APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Gokhale.

SOHRAB N. TAVARIA, PETITIONER (ORIGINAL DEFENDANT) *v.* JAFFERALLI G. PADAMSI, OPPONENT (ORIGINAL PLAINTIFF).* 1956 Mar. 7

Indian Limitation Act (IX of 1904), Arts. 62, 120—Bombay Rent Control Act (Bom. VII of 1944), s. 8 (2)—Tenant's claim for deduction from rent in respect of premium—Whether barred by the law of Limitation—Period of Limitation—Quare, *Whether the Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. Act LVII of 1947) applies.*

The tenant's right under s. 3 (2) of Bombay Rent Control Act, 1944, to claim deduction from rent in respect of the premium paid by him to the landlord is subject to the law of limitation.

Diment v. *Roberts*,[1] referred to.

The period of limitation for the exercise of the right is governed by Art. 62 and not by Art. 120.

Abasbhai v. *Bhimji*[2] *Venkatarama Ayyar* v. *Kuppuswamy Ayyar*,[3] *Moses* v. *Macferlane*,[4] *Vyaravan Chetty* v. *Shrimath Deivasikamani Nataraja Desikar*,[5] followed.

Lingangouda Marigouda v. *Lingangouda*,[6] *Narayanan* v. *Chatrukutti*[7] distinguished.

Karansey Kanji v. *Velji Virji*,[8] *Bayley* v. *Walker*,[9] relied upon.

Baijnath v. *Dulari Hajjam*,[10] referred to.

CIVIL Revision Application against the decision of B. S. Kalelkar Esquire, and Earnest M. Alvares, Esquire, Judges in the Small Causes Court at Bombay confirming the decision of Champaklal G. Modi, Esquire, Judge Small Causes Court at Bombay.

The material facts are stated in the Judgment.

C. R. A. No. 1112 of 1955

M. V. Desai with *Madhavdas Bhagat* instructed by *Dayalji & Dipchand* for the Petitioner.

C. R. A. No. 1113 of 1955.

M. V. Desai with *C. S. Sanghavi* instructed by *Dayalji & Dipchand* for the Petitioner.

M. M. Jhaveri with *V. J. Taraporwalla* and *V. T. Gambhirwalla* for the Opponents.

Gajendragadkar J.—These two revisional applications raise a point of limitation under s. 8 sub-s. (2) of the Bombay Rent Control Act VII of 1944. This question arises in this way. Three suits had been originally filed by the plaintiff against his tenants for ejectment and for arrears of rent and compensation from May 1, 1952 to January 31, 1954, and for mesne profits for the period subsequent thereto until possession was given to him. The property let out to the defendants is known as "Candy Castle" and it is situated opposite the Strand Cinema at Colaba. The claim for rent and compensation was resisted by the

*Civil Revision Application No. 1112 of 1955 with Civil Revision Application No. 1113 of 1955.

1. (1925) 1 K. B. 9 at p. 13.
2. (1931) 33 Bom. L. R. 1563.
3. (1955) 1 Mad. L. J. 345.
4. (1760) 2 Burr. 1005, 97 E. R. 676
5. (1915) 39 Mad. 939.
6. (1952) 54, Bom. L. R. 829.
7. (1941) (1942) Mad. 550.
8. (1954) 56 Bom. L. R. 619.
9. (1925) 1 K. B. 447.
10. (1928) 50 All. 865.

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defendants on the ground that they had paid an amount of Rs. 10,000 each in two suits and Rs. 11,000 in one suit as premia to the plaintiff and that they were entitled to deduct the said amounts out of the rent payable by them to the plaintiff. By consent the three suits were tried together since they raised common questions of fact and law. The learned trial Judge of the Court of Small Causes rejected the defence raised by the tenants and passed a decree for ejectment and for different sums of money as claimed by the plaintiff in respect of arrears of rent, compensation and damages. The decrees thus passed by the trial Court were challenged by the defendants before the appellate Court in the Court of Small Causes. The appeals, however, failed and the decrees passed by the trial Court were confirmed. Two of the tenants have now preferred the present revisional applications and on their behalf it has been urged that the Courts below erred in law in holding that the tenants were not entitled to claim deduction under s. 8 (*2*) of the Act. The conclusion reached by the Courts below on this point was the result of their finding that the claim for deduction was barred by limitation. That is how the only question which has been urged before us in the present revisional application is one of limitation under s. 8 (*2*) of the Act.

It is unnecessary to set out the legislative history of the rent legislation. Act VII of 1944 was preceded by two earlier Acts II of 1918 and XVI of 1939. The relevant provision contained in s. 8 of the Act with which we are concerned was substantially the same in the earlier Acts. The Rent Acts have made separate provisions for giving relief to the tenant where the tenant had paid to the landlord any amount by way of fine or premium on the one hand, and, on the other, where excess payment had been made by the tenant to the landlord by way of rent. In the present case, we are concerned with the payment made by the tenants to the landlord by way of premium. Section 8 deals with this question. Sub-s. (*1*) of s. 8 prohibits the landlord from accepting from the tenant any fine, premium or any other like sum in addition to the rent in consideration of the grant, renewal or continuance of a tenancy of any premises. This prohibition is made inapplicable under sub-s. (3) to any payment under any agreement entered into before September 1, 1940. The acceptance of the prohibited consideration is penalised under sub-s. (*4*) of s. 8. Sub-section (*2*) of s. 8 confers on the tenant the right to recover the amount paid by him by way of premium and also gives him the right to claim deduction of the amount paid by way of premium from any rent payable by him to the landlord. It is necessary to set out the terms of this sub-section. "Where any such payment has been made," says this sub-section, "the amount shall be recoverable by the tenant by whom it was made from the landlord, and may, without prejudice to any other method of recovery, be deducted from any rent payable by him to the

landlord." Mr. M. V. Desai for the petitioners contends that two rights are given to the tenant under this provision. The tenant may recover the amount in question by instituting a suit in that behalf and Mr. Desai concedes that a suit of this kind would be governed by an appropriate provision of the Limitation Act. Mr. Desai does not concede that the period of limitation would be three years under art. 62 of the Limitation Act and he suggests that the period should be six years under art. 120 of the Limitation Act. But whether the period of limitation is three years or six years, it is not disputed that a claim to recover the amount by a suit would be governed by the Limitation Act. In regard to the other right of the tenant to claim deduction of the premium paid from any rent payable by him, however, Mr. Desai argues that this right is not governed by any consideration of limitation and its exercise is subject to only one restriction which is mentioned in the section: the claim for deduction can be made only so long as the tenant continues to be a tenant of the premises and as such is liable to pay rent to the landlord. If and when the tenancy is determined and the tenant ceases to be a tenant, he cannot make any claim for deduction of the premium paid by him. It is only from rent payable by him that deduction can be claimed and if and when rent ceases to be payable by him a claim for deduction automatically lapses. If the claim for deduction can be made without reference to the law of limitation, then the view taken by the Courts below would clearly be erroneous. If, on the other hand, the Limitation Act is applicable even to the claim for deduction, then it would be necessary to consider which article applies to such a claim. If art. 62 applies, and not art. 120, then the view taken by the Courts below would be right.

In support of the construction which Mr. Desai seeks to put on sub-s. (2) of s. 8, he has invited our attention to the fact that the Legislature has made a distinction between rights accruing to the tenant in the matter of the premium paid by him to his landlord and rights accruing to him in the matter of payment of excess rent. Section 12 of the Act, which deals with this latter right, has provided for a specific limitation of six months in terms. Under s. 12 sub-s. (1), if a sum has been paid by account of rent which is in excess of the payment due to the landlord, such sum shall, at any time within a period of six months after the date of payment, be recoverable by the tenant by whom it was paid, and may, without prejudice to any other method of recovery, be deducted from any rent payable within the said period by the tenant to the landlord. It would thus be seen that, in the matter of recovering excess payment made by the tenant on account of rent, a period of six months has been prescribed both for filing the suit in which he may claim the recovery of the said amount and for claiming deduction of the said amount from the rent payable by the tenant. Mr. Desai

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argued that no such limitation has been prescribed in respect of premium and on that distinction he placed considerable emphasis.

In our opinion, this distinction would not be of any assistance to Mr. Desai in the matter of construing s. 8 sub-s. (*2*). As I have already mentioned, Mr. Desai himself has conceded that the recovery of the premium by filing a suit is subject to the law of limitation, so that it really does not make a substantial difference that the period of limitation has not been prescribed by s. 8 (*2*) itself. It is true that s. 12 (*1*) itself prescribed a period of six months; but that does not mean that the period of limitation is not prescribed by the Limitation Act for the recovery of premium under s. 8 (*2*). It was necessary to prescribe the period of limitation under s. 12 (*1*) because Legislature wanted to prescribe a much shorter period for claims falling under s. 12 (*1*), whereas Legislature wanted to leave the recovery of rent under s. 8 (*2*) to be governed by the general law of limitation. Therefore, the absence of any provision prescribing limitation in s. 8 (*2*) itself is not a matter of any decisive importance. While construing s. 8 (*2*), it is, therefore, necessary to bear in mind that the first right given to the tenant to recover the premium paid by him is governed by the period of limitation prescribed under the Limitation Act. Section 8 (*2*) really provides for two remedies or methods of recovery to the tenant. The first method of recovery is to institute a suit for recovering the amount in question; and the second method of recovery is to claim deduction from the rent payable by him. There can be no doubt on this point because in referring to the claim for deduction the section in terms says that the claim for deduction can be made by the tenant "without prejudice to any other method of recovery." In other words, the claim for deduction is obviously one method of recovery and this method has been provided without prejudice to any other method of recovery under the law. It may be useful at this stage to refer to the decision in *Diment* v. *Roberts*,[11] where Atkin L. J. in dealing with substantially similar provisions of s. 14 of the Increase of Rent and Mortgage Interest (Restrictions) Act 94, 1920, observes that the said section "gives one method of recovery, by deducting from the next rent payable."

Now, if s. 8 (*2*) provides, for the benefit of the tenants, two methods of recovery of premium paid by a tenant and if one of the methods is admittedly and obviously subject to the law of limitation, it would appear to be unreasonable *prima facie* that the other method should be entirely free from the law of limitation. The construction suggested by Mr. Desai would lead to the obviously unreasonable consequence that, whereas the tenant's right to recover the amount by a suit is barred by limitation, it would still be open to him to claim deduction

11. (1925) 1 K. B. 9 at p. 13.

from the landlord in respect of the same amount. In other words, the amount which has become irrecoverable under the first right given by the section can still be indirectly recovered by the tenant by claiming deduction from the rent payable by him. In our opinion, on a fair and reasonable construction s. 8 (2) seems to provide that both the methods of recovery are subject to the same law of limitation. The right to recover the amount and the right to claim deduction can be exercised by the tenant so long as both the rights are alive under the law of limitation. If one right is extinguished by lapse of time, the other right automatically ceases to be effective. The amount which can be recovered under the first part of s. 8 (2) can also be claimed by way of deduction, and the consideration of the law of limitation which is implicit in the requirement that the amount should be recoverable would be equally implicit in a claim for deduction which is the alternative method of recovery recognised by this sub-section. It would be noticed that a similar correspondence in the matter of limitation has been expressly provided by s. 12 (*1*) to which I have already referred. It is true that the period of limitation prescribed by s. 12 (*1*) is a much shorter period of limitation. But Legislature has clearly prescribed a period of limitation for both the remedies granted to the tenant in respect of the excess payment by him on account of rent. We are, therefore, disposed to hold that, on a fair and reasonable construction of s. 8 (*2*), it would not be possible to hold that the right to recover the amount is subject to limitation, but that a claim for deduction of the said amount from the rent payable by the tenant is not subject to any law of limitation. In our opinion, both the methods of recovery available to the tenant are governed by the same law of limitation, and they would cease to be available to the tenant as soon as the period of limitation prescribed for them has expired.

The next question which falls to be considered is: What is the period of limitation for the exercise of the right of adopting the method of recovery available under s. 8 (2)? A similar question was raised before Beaumont C. J. and Rangnekar J. in *Abasbhai* v. *Bhimji*[12], under ss. 8 and 12 of the Bombay Rent (War Restrictions) Act II of 1918. In this case, the premises had been let to the defendant in 1918 on a monthly rent of Rs. 200. Subsequently, in May 1923, the parties agreed that the defendant should pay to the plaintiff a sum of Rs. 100 every month as pagri or premium in addition to rent. Under this agreement, the defendant had paid to the plaintiff Rs. 2,400 as premium in the years 1923-24. Subsequently the plaintiff sued the defendant to recover rent for a certain period and for compensation thereafter. One of the pleas raised by the defendant was that he was entitled to recover the amount of premium paid by him by way of counter-claim, and the question

12. (1931) 33 Bom. L. R. 1563.

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which arose for decision was whether the counter-claim was in time. This Court held that the counter-claim was governed by art. 62 of the Limitation Act because the defendant had paid the sum of money in question to the plaintiff in such circumstances that the plaintiff was bound at once to repay it to the defendant. The argument that art. 120 would apply, was rejected and the counter-claim was dismissed as barred by limitation. In holding that art. 62 applied, Beaumont C. J. observed that the gist of the matter was

> "that the moment the plaintiff received the money he was bound to return it to the defendant, and that being so, I think that from the inception, i. e., from the date of the receipt of the money he held the money to the use of the defendant".

Rangnekar J. concurred with this decision and observed that it was clear on the authorities that

> "Article 62 is applicable to all cases to which the old English form of common law action for money had and received applied".

It is true that the question of limitation arose in this case by reference to a counter-claim. But that, in our opinion, makes no difference at all. This decision shows that, where the defendant pays money to the plaintiff and the nature of the amount paid indicates that from the moment the amount is paid the plaintiff is bound to return the money to the defendant, it is art. 62 that applies to the claim of the defendant, and not art. 120.

The same conclusion was reached by Mr. Justice Somasundram in *Venkatarama Ayyar* v. *Kupuswamy Ayyar*[13]. In support of his conclusion, Somasundram J. has referred to the observations made by Mansfield, C. J., in *Moses* v. *Macferlane*[14] that

> "this form of action lies for money paid by mistake or upon a consideration which happens to fail, or for money got through imposition (express) or implied or extortion or oppression or *an undue advantage taken of the plaintiff's situation contrary to laws made for the protection of persons*".

In other words:

> "this form of action would be maintainable in cases in which the defendant at the time of receipt, in fact or by presumption or by fiction of law receives the money to the use of the plaintiffs".

Mr. M. V. Desai has, however, contended that a claim to recover the amount under s. 8 (2) would be governed, not by art. 62, but by art. 120 of the Limitation Act, and in support of this contention he has referred us to a decision of the learned Chief Justice in *Lingangouda Marigouda* v. *Lingangouda*[15]. It is true that, in dealing with the question of limitation, the learned Chief Justice has observed that it is not safe to follow English decisions in construing art. 62 of the Limitation Act. But before this decision can be pressed into service, it would be necessary to remember the facts on which the question of limitation was raised before the learned Chief Justice. The

13. (1955) 1 Mad. L J. 345. 14. (1760) 2 Burr. 1005: 97 E. R. 676.
15. (1952) 54 Bom. L. R. 329.

plaintiff in that case had paid a moiety of assessment which he was liable to pay to an Indian Native State, and the defendant paid the other moiety. In 1938 the State refunded the entire amount of the assessment, comprised of both the moieties, to the defendant as the State thought that he alone was entitled to it, and it was received as such by the defendant. It was under these circumstances that the plaintiff claimed his share in the amount refunded to the defendant by the State. It would thus be clear that the defendant in this case had received the amount, not for the use of the plaintiff, but the amount had been paid to him as belonging to him by the State and had been received by him as such. That is why the learned Chief Justice held—and, with respect, rightly—that the amount was not received by the defendant for the use of the plaintiff, and so art. 62 was inapplicable. If art. 62 was inapplicable, inevitably the residuary art. 120 came into operation. It does not appear that in Lingangouda's case the attention of the learned Chief Justice was invited to the decision of Beaumont C. J. and Ranganekar J. in *Abasbhai* v. *Bhimji*[16] and indeed, since the facts with which the learned Chief Justice was dealing were radically different from the facts before us, it cannot be assumed that the general observations made by the learned Chief Justice are intended to throw any doubt on the view taken in Abasbhai's case. We would, therefore, hold that the claim for recovery as well as the claim to make deductions under s. 8 (2) is subject to the provisions of art. 62 of the Limitation Act. If that be the true position, the claim for deduction would be clearly barred by limitation in both the revisional applications.

Mr. Desai, however, argued that the claim for deduction is in the nature of a claim for equitable set-off and he assumed that between the lessor and the lessee a fiduciary relationship exists. If an equitable set-off is claimed by one person against another and it is shown that a fiduciary relationship exists between them and that the person against whom the claim is made is accountable to the person making the claim, then the claim for equitable set-off can be entertained even though it may be barred by limitation. That, in substance, is the alternative argument urged before us by Mr. Desai. There is no doubt that an equitable set-off can be entertained by Civil Courts though O. VIII, r. 6, of the Civil Procedure Code in terms refers only to legal set-off. The Code merely seeks to regulate procedure, and so the absence of any provision in the Code in regard to equitable set-off cannot be said to affect the right to claim such a set-off wherever it vests in a party. Normally, an equitable set-off, like the legal set-off, can be claimed effectively if it is in respect of an amount legally recoverable. It also appears to be well settled that in cases where the plaintiff claims a specific amount against the

16. (1931) 33 Bom. L. R. 1563.

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defendant and the defendant sets up a claim against the plaintiff for equitable set-off and both the claims relate to the same estate or there is a fiduciary relationship between the plaintiff and the defendant, the defendant's claim to set-off would be entertained as an equitable set-off though it may be barred by limitation at the date of the suit. Now, can it be said that a fiduciary relationship exists between the lessor and the lessee and that the lessor is accountable to the lessee? In support of his argument that a fiduciary relationship exists between the lessor and the lessee, Mr. Desai has invited our attention to the observations made by Mr. Justice Rangnekar in Abasbhai's case. I have already referred to the decision of Beaumont C. J. and Rangnekar J. in that case on the question of limitation. It would now be necessary to mention the observations on which Mr. Desai relies. Addressing himself to the question of limitation and before reaching his conclusion that art. 62 applied to the counter-claim set up by the tenant in the suit, Mr. Justice Rangnekar has observed that sub-s. (*2*) of s. 8

> "makes it clear that from the time the amount of the premium comes into the hands of the landlord it really belongs to the landlord, and the landlord holds it for the benefit of the tenant. In other words, he holds it in a fiduciary capacity, to use technical language, 'to the use of the tenant'."

With respect, it may be permissible to observe that, where the learned Judge observes that the amount really belongs to the landlord, perhaps he meant that it belongs to the tenant. But apart from this aspect of the matter, the learned Judge was really discussing the question as to the applicability of art. 62 and when he referred incidentally to the fiduciary capacity he really wanted to emphasize that the money was held by the plaintiff for the use of the tenant. It is in the context of his final decision and the whole of the ratio of his judgment that the expression "fiduciary capacity" must, we think, be considered. We are unable to read these observations as laying down a well-considered general proposition that, where a landlord receives a premium from his tenant, he holds it in a fiduciary capacity and is accountable to the tenant in respect of it. Indeed, it is clear from the judgments delivered by both the learned Judges that the question of fiduciary relationship in the technical sense of the term was not argued before the Court and Beaumont C. J. in fact makes no reference to it at all in his leading judgment. Fiduciary relationship involves confidence between the parties, and it is by reason of such confidence that the fiduciary character is impressed upon the relationship. Where a person having a fiduciary relationship gets possession of money or other property in this character, he does hold the money or property as a trustee. This is so in cases of agency as well as in cases of directors and promoters of companies. These cases of fiduciary relationship are men-

tioned in s. 88 of the Indian Trusts Act. It is very difficult, we think, to attribute fiduciary character to the relationship between the lessor and the lessee.

This question has been considered by Sir John Wallis, Kt., C. J., and Seshagiri Ayyar J., in *Vyravan Chetty* v. *Srimath Deivasikamani Nataraja Desikar*[17]. In a suit by the lessor for rent, it was held that it was not open to the lessee to set up by way of equitable set-off an unliquidated claim for damages which was barred at the date of the suit. In his judgment, Seshagiri Ayyar J. conceded that an equitable set-off can be claimed though barred by limitation "where there is a fiduciary relationship between the parties as in the case of trustees and *cestui que* trust and there is accountability." But he was not prepared to include the cases of lessor and lessee within this class of exceptions. "This exception", observed Seshagiri Ayyar J., "has been extended in some of the decided cases in India to mortgages, presumably on the ground that there is accountability between the parties," and he added that it was not necessary to say whether these cases had been rightly decided. He, however, concluded with the observations that he saw no reason for extending the exception to suits between a lessor and a lessee. No decision has been cited before us by Mr. Desai which has taken a contrary view, Indeed, the elaborate provisions contained in the Rent Acts proceed on the assumption that the landlord is apt to exploit the need of the tenant, and it would, therefore, seem somewhat unreasonable to assume that between the greedy landlord and the needy tenant a fiduciary relationship exists.

The decision of Venkataramana Rao and Abdur Rahman, JJ. in *Narayanan* v. *Chathukutti*[18] to which Mr. Desai invited our attention, is, however, not of much assistance because the conclusion reached by the learned Judges in this case proceeded on their finding that the relationship between the parties was really that of mortgagor and mortgagee, and in taking an account between the parties which s. 6 (2) of the Malabar Compensation for Tenants Improvements Act I of 1900 contemplated, the plaintiff, who was in the position of a mortgagor, would, in the opinion of the learned Judges, and in accordance with the language of that sub-section, be entitled to a set-off even in regard to a decree that was barred by limitation (p. 558). In other words, the finding of fact on which the decision was based was that the parties before the Court were mortgagor and the mortgagee, and as such a fiduciary relationship could be predicated between them. If a fiduciary relationship and accountability could be predicated between the parties, then of course a bar of limitation cannot be pleaded against an equitable set-off. But for predicating a fiduciary relationship between the parties, their Lordships relied substantially upon the provisions of s. 6 (2) and on the other

17. (1953) 39 Mad. 939. 18. [1942] Mad. 550.

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facts to which reference has been made in the judgment. It is not suggested that any of the provisions in Act VII of 1944 make the landlord a mortgagee and the tenant a mortgagor in respect of claims like the present.

We must, therefore, hold that the claim for equitable set-off made by the tenants would be barred by limitation since there is no fiduciary relationship and no accountability between the plaintiff and the defendants. That being so, it cannot be held that the Courts below erred in law in rejecting the claims of the tenants as barred by limitation.

Before we part with this case, however, it would be necessary to refer to the decision of the learned Chief Justice in *Karamsey Kanji* v. *Velji Virji*[19]. In this case, the learned Chief Justice had to consider *inter alia* the question of limitation for a claim for deduction set up by the tenant against his landlord under s. 18 (2) of Bombay Act LVII of 1947. It is conceded by Mr. Desai that the construction placed by the learned Chief Justice on the provisions of s. 18 (2) of the present Rent Act supports the view which we have taken about the construction of s. 8 (2) of the earlier Act XVII of 1944. That is why Mr. Desai elaborately challenged before us the correctness of the view taken by the learned Chief Justice in Karamsey's case. Section 18 (2) of the Act of 1947 provides *inter alia* that, where any premium is paid by any person, the amount or value thereof shall be recoverable by him from the landlord within a period of six months from the date of payment and may, if such person is a tenant, without prejudice to any other remedy for recovery, be deducted by him from any rent payable by him to such landlord. Except for the fact that, whereas this provision itself refers to a period of limitation while s. 8 (2) of the earlier Act does not, the other material terms which fall to be construed in s. 8 (2) are substantially the same as in s. 18 (2); and in regard to these material terms the learned Chief Justice has held that the same period of limitation of six months applies to the claim for deduction as would apply to a claim for recovery of the amount in question. It was urged before the learned Chief Justice that the legislative history in regard to the material provisions indicated that the right to claim deduction could be exercised by the tenant unfettered by any considerations of limitation so long as he was a tenant liable to pay rent to the landlord; and in support of this contention considerable reliance was placed on the fact that in the corresponding provisions of the earlier Act a period of six months had been prescribed specifically even for the claim for deduction. The learned Chief Justice was not impressed by this argument because it seemed to him clear,

"on a plain natural construction of the section itself that if a tenant could not recover any excess paid by him beyond six months from the date of the payment and if such amounts became irrecoverable, it is

19. (1954) 56 Bom. L. R. 619.

difficult to understand how a tenant could deduct what he could not recover and what was irrecoverable in law."

With respect, we agree with this conclusion. In support of his conclusion, the learned Chief Justice referred to the English decision in *Bayley* v. *Walkar*[20]; and the main point which Mr. Desai has urged before us is that the learned Chief Justice was not justified in seeking to obtain assistance from this English judgment because, according to Mr. Desai, the material words in the relevant English statute are different from the words used in s. 18 (*2*). We do not think that this argument is well-founded. The relevant sections in the English statutes are ss. 8 and 14 in 10 and 11 George 5, c. 17, which was enacted on July 2, 1920, and s. 8 of the amending statute 13 and 14 George 5, c. 32, which came into force on July 31, 1923. It is with this last section that we are directly concerned. Sub-section (2) of s. 8 provided that any sum paid by a tenant or mortgagor, which under s. 14 (*1*) of the principal Act was recoverable by the tenant or mortgagor, shall be recoverable at any time within six months from the date of payment but not afterwards, or, in the case of payment before the passing of this Act, at any time within six months from the passing of the Act but not afterwards. Mr. Desai contends that the word "recoverable" has been used in this section twice and that makes a material difference. The use of the word "recoverable" twice, says Mr. Desai, shows that before a claim for recovery of the amount in question can be made by the tenant, it must be shown by the tenant that the amount is recoverable in law, and that necessarily involves the consideration of limitation. In the corresponding section of the Indian statute, the word "recoverable" is not used twice and so in entertaining a claim for deduction questions of limitation are wholly irrelevant. This argument, in our opinion, is fallacious, because the double use of the word "recoverable" is obviously due to the fact that the section in which the word occurs twice is a part of an amending statute and so the amending section had necessarily to refer to the earlier relevant s. 14 (*1*) of the principal Act in which the amount in question had been made recoverable; and having referred to the amount which had been made recoverable under s. 14 (*1*) of the principal Act, the amending section provided that this amount shall be recoverable within six months as specified. The only purpose served by the first use of the word "recoverable" was to indicate the amount which had been made recoverable by the relevant section in the principal Act. Therefore, in our opinion, there is really no substance in the point made by Mr. Desai that the material words in the two sections are substantially different.

If the words used in the English statute are substantially similar to the words used in s. 18 (*2*) of Act LVII of 1947, then it would, we think, be perfectly reasonable and legitimate to

20. (1925) 1 K. B. 447.

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derive assistance from the view taken by Salter and MacKinnon, JJ., in *Bayley* v. *Walker*[21]. In his judgment Mr. Justice Salter has cited with approval the observations of Atkin L. J. in *Diment* v. *Roberts*,[22] that the words 'recoverable at any time within six months' meant that the sum might be recovered if any legal proceedings had been brought within six months. Atkin L. J. added that "s. 14 of the Act of 1920 gave one method of recovery, by deducting from the next rent payable, which would clearly continue for six months." The conclusion of Salter J. was that the right of recovery by deduction was barred at the same time as the right of recovery by action.

We would, therefore, hold that the view taken by the learned Chief Justice in regard to the period of limitation applicable to the claim for deduction which a tenant can make under s. 18 (*2*) is, with respect, right. If that be so, it is unnecessary to add that the view taken by the learned Chief Justice fortifies the conclusion which we have reached on a fair and reasonable construction of s. 2 sub-s. (*2*) of Act VII of 1944.

Since we have held that the claim for deduction made by both the petitioners against their landlord is barred by limitation and cannot be placed in the exceptional class of equitable claims involving fiduciary relationship, it is unnecessary to consider the further point raised by Mr. Jhaveri on behalf of the landlord that the present claim would have to be considered, not under s. 8 (*2*) of Act VII of 1944, but under s. 18 (*2*) of the subsequent Act LVII of 1947. We would only like to add that, in support of his plea that the subsequent Act would apply, Mr. Jhaveri invited our attention to a decision of the Allahabad High Court in *Baijnath* v. *Dulari Hajjam*[23]. Mr. Jhaveri had also raised a preliminary objection that we should not entertain the present revisional applications since no question of jurisdiction was involved. We did not uphold the preliminary objection because we thought that questions of limitation arising on a construction of relevant sections of the Rent Acts can only be raised in revisional applications since second appeals are not allowed under these Acts. That is why even in revisional applications we are sometimes inclined to entertain points of law in order that our decisions should be of assistance in the administration of such Acts by subordinate Courts.

In the result, the applications fail and the rules are discharged with costs.

Rule discharged.

G. N. V.

21. (1925) 1 K. B. 447. 22. (1925) 1 K. B. 9.

23. (1928) 50 All. 865.