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proceedings in such a suit are not binding on him so as to affect his rights under the second mortgage. He can thus follow the property by suing his mortgagor, even though it may have been sold under the decree of an earlier mortgagee in a suit to which he was not a party. Therefore, the interest of the prior mortgagee or the subsequent mortgagee, if any, would not be affected by a decree passed on an application under s. 13 and there is no reason therefore to cut down the plain meaning of the words used in s. 2 (6) (c) on the ground that the proceedings under the Act would prejudicially affect the rights of prior or puisne mortgagees.

There is therefore no force in this appeal and it is hereby dismissed with costs.

Appeal dismissed.

MAHADEOLAL KANODIA

v.

THE ADMINISTRATOR-GENERAL OF WEST BENGAL.

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(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Thika Tenancy—Decree for possession against tenant—Application for relief by tenant—Amendment of Act with retrospective operation—Effect—Interpretation of Statute—Principles of construction—Thika Tenancy Act (W.B. 2 of 1949), s. 28—Thika Tenancy Amendment Act (W.B. 6 of 1953), s. 1(2).

With a view to give protection to Thika tenants against eviction and in certain other matters, the West Bengal Legislature enacted the Calcutta Thika Tenancy Act, 1949. That Act was amended by the Calcutta Thika Tenancy Amendment Act, 1953, which omitted s. 28 of the Act. The question for decision in the appeal was whether the appellant against whom proceedings for execution of a decree for ejectment was pending, who had applied for relief under s. 28 when that section was in force, was entitled to have his application disposed of in accordance with the provisions of s. 28, which had ceased to exist retrospectively though it remained undisposed of on the date the Amendment Act came into force:

Held, that s. 1, sub-s. (2) of the Calcutta Thika Tenancy Act 1953, clearly intended that no relief under s. 28 of the original

Act should be given in cases pending for disposal on the date the amendment became effective and s. 28 ceased to exist retrospectively.

The principles applicable to interpretation of statutes are four-fold in nature,—

(1) such statutory provisions as create or take away substantive rights are ordinarily prospective; they can be retrospective if made so expressly or by necessary implication and the retrospective operation must be limited only to the extent to which it has been so made either expressly or by necessary implication,

(2) the intention of the legislature has to be gathered from the words used by it, giving them their plain, normal, grammatical meaning,

(3) if any provision of a legislation the purpose of which is to benefit a particular class of persons is ambiguous so that it is capable of two meanings the meaning which preserves the benefit should be adopted,

(4) If the strict grammatical interpretation gives rise to an absurdity or inconsistency, such interpretation should be discarded and an interpretation which will give effect to the purpose will be put on the words, if necessary, even by modification of the language used:

Held, also, that judicial decorum ought never to be ignored. Where one Division Bench or a Judge of a High Court is unable to distinguish a previous decision of another Division Bench or another Single Judge and holds the view that the earlier decision was wrong, the matter should be referred to a larger Bench to avoid utter confusion.

Deorajan Devi v. *Satyadhan Ghosal*, [1953] 58 C.W.N. 64, overruled.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 303 of 1956.

Appeal from the judgment and decree dated February 7, 1955, of the Calcutta High Court in Appeal from Appellate Order No. 102 of 1953, arising out of the judgment and decree dated August 6, 1953, of the Subordinate Judge, Second Court of Zillah, Howrah, in Misc. Appeal No. 231 of 1953.

G. S. Pathak, P. K. Chakravarty and *B. C. Misra*, for the appellant.

B. Sen, S. N. Mukherjee and *P. K. Bose*, for the respondent.

1960. April 20. The Judgment of the Court was delivered by

DAS GUPTA, J.—In Calcutta and its suburb Howrah there have existed for many years precarious tenancies popularly known as Thika tenancies, the characteristic feature of which is that the tenant

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takes lease of the land only and erects structures thereon at his own expense; where there is already a structure on the land the tenant acquires these structures by purchase or gift but takes the land on which the structure stood in tenancy. With the influx of population into these areas that followed the partition of India the position of these Thika tenants became even more insecure than before. With the sharply rising demand for accommodation the landlords found it possible and profitable to put pressure on these Thika tenants to increase their rents or to evict them so that other tenants who would give more rents and high premiums might be brought in. With a view to give some protection to these Thika tenants against eviction and in certain other matters, the West Bengal Legislature enacted in 1949 an Act called the Calcutta Thika Tenancy Act (hereinafter referred to as "the Act"). Some features of the protection afforded by this legislation which deserve mention are that ejectment could be had only on one or more of the six grounds specified in s. 3 of the Act; special provisions as regards notice for ejectment were made in s. 4; in the same section provision was also made about payment of compensation as a necessary pre-requisite for ejectment in certain cases. Section 6 provides that no orders for ejectment on the grounds of arrears of rent shall be executed if the amount of arrears together with costs of proceedings and damages that may be allowed were deposited within 30 days from the date of the order. Not content with giving such protection only in suits and proceedings for eviction that might be instituted by the landlord in future the Legislature in the 29th section of this Act provided that even in suits and proceedings which had already been instituted and were pending for disposal on the date when the new law came into force, this new law will be applicable, except the provisions as regards notice in s. 4. In the 28th section of the Act the Legislature went further and provided that even where the decree or order for recovery of possession had been obtained by the landlord against a Thika tenant but possession had not been actually recovered, courts will have the power to re-open the matter and

if the decree or order is not in conformity with the beneficent provisions of the Act either to rescind the decree or order altogether or to vary it to bring it into such conformity. Section 28 with which we are specially concerned in this appeal is in these words:—

> "Where any decree or order for the recovery of possession of any holding from a Thika tenant has been made before the date of commencement of this Act but the possession of such holding has not been recovered from the Thika tenant by the execution of such decree or order, the court by which the decree or order was made may, if it is of opinion that the decree or order is not in conformity with any provision of this Act other than sub-section (i) of section 5 or section 27, rescind or vary the decree or order in such manner as the Court may think fit for the purpose of giving effect to such provision and a decree or order so varied by any Court shall be transferred to such Court to the Controller for execution under this Act as if it were an order made under and in accordance with the provisions of this Act."

The new law however failed to achieve its object for some years as the Courts interpreted the definition of Thika tenant in the Act in such a manner that speaking generally no tenant was able to establish its requirement. To remedy this the Governor of West Bengal enacted on October 21, 1952, an Ordinance by which the definition of Thika tenant was revised and a few other amendments of the Act were made. The special protection given under ss. 28 and 29 of the Act to tenants against whom decrees or orders had been obtained or against whom cases were pending was however kept intact. The Ordinance by its s. 5 extended such special protection also to tenants whose cases were pending before a court on the date of the commencement of the Ordinance and those against whom decrees or orders had been made after the date of the Act and before the date of the Ordinance but possession had not been obtained. In 1953 the West Bengal Legislature enacted the Calcutta Thika Tenancy Amendment Act, 1953, revising permanently the definition of Thika tenant and making some other

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amendments. One of the amendments was that ss. 28 and 29 of the Original Act were omitted. The principal question before us in this appeal is whether the provisions of s. 28 could be applied by a Court in a case where an application had been made by a tenant for relief under that section and such application was pending for disposal on the date the omission became effective, by reason of the Amendment Act coming into force.

The decree for possession with which we are concerned in this case was made as far back as August 8, 1941, by a Munsif in Howrah. The tenant's appeal was dismissed on April 9, 1943. On February 28, 1949, on which date the Calcutta Thika Tenancy Act of 1949 came into force, proceedings for the execution of the decree of ejectment were pending in the Munsif's Court. On March 19, 1952, when these proceedings were still pending the tenant made an application to the Court which had passed the decree praying that the decree may be rescinded or varied in accordance with the provisions of s. 28 of the Act. This application came up for hearing before the Munsif on July 7, 1953. In the meantime the Amendment Act of 1953 had come into force and the omission of s. 28 of the Act had become effective. The learned Munsif held that s. 28 of the Act being no longer in force he had no power to give the tenant any relief in accordance with the provisions thereof. In that view he dismissed the application. The tenant's appeal to the District Judge, Howrah, having been rejected, he preferred a second appeal to the High Court.

The learned judges of the High Court who heard the appeal agreed with the courts below on a construction of s. 1(2) of the Amendment Act that s. 28 was not applicable to the proceedings commenced by the tenant by his application for relief and dismissed the appeal.

Against that decision the tenant has filed the present appeal before us on a certificate of fitness granted by the High Court.

The decision of the question raised in this appeal, viz., whether this tenant who had applied for relief

under s. 28 when that section was in force is entitled to have his application disposed of in accordance with the provisions of that section though it remained undisposed of on the date the Amendment Act came into force, depends on the interpretation of s. 1, sub-s. (2) of the Amendment Act. This section is in these words:

"It shall come into force immediately on the Calcutta Thika Tenancy (Amendment) Ordinance, 1952, ceasing to operate:

Provided that the provisions of the Calcutta Thika Tenancy Act, 1949, as amended by this Act, shall, subject to the provisions of s. 9, also apply and be deemed to have always applied to all suits, appeals and proceedings pending—

(a) before any Court, or

(b) before the Controller or

(c) before a person deciding an appeal under section 27 of the said Act,

on the date of the commencement of the Calcutta Thika Tenancy (Amendment) Ordinance, 1952."

It is obvious and indeed undisputed that but for any difficulty that may be placed in the tenant's way by these provisions the tenant would in view of the provisions of s. 8 of the Bengal General Clauses Act be entitled to have his applicatian for relief under s. 28 of the original Act disposed of as if s. 28 still continued. If however a contrary intention has been expressed by the Legislature in its amending Act the contrary intention would prevail. What we have to decide is whether in s. 1, sub-s. (2), the Legislature has clearly expressed an intention that no relief under s. 28 of the original Act shall be given in cases like these.

The principles that have to be applied for interpretation of statutory provisions of this nature are well-established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited

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only to the extent to which it has been so made by express words, or by necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary, even by modification of the language used.

In applying these principles to the interpretation of s. 1(2), it is necessary first to consider a contention that has been raised by Mr. Pathak on behalf of the appellant that the phrase "as amended by this Act" qualifies the word "provisions". If this be correct, the meaning of the proviso will be that only those provisions of the Act which have been amended by the Act shall apply and be deemed to have applied always to pending proceedings. This will become meaningless, the argument continues, if the word "amended" is interpreted to include omissions. For it makes no sense to say that a provision which has been omitted shall apply. So, it is argued, the word "amended" should be interpreted to mean only amendment by additions or alterations and not an amendment by omissions. The result of the proviso, the appellant's counsel contends, is to make applicable to pending proceedings the altered provisions in place of old provisions but to say nothing as regards such provisions which have been omitted.

We are unable to see how it is possible, unless rules of grammar are totally disregarded to read the words "as amended by this Act" as to qualify the word "provisions." If ordinary grammatical rules are applied there is no escape from the conclusion that

the adjectival phrase "as amended by this Act" qualifies the proximate substantive, viz., the Calcutta Thika Tenancy Act, 1949. There is no escape from the conclusion therefore that what the Legislature was saying by this was nothing more or less than that the provisions of the amended Thika Tenancy Act shall apply.

Mr. Pathak argued that if that was what the Legislature wanted to say, it was reasonable to expect it to use the words "The Thika Tenancy Act, 1949, as amended by this Act," in the proviso; and there was no reason for the use of the words "the provisions of the Thika Tenancy Act". We are not impressed by this argument. The Legislature might certainly have used the language as suggested by the learned counsel, and as he says, that would have meant an economy of words. But where there are two ways of saying the same thing it is useless to speculate why one way was adopted in preference to the other. It is not unusual to find draftsmen using the words "provisions of the Act" in many statutes where the words "the Act" would have been adequate; and it would be unreasonable to try to read too much in the use of the words "the provisions of the Thika Tenancy Act" instead of "The Thika Tenancy Act" in the proviso.

Even so the learned counsel contends, there is no reason to read "amendments" so as to include omissions. The word "amendment", he has submitted is sometimes used in the restricted sense of "addition" or "alteration" as distinct from omission; and he asks us to read the word "amended" in the proviso, to mean only alterations or additions in the statute, and as not including omissions. It is unnecessary for us in the present case to express any opinion on the general question whether in certain context the word "amended" should be interpreted so as to exclude omissions. What is clear however is that the present is not one of such cases. The amendment Act itself was being called the Calcutta Thika Tenancy (Amendment) Act, 1953. The preamble says "whereas it is expedient to amend the Calcutta Thika Tenancy Act, 1949". Section 2 of this amendment Act substitutes a new clause for the old cl. (5) of s. 2; s. 3 adds some words to cl. (1) and s. 3(b) omits some words in cl. (4) and

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again adds some words to cl. (5) of s. 3 of the Act. Section 4 omits certain words of sub-s. (1) of s. 5. Section 5 substitutes some new words in place of certain words in the original sub-ss. (1) and (2) of s. 10 of the Act. Section 6 omits one section of the original Act, viz., s. 11; s. 7 inserts some words in the original s. 27; section 8 omits two sections, viz., ss. 28 and 29; the last section, s. 9 provides for the continuance of proceedings under s. 5, sub-s. (2) of the Amendment Ordinance if sub-ss. (2), (3) and (4) thereof were in force.

Reading the Amendment Act as a whole there can be no doubt that the Legislature in using the word "amended" in the proviso to sub-s. (2) of s. 1 sought to make no distinction between amendment by additions, alterations or omissions. It is clear when certain words or sections have been added, altered or omitted by the Amendment Act, the Calcutta Thika Tenancy Act, 1949, took on a new shape with some added features, some altered features and minus those features which have been omitted. What the proviso says is that the Calcutta Thika Tenancy Act in its new shape shall apply and shall be always deemed to have applied to proceedings pending before a Court, a Controller or an appellate authority under s. 27 on the date of the commencement of the Thika Tenancy Amendment Ordinance, 1952. As the application which the appellant had made for relief under s. 28 of the Tenancy Act was pending for disposal before the Munsif's court on October 21, 1952, the date of the commencement of the Calcutta Thika Tenancy (Amendment) Ordinance, 1952, the position which cannot be escaped is that the Thika Tenancy Act of 1949 without the provisions as regards relief to tenants against whom decrees had been obtained on the date of the commencement of the original Act but possession had not been actually recovered would be applied to pending applications. In other words, though the application originally was for relief under s. 28 no such relief could be granted, the section having ceased to exist retrospectively.

It is helpful to remember in this connection the fact that while s. 28 of the original Act was giving certain tenants a right to relief which they would have had if

the beneficent provisions of the new Act were available to them during the disposal of the suits the manner in which the right is given is by conferring on courts a power to rescind or vary decrees or orders to bring them into conformity with the provisions of the Act. As soon as s. 28 was omitted the courts ceased to have any such power. The effect of the proviso in its strict grammatical meaning is that the courts shall be deemed never to have had this power in respect of applications which were still pending. The inevitable result is that the Court having been deprived of the power to give relief even in respect of applications made at a time when the power could have been exercised, was bound to dismiss the applications.

There can be no doubt that this is an unfortunate result. It may very well be true that if as a result of the Amendment Act, many tenants are deprived of the benefit of s. 28, this will be mainly because of the Court's inability to dispose of the applications before the Amendment Act came into force and not for any default on their part.

Mr. Pathak has repeatedly stressed this and has asked us to construe s. 1(2) in a way that would retain the benefits of s. 28 to tenants whose applications remained to be disposed of on the crucial date. He has in this connection emphasized the fact that the Amendment Act itself is a piece of beneficent legislation and that the amendments made by ss. 2, 3, 5 and 9 all extend to tenants benefits to which they would not have been entitled under the original Act. This extension of further benefits to tenants, he says, is a guiding principle of the amending legislation. He points out also that except as regards such pending applications under s. 28 the effect of s. 1(2) of the amending Act will be to give the extended benefits to tenants in pending proceedings. It will be incongruous, he argued, that while all tenants stand to benefit by the amending legislation only those whose applications under s. 28 have, for no fault of theirs, remained pending would be deprived of the benefit they would have had but for the omission in the amending Act, of s. 28. It is difficult not to feel sympathy for these tenants. As we have already mentioned it is a sound

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rule of interpretation of beneficent legislation that in cases of ambiguity the construction which advances the beneficent purpose should be accepted in preference to the one which defeats that purpose. In their anxiety to advance the beneficent purpose of legislation courts must not however yield to the temptation of seeking ambiguity when there is none. On a careful consideration of the language used by the Legislature in s. 1(2) we are unable to see that there is any such ambiguity. The language used here has one meaning only and that is that the Act in its new shape with the added benevolent provisions, and minus the former benevolent provisions in s. 28 has to be applied to all pending proceedings, including execution proceedings and the proceedings pending under s. 28 of the original Act on October 21, 1952. There is therefore no scope for applying in this case the principles of interpretation which are applicable in cases of ambiguity.

Nor is it possible to agree with Mr. Pathak's last contention that the strict grammatical interpretation would result in an absurdity or inconsistency. It is urged that it is unthinkable that the Legislature when undertaking a legislation to help tenants would do anything to deprive them of the existing benefits under s. 28. It is in our opinion useless to speculate as to why the Legislature thought it right to take away the benefit. One reason that suggests itself is that the Legislature might have thought that where landlords had already been deprived of the fruits of the decrees they had obtained for a long period from the date when the original Act came into force up to the time when the Amendment Act came into force, it would not be right to continue that deprivation. But whatever the reasons may be the fact remains that the Legislature has used words which in their normal grammatical meaning show that they intentionally deprived this class of tenants, viz., those whose applications under s. 28 of the Act were undisposed of on the date the Ordinance came into force, and remained undisposed of, even when the Amendment Act came into force.

We have therefore come to the conclusion that the view taken by the High Court in this case that the

effect of s. 1(2) of the Calcutta Thika Tenancy (Amendment) Act, 1953, is that all pending applications under s. 28 of the original Act must be dismissed is correct. The contrary view taken by the same High Court in *Deorajan Debi* v. *Satyadhan Ghosal* (1) and other cases is not correct.

Before we part with this appeal, however, it is our duty to refer to one incidental matter. We have noticed with some regret that when the earlier decision of two judges of the same High Court in Deorajan's Case was cited before the learned judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

As far as we are aware it is the uniform practice in all the High Courts in India that if one Division Bench differs from an earlier view on a question of law of another Division Bench, a reference is made to a larger Bench. In the Calcutta High Court a rule to this effect has been in existence since 1867. It is unfortunate

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that the attention of the learned judges was not drawn in the present case to that rule. But quite apart from any rule, considerations of judicial propriety and decorum ought never to be ignored by courts in such matters.

On the merits, as we have found that the view of law taken by the High Court in this case is correct, the appeal is dismissed.

In view however of the uncertainty that was in the law as regards the applicability of s. 28 to proceedings pending on the commencement of the Thika Tenancy Ordinance, 1952, we order that the parties will bear their own costs.

Appeal dismissed.

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SATYADHYAN GHOSAL AND OTHERS

v.

SM. DEORAJIN DEBI AND ANOTHER.

(P. B. GAJENDRAGADKAR, K N. WANCHOO and K. C. DAS GUPTA, JJ.)

Remand order—Interlocutory—Whether can be challenged in Tenancy Act (W.B. Act II of 1949), s. 28, The Calcutta Thika appeal from final or order—Res judicata—The Calcutta Thika Tenancy (Amendment) Act, 1953 (W.B. Act VI of 1953), s. 1(2) The Calcutta Thika Tenancy (Amendment) Ordinance, 1952 (West Bengal Ordinance No. XV of 1952).

The Calcutta Thika Tenancy Act, 1949, came into force before the appellant-landlords could obtain possession in execution of their decree for ejectment against the respondent-tenants. Failing to get the decree set aside under O. 9, r. 13 of the Code of Civil Procedure the tenants made an application under s. 28 of the said Act praying that the decree against them be set aside on the ground that they were Thika tenants, but the Munsif holding that they were not Thika tenants dismissed their application. While an application by the tenants under s. 115 of the Code of Civil Procedure against the Munsif's order was pending in the High Court the Calcutta Thika Tenancy Ordinance, 1952, and the Calcutta Thika Tenancy (Amendment) Act, 1953, came into force. The 1953 Amendment Act omitted s. 28 of the Original Act. The High Court after considering the effect of s. 1(2) of the Amendment Act held that it did not affect the operation of s. 28 of the Original Act which was applicable to these proceedings. The High Court also found that the tenants were Thika Tenants