by our Court in *Pandharinath* v. *Thakoredas*[6] that a suit and all appeals made therein are to be regarded as one legal proceeding, and that in the legal pursuit of a remedy, suit, appeal and second appeal, are really but steps in a series of proceedings connected by an intrinsic unity. That being so, even according to the general provisions of the law, the execution of the decree would mean the execution of the final decree in the proceedings between the parties, and from that standpoint also, it is the appellate decree that has to be executed."

If then the decree to be executed is the decree of the appeal Court, then the confirmation of a decree for eviction by the

(1) (1921) 45 Bom. 582.
(2) (1918) L. R. 46 I. A. 52.
(3) [1926] A. I. R. P. C. 93.
(4) [1933] A. I. R. P. C. 68.
(5) (1933) 36 Bom. L. R. 643.
(6) (1928) 31 Bom. L. R. 484.

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appeal Court must therefore mean that it was the appeal Court's decree for eviction that was to be executed. In this sense therefore when an appeal Court confirms a decree for eviction, it, in effect, passes a decree for eviction, and that is the only decree which is to be executed.

In this view it follows that under sub-s. (*3*) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947, an appeal Court cannot confirm a decree for eviction if before the passing of the order in appeal, the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit and also appeal. In the present case the tenant has paid only Rs. 200 which represent the rents due till the decree of the trial Court and costs of the trial Court. If the tenant-appellant wants the decree to be vacated and does not desire the appeal Court or the Court of revision to confirm the decree for eviction, he must pay all the arrears of the rent together with the costs of the suit, the appeal and the revision application. For the purpose of this payment we fix the date June 23, 1952, and if by that time all the amounts due to the respondent-landlord and costs are paid, then the decree of the trial Court for eviction will be vacated. Otherwise, the decree will stand confirmed.

Order accordingly.

M. W. P.

APPELLATE CIVIL

1952

June 16

Before Mr. Justice Rajadhyaksha and Mr. Justice Chainani.

CHATURBHUJ HOTCHAND ASARPOTA (ORIGINAL ALLOTTEE), APPELLANT *v.* THE STATE OF BOMBAY AND OTHERS, RESPONDENTS.*

Bombay Land Requisition Act (XXXIII of 1946), s. 8 (3)—Bombay Land Requisition (Determination of Compensation) Rules, 1949, Rule 3—Whether allottee has right to appeal against order passed by Compensation Officer.

An allottee of requisitioned premises has no *locus standi* in the proceedings before the Compensation Officer and has no right to file an appeal under s. 8 (*3*) of the Bombay Land Requisition Act, 1948, against an order passed by the Compensation Officer.

* First Appeal No. 598 of 1950.