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GYAN CHAND

v.

K. B. LAL AND OTHERS

December 6, 1976

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[Y. V. CHANDRACHUD, P. K. GOSWAMI AND S. MURTAZA FAZAL

ALI, JJ.]

Rajasthan Premises (Control of Rent and Eviction) Act, 1950—S. 13A—Scope of.

Application for special leave under Article 136 of the Constitution—If could be equated with ordinary right of appeal.

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Order 16 of Supreme Court Rules and Order 41 Civil Procedure Code—Distinction.

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Section 13A was introduced in Rajasthan Premises (Control of Rent and Eviction) Act, 1950 by an Ordinance on September 29, 1975. The Ordinance was later replaced by an Act. Clause (a) of the section provides that no Court shall, in any *proceeding* pending on the date of the commencement of the Amending Ordinance, pass any decree in favour of a landlord for eviction of a tenant on the ground of non-payment of rent under certain circumstances. Clause (b) provides that in every *such proceeding* the Court shall, on the application of the tenant, made within 30 days from the date of the presentation of the memorandum of appeal or application for revision, determine the amount of rent in arrears. Clause (c) provides that the provisions of cls. (a) & (b) shall, *mutatis mutandis*, apply to all appeals, or applications for revision, preferred or made after the commencement of the Amending Ordinance. Explanation (b) to the section defines a *proceeding* to mean a suit, appeal or application for revision. Section 22(1) provides that from every decree or order passed by the Court under the Act, an appeal shall lie to the Court to which appeals ordinarily lie from original decrees and orders passed by such former Court.

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On the ground of non-payment of rent, a decree of eviction was passed against the appellant, who was the respondent's tenant. The High Court having affirmed the decree on appeal, the appellant filed an application for special leave to this Court on September 23, 1975. The Ordinance introducing s. 13A was passed on September 29, 1975. This Court granted special leave on November 14, 1975.

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In appeal to this Court it was contended by the appellant (1) that since the application for special leave was pending before this Court on the date of the commencement of the Ordinance, the case was governed by s. 13A (a) and (b) of the Act; (2) in the alternative since, as a result of the grant of special leave, an appeal had been pending before this Court, the appellant was entitled to the protection of s. 13A(c) of the Act.

Dismissing the appeal,

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HELD : (*Per Chandrachud and Goswami, JJ*)

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(1)(a) In order to attract s. 13A(a) a suit, appeal or application for revision must be pending on the date of the commencement of the Ordinance. An application for special leave under Art. 136 of the Constitution cannot be equated with the ordinary remedy of appeal as of right under any provision of law. It is an extraordinary right conferred under the Constitution, within the discretion of the Supreme Court and an application for special leave does not come within the contemplation of appeal pending before the Court under s. 13A(a). The collocation of the words "suit, appeal or application for revision" used in the explanation to denote "proceeding", shows that the suits and regular appeals therefrom as provided under the ordinary law and applications for revision alone are intended. [329C & B]

(b) The expression "presentation of memorandum of appeal" under s. 13A (c) chimes with the construction that the legislature clearly intended to include only the hierarchy of appeals under the Code of Civil Procedure. [330D]

(c) Under s. 13A(c) read with s. 13A(b) in a pending appeal, the tenant has to make an application within 30 days "from the date of presentation of the memorandum of appeal". There is no provision in an appeal by special leave for presentation of memorandum of appeal, under r. 11 of O.XVI, of the Supreme Court Rules, on the grant of special leave, the petition for special leave is treated as the petition of appeal. In contrast under O.41 r. 1(1) of the Code of Civil Procedure, every appeal shall be preferred in the form of a memorandum signed by the appellant and presented to the Court. [329H]

(d) The *terminus a quo* for the purpose of s. 13A(c) is from the date of presentation of the memorandum of appeal. Since no petition of appeal has to be presented in the Supreme Court after the special leave is granted, such a contingency of appeal to this Court by way of special leave is not intended to be covered by s. 13A(c). [330C]

(2) Section 22 cannot assist the appellant in this case. While s. 22(1) qualifies the decree or order as being "under this Act" s. 13A does not describe "proceeding" to be under the Act. [330E; 332C]

The Act provides for the institution of actions in two different forums namely, the lowest Court of competent jurisdiction, which is the Civil Court, and the other before a Magistrate on the executive side. [332F]

Appeals or applications for revision under s. 13A(c) relate only to decrees in suits for eviction based on the ground of non-payment of rent. Such appeals or applications for revision under s. 13A(c) are not contemplated under s. 22. Decrees or orders passed by the Court under the Act, against which appeals and revisions are provided in s. 22, do not take in decrees and orders passed in a suit for eviction. Usual rights of appeal and revision will be available in the latter class of suits. To hold otherwise will be to deny a right of second appeal to a litigant, whether it is landlord or tenant, against a decree in an eviction suit which is clearly not the intention of the legislature. Second appeal is only barred in case of decrees or orders passed under the Act. [332H]

(*Per S. Murtaza Fazal Ali, J.*)

Proceedings in this Court would not fall within the ambit of cls. (a) and (b) of s. 13A. [338F]

(a) The Explanation to the section clearly shows that the word "proceeding" refers only to such proceedings as may be pending in any suit, appeal or application for revision under the Act. The use of the words "such proceedings" in s. 13A(b) shows that the proceedings contemplated by s. 13A are really proceedings referred to in the explanation, which means proceedings in the nature of suits, appeals or applications for revision as referred to in s. 22. [338E-F]

(b) Section 13A(c) would not apply to the present case. The benefit conferred by cl. (c) would apply only to appeals and applications for revision filed under the Act as provided by s. 22. The true interpretation of cl. (c) would be that this clause contemplated the same proceedings as contemplated by cls. (a) and (b), namely, proceedings indicated in the explanation. [338G-H]

(c) An appeal by special leave is a special remedy provided by Art. 136 of the Constitution and the legislature must be presumed to be aware of this special remedy. If the intention was to extend the benefit to appeals for special leave, it should have been clearly stated in cl. (c). [339B]

(d) The Supreme Court Rules make a clear-cut distinction between an application filed for the grant of special leave and a petition of appeal, if the leave is granted. The constituents and ingredients of an application for special leave to appeal are quite different from those of a memorandum of appeal under O.XLI r. 1(2) of the Code of Civil Procedure. [339D]

(e) The provisions of O.XLI, r. 1(2) C.P.C. require that the memorandum of appeal has to set forth under distinct heads, the grounds of objections to the decree appealed from. No such requirement is to be found in the Supreme Court Rules either for an application for special leave to appeal or in the petition of appeal which is required to be filed if certificate by the High Court is granted. The legislature must be presumed to be aware of the difference between an application for special leave to appeal and a memorandum of appeal. Though r. 11 of O.XVI of the Supreme Court Rules provides that the petition for special leave would be treated as a petition of appeal after the special leave is granted, it cannot be equated with a memorandum of appeal contemplated by s. 13A(c) of the Act. [339G-H]

(f) The fact that s. 13A(c) mentions the words "from the date of the presentation of the memorandum of appeal or application for revision" clearly indicates that the remedies contemplated by the Act are remedies of appeal and revision as provided for by s. 22 of the Act. [339H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1743 of 1975.

(Appeal by special leave from the judgment and order dated 5.9.1975 of the Rajasthan High Court in S. B. Civil 2nd Appeal No. 302 of 1974)

S. M. Jain, for the appellant.

S. C. Agarwala and *V. J. Francis*, for Respondents 1 & 2.

The Judgment of *Y. V. Chandrachud* and *P. K. Goswami, JJ.* was delivered by *Goswami, J. S. Murtaza Fazal Ali, J.* gave a separate Opinion.

GOSWAMI, J. The facts of the case relating to this appeal by special leave have been fully described in the judgment of our learned brother, *Fazal Ali, J.* We agree with the conclusion reached by him that this appeal should be dismissed. We also agree with our learned brother that the appeal should be dismissed on the merits.

However, so far as the question of law that arises in this appeal, we would like to confine our decision to the reasons given hereinafter.

The question of law that arises in this appeal is as to whether an application for special leave or an appeal by special leave to this Court is an "appeal" within the meaning of section 13A of the Rajasthan Premises (Control of Rent and Eviction) Act 1950, as amended by the Rajasthan Ordinance No. 26 of 1975 (briefly the Act). We should, therefore, read section 13A :

"13A. Special provisions relating to pending and other matters : Notwithstanding anything to the contrary in this Act as it existed before the commencement of the Ordinance or in any other law,

(a) no court shall, in any proceeding pending on the date of commencement of the amending Ordinance pass any decree in favour of a landlord for eviction of a tenant on the ground of non-payment of rent, if the tenant applies under clause (b) and pays to

the landlord, or deposits in court, within such time such aggregate of the amount of rent in arrears, interest thereon and full costs of the suit as may be directed by the court under and in accordance with that clause;

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(b) in every such proceeding, the court shall, on the application of the tenant made within thirty days from the date of commencement of the amending Ordinance, notwithstanding any order to the contrary, determine the amount of rent in arrears upto the date of the order as also the amount of interest thereon at six per cent per annum and costs of the suit allowable to the landlord; and direct the tenant to pay the amount so determined within such time, not exceeding ninety days, as may be fixed by the court, and on such payment being made within the time fixed as aforesaid, the proceeding shall be disposed of as if the tenant had not committed any default;

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(c) the provisions of clause (a) and (b) shall *mutatis mutandis* apply to all appeals, or applications for revision, preferred or made after the commencement of the amending Ordinance, against decrees for eviction passed before such commencement with the variation that in clause (b), for the expression "from the date of commencement of the amending Ordinance" the expression "from the date of the presentation of the memorandum of appeal or application for revision" shall be substituted;

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(d) no court shall in any proceeding pending on the date of commencement of the amending Ordinance, pass any decree in favour of a landlord for eviction solely on the ground that due to the death of the tenant as defined in clause (vii) of section 3 as it stood before the commencement of the amending Ordinance, his surviving spouse, son, daughter and other heir as are referred to in sub-clause (b) of clause (vii) of section 3 were not entitled to the protection against eviction under this Act as it stood before the commencement of the amending Ordinance;

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(e) no decree for eviction passed by any court before the commencement of the amending Ordinance shall, unless the same already stands executed before such commencement, be executed against the surviving spouse, son, daughter and other heir as are referred to in sub-clause (b) of the clause (vii) of section 3 if such decree was passed solely on the ground as is referred to in clause (d) and such decree shall be deemed to be a nullity as against them; and

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- A (f) the provisions of clause (d) shall *mutatis mutandis* apply to all appeals, or applications for revision preferred or made, after the commencement of the amending Ordinance, and

Explanation : For the purposes of this section :—

- B (a) 'amending Ordinance' means the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Ordinance, 1975; and
 (b) 'Proceeding' means suit, appeal or application for revision."

C Even in the original Act passed in 1950 section 13(1)(a) was there with two provisos and there was restriction against eviction. Under section 13(4) of the original Act a right was conferred upon the tenant in a suit founded on the ground of non-payment of rent to pay the arrears with interest and costs as determined by the court on the first day of hearing within the outside limit of fifteen days from the date of the order. If the tenant complied with the order, the suit for eviction stood dismissed.

D By the Amending Rajasthan Act 12 of 1965 section 13A was introduced. Sub-section (4) of section 13 of the original Act was substituted by still preserving the tenant's right to pay the arrears with interest and costs within the outside limit of two months and on payment of the same no decree for eviction on the ground of non-payment of rent shall be passed. The Rajasthan Ordinance No. 26 of 1975, *inter alia*, has amended the opening *non-obstante* clause of section 13A and except for substituting the word 'Act' by 'Ordinance' in clauses (a), (b) and (c) nothing else has been altered.

E Section 13A is selective enough. Only one type of eviction decree which is solely based on the ground of non-payment of rent is taken care of extending still further the period for payment of arrears with interest and costs. Under section 13A, as amended, the benefit is available in pending suits of that category, appeals therefrom and applications for revision pending on the date of commencement of the Ordinance, that is, on 29th September, 1975.

F The decree of eviction with which we are concerned in this appeal is founded on the ground of non-payment of rent as specified in section 13(1)(a).

G There is a two-fold submission by the learned counsel for the appellant. First, in view of the fact that the appellant lodged on 23rd September, 1975, an application under Article 136 of the Constitution praying for special leave to appeal against the judgment of the High Court and the Ordinance was passed on 29th September, 1975, after that application, his case is governed by section 13A(a) and (b) of the Act. In the alternative, the appellant submits that at any rate after the special leave had been granted by this Court there was an appeal pending against the judgment of the High Court

and since he submitted an application within 30 days from the grant of special leave his case is covered by section 13A(c) of the Act.

With regard to the first submission it may be pointed out that an application for special leave under Article 136 of the Constitution against a judgment or an order cannot be equated with the ordinary remedy of appeal, as of right, under any provisions of law. It is an extraordinary right conferred under the Constitution, within the discretion of this Court, and such an application for special leave does not come within the contemplation of appeal pending before the court under section 13A(a). It is true that the word "proceeding" which appears in section 13A(a) and (b) means suit, appeal or application for revision according to the Explanation, appended to section 13A. Therefore, in order to attract section 13A(a), a suit, appeal or application for revision must be pending on the date of commencement of the Ordinance No. 26 of 1975.

In view of the connotation of the word "proceeding" as given under the Explanation to section 13A it is impermissible to extend the meaning of the word "proceeding" to include an application for special leave under Article 136 of the Constitution. The collocation of the words, "suit, appeal or application for revision" in the Explanation to denote "proceeding" would go to show that suits, regular appeals therefrom, as provided under the ordinary law and applications for revision alone are intended. It is inconceivable that if the legislature had intended to include within the ambit of "proceeding" an application for special leave under Article 136 of the Constitution it would have omitted to mention it in express terms.

We will now deal with the second submission of the appellant which is the alternative argument.

It is submitted by the appellant that even if an application for special leave is not an appeal for the purpose of section 13A(a) in view of the fact that leave of this Court had been obtained and an appeal had been pending in pursuance of the grant of special leave he is entitled to invoke the protection under section 13A(c). It is on that basis that the appellant submitted a second application relying on section 13A(c).

Under Order XVI, rule 11 of the Supreme Court Rules, on the grant of special leave the petition for special leave shall, subject to the payment of additional court fee, if any, be treated as the petition of appeal and it shall be registered and numbered as such. Under section 13A(c) read with section 13A(b), in a pending appeal, the tenant has to make an application within 30 days "from the date of the presentation of the memorandum of appeal". There is no provision in an appeal by special leave for presentation of a memorandum of appeal, but, as stated earlier, under rule 11 on the grant of special leave the petition for special leave is treated as the petition of appeal and registered and numbered as such. We may in this connection contrast the provisions of the Civil Procedure Code where the procedure is laid down for appeals. Order 41, Civil Procedure

- A Code, deals with appeals from original decrees. Under sub-rule (1) of rule 1 of Order 41, every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the court or to such officer as it appoints in this behalf. Under Order 42, the rules of Order 41 shall apply, so far as may be, to appeals from appellate decrees. Similarly the same procedure, as under Order 41, is provided for under Order 43, rule 2, with regard to appeals from orders. It is, therefore, clear that under the Civil Procedure Code an appeal has to be preferred in the form of a memorandum and presented to the court or to such officer appointed by the court in that behalf.

- The question of limitation provided under section 13A(b) and (c) is important and the *terminus a quo* for the purpose of section 13A (c) is from the date of presentation of the memorandum of appeal. Since no petition of appeal has to be presented in this court after special leave is granted, such a contingency of appeal to this Court by way of special leave is not intended to be covered by section 13A-(c). On the other hand the expression "the presentation of the memorandum of appeal" in section 13A(c) chimes with the construction that the legislature clearly intended to include only the hierarchy of appeals under the Civil Procedure Code wherein presentation of the memorandum of appeal is an obvious requisite.

We may next deal with the question whether section 22 of the Act is of assistance in deciding this controversy since our learned brother's conclusion has received sustenance also from the said section. We do not think so.

Before we proceed further we may turn to some of the material provisions in the Act.

- Section 6 provides for fixation of standard rent and under sub-section (1) thereof the landlord or the tenant may institute a suit in the lowest court of competent jurisdiction for fixation of standard rent for any premises. Sub-section (1) of section 7 provides for fixation of provisional rent by the same court upon the institution of a suit under section 6. Under sub-section (4) of section 7 any failure to pay the provisional rent for any month by the fifteenth day of the next following month shall render the tenant liable to eviction under clause (a) of sub-section (1) of section 13, and all sums due from the tenant as such rent shall be recoverable from him as if the order under sub-section (1) were a decree of the court in a suit for periodical payments. Section 11 provides for procedure for increasing rent and the landlord may bring a suit under sub-section (3) of section 11 for increasing rent or standard rent in the lowest court of competent jurisdiction. Under sub-section 11(4) the court shall, after such summary enquiry, as it may think necessary, make orders according to law, and a decree shall follow. Section 19A provides for payment, remittance and deposit of rent by tenants and the court for the purpose of that section as well as for sections 19B and 19C with respect to any local area means any civil court which may be specially authorised by the State Govern-

ment by notification in this behalf, or where no civil court is so authorised, the court of the Munsif, and the court of the Civil Judge, where there is no court of Munsif having jurisdiction over the area.

Section 12 provides for dealing with disallowance of amenities by the landlord by the Magistrate. The Magistrate means the sub-Divisional Magistrate having jurisdiction over the place where the premises in question are situated and includes such other Executive Magistrate having jurisdiction over and sitting at that place, as the State Government may empower in this behalf [section 3(i)]. Under sub-section (6) of section 12 the order of the Magistrate under sub-section (3) shall be executed by the Munsif having jurisdiction, or, where there is no Munsif, by the Civil Judge having jurisdiction over the area in which the premises are situated as if it were a decree passed by such Munsif or Civil Judge, as the case may be. Next, section 17 describes the powers of a Magistrate to require premises to be let and certain orders can be passed under that section by the Magistrate. Similarly section 19 enables the Magistrate to pass certain orders with regard to the vacant building sites.

From a conspectus of the above provisions it will be seen that there are two types of forums for instituting action under the Act. One category of actions is taken to the lowest court of competent jurisdiction which is a civil court and the other category is lodged before the Magistrate on the executive side.

The word court, however, is not defined in the Act but for purposes of sections 19A, 19B and 19C. While the forums are specified for certain types of actions enumerated in the Act no court as such is specified in the Act for entertaining suits of eviction by landlord against a tenant. It is, therefore, manifest that such suits will lie in the ordinary civil court of competent jurisdiction. That court will, however, have to take into account the relevant provisions of the Act, for the purposes of determination of controversies raised before it. The benefits conferred by the Act upon the tenants will have to be given by the civil court in trying eviction suits. Where there is a bar of eviction under the Act the court will have to give effect to it.

As is clear from the above narration that there is a dichotomy of forums under the Act, some matters are lodged before the lowest court of competent jurisdiction and some others before the Magistrate. There is a *tertium quid*, namely, the usual court which is available to the landlord for instituting suits for eviction against tenants. The landlord, however, will have to take note of the provisions under the Act and comply with those provisions in such a litigation. The tenant also, in such suits, will be able to claim all the benefits conferred upon him under the Act which the courts will, in appropriate cases, grant.

In the above background of the provisions in the Act section 22 which provides for appeals and revisions may be read :

- A** "22(1) From every decree or order passed by a court under this Act, an appeal shall lie to the court to which appeals ordinarily lie from original decrees and orders passed by such former court.
- (2) No second appeal shall lie from any such decree or order;
- B** Provided that nothing herein contained shall affect the powers of the High Court for Rajasthan in revision;
- (3) Any person aggrieved by an order of the Magistrate may, within fifteen days from the date of such order, appeal therefrom to the District Magistrate or such authority as the State Government may from time to time appoint in that month."
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It is very significant that while section 22(1) qualifies the decree or order as being "under this Act", section 13A, on the contrary, does not describe "proceeding" to be under the Act.

- D** Section 22(1) refers to every decree or order passed by a court under this Act. The decree or order passed under this Act must, therefore, have reference to those passed under sections 6, 7, 11, 19A and 19C. Sub-section (2) provides that no second appeal shall lie from any such decree or order. Such decrees or orders are, therefore, again referable to those passed under the above mentioned sections under the Act. While a second appeal is barred in case of those decrees and orders under the Act the High Court's power of revision is not barred. Sub-section (3) of section 12 provides for appeals from an order of a Magistrate to the District Magistrate or such authority as may be appointed by the Government. As noticed earlier certain orders are passed by the Magistrate under section 12(3), section 17 and section 19. Section 22(3) makes provision of appeal against such orders passed under section 12(3), section 17 and section 19.
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- F** It is, therefore, clear that the Act provides for the institution of actions in two different forums and also makes provision for appeals and revisions against orders and decrees passed under the Act. There is no provision in the Act for institution of suits for eviction which will, therefore, lie in the ordinary courts of competent jurisdiction. Appeals, also revisions, where competent, will lie against decrees in eviction suits in the usual hierarchy of courts.
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- It is manifest from a perusal of the scheme of the Act that appeals or applications for revision under section 13A(c) relate only to decrees in suits for eviction based on the ground of non-payment of rent. Such appeals or applications for revision under section 13A(c) are not contemplated under section 22 of the Act. As shown above, decrees or orders passed by the court under the Act against which appeals and revisions are provided in section 22 do not take in decrees or orders passed in a suit for eviction. Usual rights of appeal and revision will be available in the latter class of
- H**

suits. To hold otherwise will be to deny a right of second appeal to a litigation, be he a landlord or tenant, against a decree in an eviction suit which is clearly not the intention of the legislature. Second appeal is only barred in case of decrees or orders passed under the Act to which a copious reference has been made hereinabove with reference to the various provisions of the Act. A

With regard to execution proceedings, it would appear that these are outside the scheme of clauses (a) to (c) of section 13A but it is unnecessary to express any firm opinion on that point since it does not arise in this appeal. B

We are of opinion that the appellant cannot take advantage of section 13A in this appeal by special leave. His applications under section 13A stand dismissed. The appeal is, therefore, dismissed, but there will be no order as to costs. C

FAZAL ALI, J. This appeal by special leave involves a question of law regarding the ambit and scope of s. 13A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 as amended by Ordinance No. 26 of 1975 dated September 29, 1975 which was later replaced by an Act. D

The appeal arises in the following circumstances.

The defendant/appellant along with his two brothers Padam Chand and Tara Chand had taken on lease a shop at a monthly rent of Rs. 60/- from the plaintiffs/respondents as far back as September 1, 1961. The shop was situated in Tripolia Bazar, Jaipur City (Rajasthan). The plaintiffs served a notice of eviction under s. 106 of the Transfer of Property Act on the appellant and his two brothers terminating the tenancy and directing them to vacate the premises. As the tenants did not vacate the premises, the plaintiffs instituted the present suit in the Court of the Munsiff East, Jaipur City, claiming eviction of the appellant and his two brothers on the ground that they had not paid or tendered rent for a period of six months from Magh Shukla 1, Smvt. 2021. In the plaint the plaintiffs also averred that the shop was required by them for their own use and occupation and that the tenants had sublet the shop to Rajasthan Bartan Bhandar without the consent of the plaintiffs. We might mention here that these two grounds taken by the plaintiffs have been held by all the Courts to be completely disproved, and the suit was decreed by the District Judge and the High Court mainly on the ground that the tenants had defaulted in payment of rent for a period of six months and were, therefore, liable to be ejected under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950—hereinafter referred to as 'the Act'. It appears that after summonses were served on all the three defendants including the appellant, two of the brothers of the appellant, viz., Padam Chand and Tara Chand put in their appearance, but the appellant despite the service did not put in his appearance. In fact the counsel who was appearing for the other two defendants had been instructed to appear for the appellant also, but the Vakalatnama was not signed by the appellant. The appellant appears to have taken advantage of E F G H

- A this lacuna in contending that he had not participated in the proceedings of the Trial Court. On February 14, 1966 the defendant Tara Chand moved an application under s. 13 of the Act praying to the Court that the rent due may be determined and the defendants may be directed to deposit the rent. The Court accordingly determined the rent on March 1, 1966 and directed the defendants to deposit a sum of Rs. 398-75 Paise on or before April 19, 1966. As the rent was not deposited, the plaintiffs moved an application for striking out the defence of the defendants against eviction for their failure to comply with the provisions of s. 13(4) of the Act. The Court accordingly by its order dated December 14, 1966 struck out the defence of the defendants. It may be pertinent to note that although the appellant had not put in his formal appearance he understood the order of the Trial Court dated December 14, 1966 striking out the defence and treated the same as having been passed not only against his brothers Padam Chand and Tara Chand, the two defendants, but also against himself and accordingly he along with his brothers preferred an appeal against that order to the Senior Civil Judge, Jaipur City on October 30, 1967. This appeal was ultimately dismissed and then the three defendants filed an application for revision before the High Court which was also dismissed by the High Court by its order dated September 19, 1968. Thus it is manifest that the appellant was fully aware of the proceedings that had taken place as also of the order that had been passed against the defendants striking out their defence. When the record was received back by the Trial Court, Shri Tara Chand Jain Advocate of the defendants informed the Court on November 26, 1968 that he was holding brief only on behalf of the two defendants Padam Chand and Tara Chand and not on behalf of the appellant Gyan Chand. The Court accordingly passed an order that the suit was to proceed *ex parte* against the appellant. On November 30, 1968 the appellant filed an application for setting aside the *ex parte* order passed against him and this application found favour with the Trial Court and was accordingly allowed. The appellant was allowed to file his written statement which he filed on January 27, 1969. Thereafter the appellant applied to the Court for determining the rent due to the plaintiffs but that application was rejected on the ground that no amount of rent was payable as the entire rent due had already been paid by the other two defendants. Thereafter the plaintiffs filed an application before the Trial Court for striking out the defence against Gyan Chand as he had not complied with the order under s. 13(4) of the Act passed by the Court previously. The Trial Court, however, did not pass any orders on that application and ultimately dismissed the suit holding that there was no default.

H It may be stated at the outset that when the appellant applied for setting aside the *ex parte* order he gave no explanation whatsoever for his non-appearance in the suit, after the summonses were served on him but merely tried to explain his absence on November 26, 1968. We have already pointed out that the appellant knew very well that the defence had been struck out by an order of the Court and had actually joined in the appeal and the revision filed by the other two defendants. In spite of that for two years he kept quiet and gave no explanation whatsoever for not appearing before the

Court and participating in the proceedings until November 30, 1968. This delay of two years which has been seriously commented upon by the High Court has not been explained satisfactorily by the appellant.

After the suit was dismissed by the Trial Court, the plaintiffs filed an appeal before the Additional District Judge who allowed the appeal holding that the defendants were defaulters and accordingly decreed the suit. The grounds of subletting and personal requirement as alleged by the plaintiffs were, however, held not proved. Thereafter there was second appeal to the High Court which affirmed the judgment of the District Judge and maintained the decree passed by the District Judge. The High Court has rightly pointed out that the conduct of the appellant in not giving any explanation for not participating in the proceedings despite service of the summonses speaks volumes against him. The argument of the appellant that the entire proceedings should be cancelled as they had taken place in his absence was rightly rejected by the High Court. In view of the concurrent findings of fact recorded on this point by the District Judge and the High Court, we are not at all inclined to interfere, in this appeal by special leave, with the merits of the case decided by the Courts below. We are satisfied that the appellant was not diligent at all and has to thank his stars if the decision of the Courts below went against him. In these circumstances, we do not propose to enter into merits of the appeal.

Mr. Jain, however, raised a pure question of law flowing from the amendment by which s. 13A was introduced in the Act by virtue of Ordinance No. 26 of 1975. Mr. Jain submitted that the statutory benefit conferred by s. 13A would have to be extended to the appellant before this Court also and since the rent due had already been paid and the appellant was prepared to pay the costs and interest, the suit should be dismissed. In order to appreciate this point, it may be necessary to state the sequence of facts. The High Court dismissed the second appeal of the appellant on September 5, 1975. Against this judgment, the appellant filed an application for special leave in this Court on September 23, 1975. Six days later i.e. on September 29, 1975 Ordinance No. 26 of 1975 dated September 29, 1975 introduced s. 13A by amending the Act. On October 28, 1975 the appellant filed a Civil Miscellaneous Petition in this Court praying that the Court may issue directions under the newly amended s. 13A (c) of the Act. On November 14, 1975 this Court granted special leave. On December 11, 1975 another Civil Miscellaneous Petition was filed by the appellant renewing his prayer for directions to be given by this Court under s. 13A of the Amending Act. The significance of these Civil Miscellaneous Petitions appears to have been that if the special leave petition was not treated as an appeal, then the moment the special leave was granted by this Court the appeal stood admitted by this Court and, therefore, the second application was filed for directions under s. 13A of the Act as amended.

Mr. Agarwala counsel for the respondents has vehemently contended that s. 13A of the Act would have absolutely no application to appeal by special leave filed in this Court. In order to appreciate

A this point it may be necessary to examine the language and the circumstances under which s. 13A was introduced. It would appear that before the introduction of s. 13A by virtue of the Ordinance, there was no provision in the Act which prohibited the Court from passing any decree if at any stage the tenant was prepared to deposit the entire rent, costs and interest as directed by the Court. The Legislature in pursuance of its socialistic policies attempted to liberalise the conditions of tenancies so as to give the tenants special protection against frivolous evictions. With this object in view, the Ordinance appears to have been passed which was later on replaced by an Act. In the statement of objects and reasons accompanying the amending Act it is mentioned that the Legislature decided to provide relief to tenants occupying premises in urban areas and in clause (6) of the said statement, the following observations are made :

C

“In relation to pending suits and proceedings for ejection on ground of defaults, an opportunity had been given to tenants to deposit the arrears of rent within thirty days and upon such deposit no decree for ejection will be passed on such ground against them.”

D Thus a perusal of clause (6) of the statement of objects and reasons would clearly show that the intention of the Legislature was to confer certain benefits on the tenants to pending suits and proceedings for ejection only on ground of defaults by giving them an opportunity to deposit the arrears within a specified time. It is nowhere mentioned in clause (6) that this benefit was to be extended beyond the frontiers of the State in appeals which were not ordinary remedies but which were special remedies provided for under the Constitution. Thus the scope of the amendment was to confine the protection given to the tenants within the limits of the hierarchy of courts mentioned by the Act, and to the Courts in the State of Rajasthan. It may be noticed that the statement of objects and reasons does not even give a hint that the benefit conferred by s. 13A would be available even in the execution proceedings after the decree had been passed.

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We shall now analyse s. 13A of the Act against the background of the main objective of the Legislature. Section 13A of the Act as introduced by Ordinance No. 26 of 1975 and later replaced by the Act runs thus :

G “13A. Special provisions relating to pending and other matters :— Notwithstanding anything to the contrary in this Act as it existed before the commencement of the ordinance or in any other law :

H (a) no court shall, in any proceeding pending on the date of commencement of the amending ordinance pass any decree in favour of a landlord for eviction of a tenant on the ground of non-payment of rent, if the tenant applies under clause (b) and pays to the landlord, or deposits in court, within such time such aggregate of the amount of rent in arrears, interest

thereon and full costs of the suit as may be directed by the court under and in accordance with that clause;

- (b) in every such proceeding, the court shall on the application of the tenant made within thirty days from the date of commencement of the amending ordinance, notwithstanding any order to the contrary, determine the amount of rent in arrears upto the date of the order as also the amount of interest thereon at six per cent per annum and costs of the suit allowable to the landlord; and direct the tenant to pay the amount so determined within such time, not exceeding ninety days, as may be fixed by the court, and on such payment being made within the time fixed as aforesaid, the proceeding shall be disposed of as if the tenant had not committed any default;
- (c) the provisions of clauses (a) and (b) *mutatis mutandis* apply to all appeals, or application for revisions, preferred or made after the commencement of the amending ordinance, against decrees for eviction passed before such commencement with the variation that in clause (b), for the expression "from the date of commencement of the amending ordinance," the expression "from the date of the presentation of the memorandum of appeal or application for revision" shall be substituted;

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Explanation :—For the purpose of this section :—

- (a) "amending ordinance" means the Rajasthan Premises (Control of Rent and Eviction) (Amendment) Ordinance, 1975; and
- (b) "Proceeding" means suit, appeal or application for revision."

Section 13A contemplates only three kinds of proceedings, namely, suits, appeals and applications for revision and these proceedings must be under the Act itself. Clause (a) of s. 13A of the Act provides that no court after the commencement of the amending ordinance shall pass any decree on the ground of non-payment of rent if the tenant applies and pays to the landlord the entire rent in arrears, interest and full costs of the suit. Clause (b) requires that such an application is to be made within thirty days of the commencement of the amending ordinance on which the Court would determine the rent in arrears and direct interest to be paid at the rate of six per cent per annum. Clauses (a) and (b) obviously do not apply to the present case, because the proceedings were not pending in any court when the ordinance or the Act came into force. Reliance was, however, placed on the word "proceeding" as appearing in clauses (a) and (b) in

- A order to plead an argument that the word "proceeding" was wide enough to include not only suits, but appeals at all stages. This argument in our opinion is based on a serious misconception of the interpretation of the word "proceeding". The Legislature has not left the connotation of the word "proceeding" in doubt because clause (b) of the Explanation clearly indicates what "proceedings" contemplated by s. 13A in clauses (a), (b) and (c) are. The Explanation clearly shows that "proceeding" means suit, appeal or application for revision. A logical interpretation of clause (b) of the Explanation would clearly reveal that the Act itself has limited the scope of the proceeding to suits, appeals or applications for revision under the hierarchy of the statute. In other words, the Explanation refers only to such proceedings as may be pending in any suit, appeal or application for revision under the Act.

C Section 22 of the Act runs thus :

"22. Appeals and Revisions :—(1) From every decree or order passed by a Court under this Act, an appeal shall lie to the Court to which appeals ordinarily lie from original decrees and orders passed by such former court.

D (2) No second appeal shall lie from any such decree or order;

Provided that nothing herein contained shall affect the powers of the High Court for Rajasthan in revision;

X X X X "

- E Section 22 provides for an appeal to the Court where an appeal ordinarily lies, i.e. the Court of the District Judge in the instant case and thereafter an application in revision to the High Court. The use of the words "such proceeding" in clause (b) of s. 13A fortifies our conclusion that the proceedings contemplated by s. 13A are really the proceedings referred to in Explanation which means proceedings in the nature of suits, appeals or applications for revision as referred to in s. 22 of the Act. In these circumstances we are unable to agree with the learned counsel for the appellant that proceedings in this Court would fall within the ambit of clauses (a) and (b) of s. 13A of the Act.

- G It was then submitted that at any rate clause (c) of s. 13A would apply to the facts of the present case and the appellant should be given the benefit of that provision. It is true that clause (c) applied the provisions of clauses (a) and (b) *mutatis mutandis* to appeals and applications for revision. It may be noticed, however, that this benefit is not conferred even in the execution proceedings arising out of decrees passed in suits or appeals and upheld in revisions. The true interpretation of clause (c) of s. 13A would, therefore, be that this clause also contemplated the same proceedings as contemplated by clauses (a) and (b), namely the proceedings indicated in the Explanation. Thus the benefit conferred by clause (c) would apply only to appeals or applications for revisions filed under the

Act as provided by s. 22 of the Act. The Legislature never intended to confer this benefit beyond the frontiers of the State.

It was however, submitted that the word "appeal" is wide enough to include an appeal by special leave filed in this Court. It is, however, not possible to accept this contention. The amendment was passed some time in the year 1975 i.e. about 25 years after the Constitution had come into force. An appeal by special leave was a special remedy provided for by Art. 136 of the Constitution and the State Legislature of Rajasthan must be presumed to be aware of this special remedy as also the nomenclature of this remedy. If the intention was to extend the benefit to appeals for special leave it should have been so clearly stated in clause (c). Furthermore, the Rules framed by the Supreme Court, the knowledge of which also must be ascribed to the State Legislature, make a clear-cut distinction between an application filed in the Court for grant of special leave and a petition of appeal after the leave is granted. It was suggested that the application for special leave to appeal may be treated as the memorandum of appeal as referred to in clause (c) of s. 13A. It is, however, not possible to accept this contention, because the constituents and ingredients of an application for special leave to appeal are quite different from those of a memorandum of appeal preferred to an appellate Court under O. XLI r. 1(2) of the Code of Civil Procedure. Under O. XVI r. 4 of the Supreme Court Rules, 1966 the petition for special leave is to contain only the necessary facts and not the grounds. It is true, r. 11 of O. XVI of the Supreme Court Rules provides that the petition for special leave would be treated as a petition of appeal after the special leave is granted, but that also cannot be equated with a memorandum of appeal as contemplated by clause (c) of s. 13A of the Act. In contra-distinction to the provisions of the Supreme Court Rules it would appear that O. XLI r. 1(2) of the Code of Civil Procedure runs thus :

"The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively."

It would thus appear that the provisions of r. 1(2) of O. XLI Code of Civil Procedure require that the memorandum of appeal has to set forth under the distinct heads the grounds of objections to the decree appealed from. No such requirement is to be found in the Supreme Court Rules either for an application for special leave to appeal or in the petition of appeal which is required to be filed if certificate by High Court is granted. The Legislature must be presumed to be aware of the difference between an application for special leave to appeal and a memorandum of appeal. If the intention was to extend the benefit of s. 13A even to appeals before the Supreme Court, then apart from the word memorandum of appeal, the words "application for special leave to Supreme Court" should have been mentioned. The fact that clause (c) of s. 13A merely mentions the words "from the date of the presentation of the memorandum of appeal or application for revision" clearly indicate that

A the remedies contemplated by the Act are the remedies of appeal and revision as provided for by s. 22 of the Act. In fact, as already pointed out, the benefit conferred by s. 13A of the Act does not extend even to the execution proceedings and in these circumstances it cannot be assumed that it would have applied to a Court which is beyond the frontiers of the State and to a remedy which has been provided not by the State Legislature but by the Constitution itself.

B For these reasons, therefore, we reject the argument of the appellant that clause (c) of s. 13A of the Act would apply to the present appeal and that the appellant is, therefore, entitled to the benefit of this provision on the basis of the Civil Miscellaneous Petition filed by him. We are clearly of the opinion, on an interpretation of the various clauses of s. 13A of the Act and the Explanation thereto that the benefit under s. 13A has been intended by the Legislature to be conferred only on the appellate and revisional courts and even execution proceedings have been excluded from the ambit of the protection granted.

C For these reasons I agree with the judgment proposed by my brother Goswami, J., and dismiss the appeal but in the peculiar circumstances of the case without any order as to costs.

P.B.R.

Appeal dismissed.