Reserved On 01.12.2022

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Court No. - 34

AFR

Case :- S.C.C. REVISION No. - 158 of 2022

Revisionist :- Amit Gupta

Opposite Party :- Gulab Chandra Kanodia

Counsel for Revisionist :- Prakhar Tandon

Counsel for Opposite Party :- Saurabh Srivastava

Connected with

Case :- S.C.C. REVISION DEFECTIVE No. - 48 of 2022

Revisionist :- Shri Mewak Ram And Keshav Dev Khemka Samaj Sewa Sadan Samiti
Opposite Party :- Shri Kuldeep Chand Malik
Counsel for Revisionist :- Ashish Kumar Singh,Ajay Kumar Singh

Hon'ble Ajit Kumar,J.

1. Heard Sri Prakhar Tandon, learned counsel for the revision applicant in SCC Revision No. 158 of 2022 Saurabh Srivastava, learned counsel for the contesting respondent and Sri Ashish Kumar Singh, learned counsel for the revision applicant in SCC Revision (D) No. 48 of 2022.

2. Both these revision applications raise common question of law and hence being decided together by this common judgment and order.

3. In SCC Revision No. 158 of 2022, the revision applicant is aggrieved by the order passed by the Judge, Small Causes dated 23rd September, 2022 rejecting his application bearing no. 232-C, filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 questioning the maintainability of Small Cause Suit for recovery of arrears of rent and ejectment even after coming into force and for the provisions contained under U.P. Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred to as new Tenancy Act,

2021), which has come into force *vide* gazette notification w.e.f. 16th September, 1972.

4. In SCC Revision No. 48 of 2022, the revision applicant has questioned the order dated 13th July, 2022 passed by the District Judge, Saharanpur in SCC Suit No. Nil of 2022 dismissing the SCC Suit at the very threshold holding it to be not maintainable in view of enforcement of Tenancy Act, 2021 and the provisions contained therein.

5. Thus two legal questions arise for consideration before this Court:

***(a)**. Whether a Small Cause Suit already instituted, since prior to coming into force of the new Tenancy Act, 2021 and so also such SCC revision arising therefrom would stand saved or the SCC suit and SCC Revision being not mentioned in the repeal and saving clause of Section 46, the proceedings of such suit and revision would stand abated; and*

***(b)**. Whether the bar created under Section 38 of the Tenancy Act is not an absolute one and so Small Cause Suit for arrears of recovery of Rent and Eviction (SCC Suit) and SCC Revision arising therefrom would still be maintainable even after the enforcement of the New Tenancy Act, 2021 qua the of tenancies not covered by tenancy agreements provided for under Tenancy Act, 2021.*

6. In respect of question **"(a)"** following arguments have been advanced by Sri Prakhar Tandon, learned counsel, appearing for the applicant in revision no. 158 of 2022:

(i) Section 46 of the New Tenancy Act, 2021 saves certain proceedings already instituted and pending under the U.P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972, but does not mention to the suits instituted under the proviso to Sub Section 3 of Section 15 of the Provincial Small Causes Courts Act, 1887 in its application to the state vide U.P. Civil Laws Amendment Act, 1972 and so repeal and saving clause would not apply to the proceedings of SCC suits and SCC revisions;

(ii) Section 46 of the New Tenancy Act, 2021 is meant to replace Act No. 13 of 1972 and has made the operation of this new Act to be prospective only to ensure that already pending proceedings under the repealed U.P. Urban Building (Letting of Rent and Eviction) Act, 1972 are not frustrated;

(iii) New Act provides for a forum to initiate proceedings by land lord against tenant and since new Act replaces the old Act and has been enacted by a competent legislature on a subject falling in the State list of the Schedule VII of the Constitution, it will occupy the field to the exclusion of all other Acts framed by the competent legislature on the subject in the list 2, and therefore, the provisions as enacted by the State legislature vide U.P. Civil Laws Amendment Act, 1972 would also stood impliedly repealed. Thus according to Mr. Tandon, in so far as proviso to sub section 3 of Section 15 of the Provincial Small Causes Courts Act, 1887 and Bangal, Agra and Assam Civil Courts Act, 1887 in its application to Uttar Pradesh, would stand repealed.

7. Sri Saurabh Srivastava, learned counsel for the respondent has raised an argument that since forum of Small Causes Court is available by virtue of U.P. Civil Laws Amendment Act, 1972 and the new Tenancy Act having no Presidential assent, the forum of Small Causes Court would continue to remain there and there can be two forums simultaneously and may be with the passage of time, the forum of Small Causes Courts looses its relevance and significance for there being only written tenancy agreement and old tenancies coming to end. He has emphasized the two Acts namely New Tenancy Act, 2021 and Amendment Act, 1972 to be having parallel operation and on principle of doctrine of election, a party bringing an actionable claim, can choose either of the two.

8. *Per contra*, the submissions advanced by Sri Ashish Kumar Singh, learned Advocate are as under:

(I) U.P. Civil Laws amendment Act, 1972 was brought into, to make the Central Act namely Provincial Small Causes Courts Act, 1887,

and the Bangal, Agra, Assam Civil Courts Act, 1887 to maintain a suit by lessor for the eviction of lessee from the building after the determination of lease i.e. a suit for recovery of rent and occupation of building and this Act having received assent of the President and so also the Central Act would continue to occupy the field for maintenance of such suits even after the enactment of the new Tenancy Act, 2021;

(II) The bar created under Section 38 is limited to the cases where rights and obligations flow from the agreement reached and presented under the New Tenancy Act, otherwise remedy of small cause suit is there and will continue to be available until the legislature repeals the U.P. Civil Laws Amending Act, 1972 and provides alternative forum for these cases in which no agreement in writing has been signed.

(III) Since U.P. Civil Laws Amendment Act, 1972 made the Provincial Small Courts Act, 1887 in its application to the State of U.P. for providing a forum of Small Causes Court, until such a provision is repealed with retrospective effect, such suit proceedings would continue be brought to their logical end.

9. Rival submissions fall for consideration.

10. In order to find answer to the questions that arise for consideration in the two cases, as to what extent the new State Tenancy Act would cover the field of tenancy law in the state; as to whether it intrudes the field already occupied by the central act like Transfer of property Act,1872; as to whether it saves suits already instituted and whether forum of small causes courts provided for *vide* UP Civil Laws Amendment Act, 1972 having Presidential assent would still be available, it is first necessary to look into legislative relationship between centre and State as our constitution prescribes for.

11. Three lists provided in VIIth schedule of the constitution referred to as Union List, State List and Concurrent list, are indicative of federal structure of our constitution.

12. Article 272 saves pre-constitution laws until are repealed by competent legislature. Article 252 provides for power of central legislature and states' power to legislate.

13. The concurrent list subjects fall within the legislative competence of both the central and state legislatures provided of course, field is not already occupied by any Central Act and if this is so then a State Act shall have to have Presidential assent. Likewise any State Act if is having presidential assent it's effect would be taken away, to *wit;* by express or implied repeal, only if a subsequent Act also has a presidential assent.

14. With this above principle enshrined in our constitution governing legislative relationship between centre and state I proceed to examine certain provisions of the new Tenancy Act that are relevant to the controversy involved in the cases in hand.

15. Prior to this new Tenancy Act the earlier Act, namely, U.P. Urban Buildings (Regulation of Letting and Eviction) Act, 1972 (hereinafter referred to as "Rent Control Act") barred suits relating to buildings falling in urban areas in matters of tenancy dispute except on specified grounds as prescribed for under section 20 of the said Act. In Oder to ensure expeditious disposal of such suits as it would not involve title dispute and would require only summary trial, the state legislature brought in U.P. Civil Laws Amendment Act, 1972 (hereinafter referred to as Amendment Act, 1972) adding a *proviso* to section 3 of the Provincial Small Causes Courts Act, 1887 in its application to the state and so also amending Bengal, Awadh and Assam Civil Courts Act, providing forum of civil courts having territorial jurisdiction to be designated as Small Causes courts. This Amendment Act, 1972 received Presidential assent on 12.09.1972 and is still not repealed.

16. Thus small causes suits came to be maintainable in matters of tenancy disputes *qua* urban buildings defined under the rent control Act and Amendment Act.

17. The new Tenancy Act completely repealed the old rent control Act and has even barred the suits in respect of tenancy disputes relating to premises defined under section 2(c) situate in areas provided under section 1. Section 1 provides for its areas of application as under:

> *"(1) This Act may be called the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021.*
>
> *(2) It extends to the whole of the Uttar Pradesh.*
>
> *(3) It shall apply to:-*
>
> *(a) every city as defined in the Uttar Pradesh Municipal Corporation Act, 1959 (U.P. Act no. 2 of 1959);*
>
> *(b) every municipal area as defined in the Uttar Pradesh Municipalities Act, 1916 (U.P. Act no. 2 of 1916);*
>
> *(c) every development area notified under Uttar Pradesh Urban Planning and Development Act, 1973 (President's Act no. 11 of 1973);*
>
> *(d) every special development area notified under the Uttar Pradesh Special Area Development Authorities Act, 1986 (U.P. Act. no. 9 of 1986);*
>
> *(e) every Industrial Development Area notified under Uttar Pradesh Industrial Area Development Act, 1976 (U.P. Act no. 6 of 1976);*
>
> *(f) every Regulated area notified under the Uttar Pradesh (Regulation of Building Operations) Act, 1958 (U.P. Act. no. 34 of 1958); and*
>
> *(g) every area relating to various housing schemes of Uttar Pradesh Avas Evam Vikas Parishad constituted under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Act. no. 1 of 1966):*
>
> *Provided that the State Government, if it is satisfied that it is necessary or expedient so to do in the interest of the general public, residing in any other local area, may by notification in the Gazette declare that this Act or any part thereof shall apply to such area, and thereupon this Act or part shall apply to such area.*
>
> *(4) It shall be deemed to have come into force with effect from January 11, 2021."*

(emphasis added)

18. Section 2 (c) defines premises as under :

> *" "Premises" means any building or part of a building which is, or is intended to be, let on rent for the purpose of residence or for commercial or for educational use, except for industrial use and includes-*

(i) garden, garage or closed parking area, vacant land, grounds and out-houses, if any, appertaining to such building or part of the building; and

(ii) any fitting to such building or part of the building for the more beneficial enjoyment thereof, but does not include premises such as hotel, lodging house, dharamshala or inn;

(j) "Tenant", whether called lessee or by any other name, means a person by whom or on whose account or on behalf of whom, the rent of any premises is payable to the landlord under a tenancy agreement and includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made."

(Emphasis added)

19. Section 32 of New Tenancy Act, 2021 provides for constitution of Rent Tribunal and Rent Authority as under:

"The Rent Tribunal shall be presided over by the District Judge himself or by Additional District Judge nominated by the District Judge in each district."

20. Section 34 provides for powers of Rent Authority and Tribunal as under:

"(1) The Rent Authority and the Rent Tribunal shall, for discharging their functions under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act. No. 5 of 1908) for the purposes of,-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commission for examination of the witnesses or documents;

(d) issuing commission for local investigation;

(e) receiving evidence on affidavits;

(f) dismissing an application or appeal for default or deciding it ex-parte;

(g) setting aside any order of dismissal of any application or appeal for default or any other order passed by it ex-parte;

(h) any other matter, which may be prescribed.

(2) Any proceeding before the Rent Authority or Rent Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code, 1860 (Act. No. 45 of 1860); and the Rent Authority and the Rent Tribunal shall

be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Act. No. 2 of 1974).

(3) For the purposes of holding any inquiry or discharging any duty under this Act, the Rent Authority may,-

(a) after giving not less than twenty-four hours' notice in writing, enter and inspect or authorize any officer subordinate to it, to enter and inspect any premises at any time between sunrise and sunset;

(b) by a written order, require any person to produce for its inspection such books or documents relevant to the inquiry, at such time and at such place as may be specified in the order.

(4) The Rent Authority may, if it thinks fit, appoint one or more persons having special knowledge of the matter under consideration as an assessor or valuer to advise it in the proceeding before it.

(5) Any clerical or arithmetical mistake in any order passed by the Rent Authority or any other error arising out of any accidental omission may, at any time, be corrected by the Rent Authority on an application received by it in this behalf from any of the parties or otherwise.

(6) The Rent Authority may exercise the powers of a Judicial Magistrate of the First Class for the recovery of the fine under the provisions of the Code of Criminal Procedure, 1973 (Act. no. 2 of 1974) and the Rent Authority shall be deemed to be a Magistrate under the said Code for the purposes of such recovery.

(7) An order made by a Rent Authority or an order passed in appeal under this Chapter shall be executable by the Rent Authority as a decree of a Civil Court and for this purpose, the Rent Authority shall have the powers of a Civil Court.

(8) The Rent Authority may set aside or recall any order passed ex-parte if the aggrieved party files an application and satisfies it that the notice was not duly served or that he was prevented by any sufficient cause from appearing when the case was taken up for hearing.

(9) Save as otherwise expressly provided in this Act, every order made by the Rent Authority shall, subject to decision in appeal, be final and shall not be called in question in any original suit, application or execution proceedings."

(emphasis added)

21. Section 35 provides for appeal to rent tribunal as under:

(1) Any person aggrieved by an order passed by the Rent Authority may prefer an appeal along with a certified copy of such order to the Rent Tribunal within the local limits of which the premises is situated, within a period of thirty days from the date of that order:

Provided that no appeal shall lie unless the appellant pre-deposits fifty percent of the entire payable amount under the impugned order of the Rent Authority.

(2) Upon filing an appeal under sub-section (1), the Rent Tribunal shall serve notice, along with a copy of memorandum of appeal to the respondent and fix a hearing not later than thirty days from the date of service of notice of appeal on the respondent and the appeal shall be disposed of within a period of sixty days from such date of service.

(3) Where the Rent Tribunal considers it necessary in the interest of arriving at a just and proper decision, it may allow filing of documents at any stage of the proceedings in appeal:

Provided that no such document shall be allowed more than once during the hearing.

(4) The Rent Tribunal may, in its discretion, pass such interlocutory order during the pendency of the appeal, as it may deem fit.

(5) While deciding the appeal, the Rent Tribunal may, after recording reasons therefor, confirm, set aside or modify the order passed by a Rent Authority.

(emphasis added)

22. Section 36 provides for execution of order under:

> *"(1) The Rent Authority shall, on an application filed by any party, execute an order of a Rent Tribunal or any other order made under this Act, in such manner as may be prescribed, by-*
>
> *(a) delivering possession of the premises to the person in whose favour the decision has been made; or*
>
> *(b) attaching one or more bank accounts of the opposite party for the purpose of recovering the amount specified in such order; or*
>
> *(c) appointing any advocate or any other competent person including officers of the Rent Authority or local administration or local body for the execution of such order; or*
>
> *(d) attachment of salary and allowance of the opposite party; or*
>
> *(e) attachment and sale of the movable or immovable property of the opposite party.*
>
> *(2) The Rent Authority may take the help from the local police for for execution of the final orders:*
>
> *Provided that no applicant shall obtain help of the police unless he pays such costs as may be decided by the Rent Authority.*
>
> *(3) The Rent Authority shall conduct the execution proceedings, in relation to its order or an order of a Rent Tribunal or any other order passed under this Act, in a summary manner and dispose of the application for execution made under this section within a period of thirty days from the date of service of notice on the opposite party."*

23. Section 38 bars jurisdiction of civil courts barred in respect of certain matters as under:

> *"(1) Save as otherwise provided in this Act, no* ***Civil Court*** *shall entertain any suit or proceeding in so far as it relates to the provisions of this Act.*
>
> *(2)* ***The jurisdiction of the Rent Authority shall be limited to tenancy agreement submitted to it as specified in the First Schedule*** *and shall not extend to the question of title or ownership of premises."*

(emphasis added)

24. Section 42 gives overriding effect to the Tenancy Act as under:

> ***"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law of the State of Uttar Pradesh for the time being in force."***

25. Section 46 provides for repeal and saving clause as under:

> *"(1) The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act no. 13 of 1972) and the Uttar Pradesh Regulation of Urban Premises Tenancy (Second) Ordinance, 2021 (U.P. Ordinance no. 3 of 2021) is hereby repealed.*
>
> *(2) Notwithstanding such repeal,* ***all cases and other proceedings under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act no. 13 of 1972) pending, at the commencement of this Act,*** *shall be continued and disposed of in accordance with the provisions of the said Act of 1972 as if that Act had continued to be in force and this Act had not been promulgated.*
>
> *(3)* ***All cases and proceedings relating to any dispute between a landlord and a tenant under any law other than the law repealed by sub-section (1) pending before the Civil Court or in appeal before any other Court on the date of commencement of this Act,*** *in respect of the premises to which this Act applies, shall be continued before such Court and disposed of in accordance with such applicable law.*
>
> *(4) Notwithstanding such repeal anything done or any action taken under the Uttar Pradesh Regulation of Urban Premises Tenancy Ordinance, 2021 (U.P. Ordinance no. 2 of 2021) and the Uttar Pradesh Regulation of Urban Premises Tenancy (Second) Ordinance, 2021 (U.P. Ordinance no. 3 of 2021) shall be deemed to have been done or taken under the corresponding provisions of this Act."*

*(*emphasis added)

26. The application clause vide section 1 of the new Tenancy Act, 2021 makes it applicable to the areas falling in municipalities, civil

and industrial development authority areas including the areas covered under the U. P. (Regulation of Building Operations) Act, 1958 and the areas of housing schemes of U.P. Awas Ewam Vikas Parishad. Buildings are defined as premises vide section 2(c) above with exception to those referred under section 3 of the new Tenancy Act, 2021 except buildings let out for industrial use.

27. The new Tenancy Act, 2021 provides for constitution of Rent Authority and Tribunal for rent dispute resolution and so consequently bars jurisdiction of civil courts vide section 38.

28. The argument advanced by Mr. Tandon was that since section 42 does not refer to the small causes courts, so the suits pending before small causes courts and small causes revisions shall abate with the enforcement of the Tenancy Act. He had argued that on conjoint reading of sections 38, 42 and 46 it would lead to inevitable conclusion that the Amendment Act,1972 got impliedly repealed.

29. Before I proceed to examine these three sections I need to examine the scope of power that vests with the Rent Authority that is created first, to adjudicate upon the *lis* between lessor (landlord) and lessee(tenant).

30. Under the new Tenancy Act, 2021 much emphasis is upon written agreement vide section 4 that runs as under:

> *" (1) Notwithstanding anything contained in this Act or any other law for the time being in force,* ***no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing,*** *which shall be informed to the Rent Authority by the landlord and tenant jointly, in the form specified in the First Schedule within a period of two months from the date of tenancy agreement:*
>
> ***Provided that in cases of residential tenancies for a period of less than twelve months, the landlord and tenant shall not be required to inform the Rent Authority about, such tenancy.***
>
> *(2) Where the landlord and the tenant fail to jointly inform the execution of the tenancy agreement referred to in sub-section (1), the landlord and tenant shall separately inform the execution of tenancy agreement to the Rent Authority within a period of one month from the date of expiry of the period specified in sub-section (1).*

(3) ***Where, in relation to a tenancy created before the commencement of this Act,****-*

(a) ***if an agreement in writing was entered*** *into between the landlord and the tenant, they shall jointly present a copy thereof to the Rent Authority within three months of the commencement of this Act.*

(b) ***if no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing*** *with regard to that tenancy and present the same to the Rent Authority* ***within three months of the commencement of this Act:***

Provided that where the landlord or the tenant fail to present jointly a copy of the tenancy agreement or fail to reach an agreement within specified period, such landlord and tenant shall separately file the particulars about such tenancy with the Rent Authority within one month from the date of expiry of period mentioned in clause (b) above, in the form specified in First Schedule. ***If the landlord has submitted his particulars within the specified period but tenant fails to submit such particulars, the landlord may file an application for eviction on this ground alone:***

Provided further that during such eviction proceedings, the Rent Authority shall, notwithstanding anything contained in this Act, decide interim rent payable by the tenant during such adjudication.

(4) The State Government shall, put in place a digital platform in the Hindi or English language for enabling submissions of document in such form and manner as may be prescribed.

(5) The Rent Authority shall, after receiving information about the execution of tenancy agreement along with the documents specified in the First Schedule, provide a unique identification number to the parties.

(6) The terms of authorization of the property manager, if any, by the landlord to deal with the tenant shall be such as agreed to by the landlord and tenant in that behalf in the tenancy agreement.

(7) The information provided under sub-sections (1), (2) and (3) shall be conclusive proof of the facts relating to tenancy and matters connected therewith, and in the absence of any statement of information, the landlord may file an application for eviction on this ground alone."

(emphasis added)

31. The obligation cast upon the parties namely landlord and tenant, is to enter an agreement in writing and inform Rent Authority within two months of such agreement either jointly or separately, provided of course, tenancy is for a period of 12 months or more. In case of old/existing tenancies on the date of commencement of new Tenancy Act, 2021, parties are expected to enter an agreement in writing and inform the Rent Authority within three months of the commencement of the said Act and in case of existence of written

agreement it is obligation cast upon the parties to jointly present that to the Rent Authority.

32. The first proviso to section 4 (3) makes it obligatory upon the landlord to give particulars as per form prescribed in the First Schedule *qua* tenancy to Rent Authority within one month of the expiry of three months period referred to above in the event no agreement is entered in writing and in such an eventuality the tenant will also be required to give his particulars and in the event of failure on the part of the tenant in discharging his part of obligation, he will be liable to eviction.

33. So the question arises as to the tenancy where even land lord fails to discharge his part of obligation under the first proviso to section 4(3). The first proviso to section 4(1) leaves open for a tenancy of eleven months to continue without reporting any agreement in writing to the Rent Authority and further provisions relating to revision of rent under the Tenancy Act also provides for revision in respect of old existing tenancies. Reading all theses above provisions together one can safely conclude that in cases of no tenancy agreement and none of the parties furnishing any agreement, would lead to an inevitable conclusion that tenancy is either for less than 12 months or on month to month basis. Still further in the event landlord not furnishing his particulars of existing tenancy even after commencement of new Tenancy Act 2021, the Act is silent as to consequences. Again an inevitable conclusion would be, therefore, oral agreements of understanding for less than 12 months are protected under section 21 against the right of landlord to seek eviction. It would be worth producing section 21 and 22 here and are reproduced hereunder:

> *'"**21-(1) Protection of tenant against eviction.- (1) A tenant shall not be evicted during the continuance of tenancy agreement unless otherwise agreed to in writing by the landlord and** tenant, except in accordance with the provisions of sub-section (2) or in accordance with the provisions of section 22:*
>
> *Provided that where the landlord has acquired the premises by sale deed after the commencement of this Act and it was in the occupation of a*

tenant since before its purchase, no application for recovery of possession of such premises shall be made under this section unless a period of one years has elapsed from the date of such acquisition, or expiry of tenancy agreement executed in between the erstwhile landlord and the tenant, whichever is earlier:

Provided further that after acquisition of the premises by the landlord under preceding proviso the landlord shall also intimate to the tenant in possession, within one month of such acquisition.

(2) The Rent Authority may, on an application made to it by the landlord in such manner as may be prescribed, make an order for eviction and recovery of possession of the premises on one or more of the following grounds, namely:-

(a) that the tenant does not agree to pay the rent payable under section 8;

(b) that the tenant has not paid the arrears of rent and other charges payable in full as specified in sub-section (1) of section 13 for two consecutive months, including interest for delayed payment as may be specified in the tenancy agreement within a period of one month from the date of service of notice of demand for payment of such arrears of rent and other charges payable to the landlord:

Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. 4 of 1925) has issued a certificate that he is serving under special conditions within the meaning of section 3 of that Act or where he has died by enemy action while so serving, then in relation to his heirs, the words "two months" in this clause shall be deemed to have been substituted by the words "one year";

(c) that the tenant has, after the commencement of this Act, parted with the possession of whole or any part of the premises without obtaining the written consent of the landlord:

Provided that in case, the tenant is a firm, then in case Of change of proprietor or partners of firm or its nature of business, the prior endorsement of landlord has not been obtained in writing;

(d) that the tenant has continued to misuse the premises even after receipt of notice from the landlord to desist from such misuse.

Explanation.-For the purposes of this clause, "misuse of premises" means encroachment of additional space by the tenant or ***use of premises for a purpose other than the purpose permitted in the tenancy agreement*** *or use of premises which causes public nuisance or causes damage to the property or is detrimental to the interest of the landlord or for immoral or illegal purposes;*

(e) where it is necessary for the landlord to carry out any repair or construction or rebuilding or addition or alteration or demolition in respect of the premises or any part thereof, which is not possible to be carried out without the premises being vacated:

Provided that after such repair, construction, rebuilding, addition or alteration, the tenant may be allowed to reoccupy the premises only when it has been mutually agreed to between the landlord and the tenant and a new tenancy agreement has been submitted with the Rent Authority:

Provided further that the tenant shall not be allowed to reoccupy the premises:

(i) in the absence of submission of such mutual tenancy agreement with the Rent Authority; and

(ii) in cases where the tenant has been evicted under the orders of a Rent Authority;

(f) that the premises or any part thereof is required by the landlord for carrying out any repairs, construction, rebuilding, additions, alterations or demolition, for change of its use as a consequence of change of land use by the competent authority;

***Explanation**:-For the purposes of this clause, the expression "competent authority" means the Municipal Corporation or the Municipality or the Development Authority or any other authority, as the case may be, which provides permission on matters relating to repair or redevelopment or demolition of building or permission for change in land use;*

(g) that the tenant has given written notice to vacate the premises let out on rent and in consequence of that notice the landlord has contracted to sell the said premises or has taken any other step, as a result of which his interests would seriously suffer if he is not put in possession of that premises;

(h) that the tenant has carried out any structural change or erected any permanent structure in the premises let out on rent without the written consent of the landlord;

(i) that in violation of section 7, the tenant has sub-let whole or part of the premises held by him or has transferred or assigned his rights in the tenancy agreement or part thereof;

(j) that where the tenancy stands determined by efflux of time;

(k) that the tenant has allowed the premises to be occupied by any person who is not a member of his family;

Explanation:-For the purposes of this clause, family means spouse, male lineal descendants, such parents, grandparents any unmarried, widowed, divorced, judicially separated daughter, daughter of a male descendant, or widowed daughter-in-law as may have been normally residing with him or her;

(l) that the tenant has substantially removed his effects from the premises;

(m) that the premises are required by landlord either in its existing form or after demolition and new construction thereof for the purpose of its occupation by landlord.

(3) No order for eviction of the tenant on account of failure to pay the rent specified in clause (b) of sub-section (2) shall be made, if the tenant makes payment to the landlord or deposits with the Rent Authority the arrears of rent and other payable charges, if any, including interest within one month from the date of service of the said demand notice upon him.

(4) Where the tenant fails to pay the rent consecutively for two months subsequent to the grant of the relief specified in sub-section (3) in any one year, then the tenant shall not be entitled to such relief again.

(5) In any proceedings for eviction under clause (e) of sub-section (2), the Rent Authority may allow eviction from only a part of the premises, if the landlord agrees for the same."

Section 22 - Eviction and recovery of possession of premises in case of death of the landlord- (1) (1) Notwithstanding anything contained in this Act or any other law for the time being in force, in case of death of the landlord, where there is a requirement of the premises let out on rent by the legal heirs of the landlord during the period of tenancy, such legal heirs may file an application in this behalf for eviction and recovery of possession of the said premises before the Rent Authority in such form and manner, as may be prescribed.

(2) The Rent Authority may, on an application made to it under sub-section (1), if it is satisfied that the legal heirs of the deceased landlord are in requirement of the premises let out on rent, pass necessary orders against the tenant for handing over vacant possession of the said premises to the legal heirs of the deceased landlord.

(emphasis added)

34. Section as quoted above protects tenant from eviction during continuation of tenancy agreement with exception to what is provided under section 22. However, a subsequent purchaser of the premises has a right to seek eviction after one year of such acquisition or on expiry of rent agreement whichever falls earlier and with notice to tenant in possession to be issued within one month of such acquisition. Subsection (2) provides for contingencies in which a landlord may apply for eviction. A careful reading of various clauses of subsection (2) it shows almost every eventuality has been covered to seek eviction of a defaulting tenant and need of the premises by landlord for occupation thereof. What is important to notice is clause (j) of subsection (2) as it refers to an eventuality of determination of tenancy by efflux of time. This of course would cover the tenancies where term under written agreement has expired or for that matter 11 months unwritten tenancy.

35. There can equally be a claim of tenant to seek protection under section 112 to 114 A of relating to waiver of forfeiture, waiver of notice to quit, relief against forfeiture for non payment of rent, relief against forfeiture in certain cases of the of Transfer of Property Act 1882 and so provisions under new Tenancy Act, 2021 would

certainly give way to central Act to the extent of repugnancy, as it occupies the field and would prevail by virtue of Article 254 of the Constitution until state legislates any amending law to modify Transfer of Property Act,1882 in its application to the state and such amending law gets Presidential assent.

36. Now the question arises for remedies. In matters of eviction both the old Rent Control Act and the New Tenancy Act have one thing common and that is designated prescribed authority/rent authority. However, under the old Act suits were maintainable in certain specified contingencies. Under the new Tenancy Act those very eventualities though do count for as ground for eviction but by way of application before the Rent Authority only. Protection granted under section 20(4) of the Rent Control Act has also been granted with little modification under section 21(3) of the new Tenancy Act. Section 21(3) runs as under:

> *"No order for eviction of the tenant on account of failure to pay the rent specified in clause (b) of sub-section (2) shall be made, if the tenant makes payment to the landlord or deposits with the Rent Authority the arrears of rent and other payable charges, if any, including interest within one month from the date of service of the said demand notice upon him."*

37. It appears that since the old Rent Control Act provided for suits, state legislature thought it better to provide a forum for summary disposal of such suits as it would be involving only landlord-tenant dispute and mostly there were orally agreed tenancies. Thus a trial was necessary but at the same time it's expeditious disposal. Resultantly U.P. Civil Laws Amendment Act, 1972 was enacted inserting a proviso to section 15(3) of The Provincial Small Causes Courts Act, 1887. Section 2 of the Amendment Act,1972 is reproduced hereunder:

> *" 2.* ***Amendment Of Section 15 Of Act Ix Of 1887*** *:- In Section 15 of the Provincial Small Cause Courts Act, 1887,as amended in its application to Uttar Pradesh, hereinafter referred to as the principal Act, in sub-section (3), the following proviso shall be inserted, namely:*
>
> *"Provided that in relation to suits by the lessor for the eviction of a lessee from a building after the determination of his lease, or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for the use and occupation thereof after such determination of lease, the reference in this sub-section*

to two thousand rupees shall be construed as a reference to five thousand rupees.

Explanation.--For the purposes of this sub-section, the expression building has the same meaning as in Art. (4) in the Second Schedule."

38. As a consequence to the above incorporation of proviso court's power of revision against eviction decree became available under section 25 of Act,1887. Accordingly a proviso was also added vide section 3 of the Amendment Act as under:

"In Section 25 of the principal Act the following proviso thereto shall be inserted, namely :

"Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of Judge of Small Causes, the power of revision under this section shall vest in the High Court."

39. Further the word building came to be redefined by amending Article(4) of the second schedule of the Principal Act vide Section 4 that runs as under:

"In the Second Schedule to the principal Act, for Art. (4) the following Article shall be substitude, namely :

"(4) a suit for the possession of immovable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

Explanation.--For the purposes of this Article, the expression 'buildings, means a residential or non-residential roofed structure, and includes any land (including any garden), garages and out-houses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof."

40. Consequential amendments were also made under section 25 of Bengal Agra and Assam Civil Courts Act, 1887, section 115 of CPC, 1908 in its application to Uttar Pradesh.

41. Further vide section 9 of the Amendemnt Act, 2021 all such suits pending before the Munsif's court where transferred to small causes court except where oral evidence had started.

42. Now since the new Tenancy Act does not talk of suits, so suits, it was argued would not be maintainable as the new regime of tenancy law under the Act of 2021 covers all kinds of tenancy disputes short

of unwritten tenancy agreements and it appears also why the legislature in its wisdom thought it to be not necessary to amend Amendment Act,1972.

43. Amendment Act,1972 has received Presidential assent on 12th September 1972 and came into force with Gazette notification on 16th September1972. This Act modifies Provincial Small Causes Courts Act,1887 and Bengal,Agra and Assam Act,1887 both central Acts in their application to suits relating to tenancy dispute in Uttar Pradesh to be maintainable on specified grounds vide Section 20 of old Rent Control Act. Section 20 of old Rent control Act provides as under:

> ***20. Bar of suit for eviction of tenant except on specified grounds- (1)*** *Save as provided in sub-section (2), [* * *] no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:*
>
> *Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant.*
>
> *(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:*
>
> *(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:*
>
> *Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while so serving, then in relation to his heirs, the words "four months" in this clause shall be deemed to have been substituted by the words "one year";*
>
> *(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the building;*
>
> *(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural*

alteration in the building as is likely to diminish its value or utility or to disfigure it;

(d) that the tenant [has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such use], or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purpose;

(e) that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building;

(f) that the tenant has renounced his character as such or denied the title of the landlord, and the letter has not waived his right of reentry or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased.

[* *]*

(4) In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays of [tenders to the landlord or deposits in Court] the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

[Explanation--For the purposes of this sub-section--

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression "cost of the suit" includes one-half of the amount of Counsel's fee taxable for a contested suit.]

(5) Nothing in this section shall affect the power of the Court to pass a decree on the basis of an agreement, compromise or satisfaction recorded under Rule 3 of Order XXIII of the First Schedule to the Code of Civil Procedure, 1908.

[(6) Any amount deposited by the tenant under sub-section (4) or under Rule 5 of Order XV of the First Schedule to the Code of Civil

Procedure, 1908 shall be paid to the landlord forthwith on his application without prejudice to the parties' pleadings and subject to the ultimate decision in the suits.]

(emphasis added)

44. The Amendment Act, 2021 brought amendment to Article 4 of Second Schedule of the PSCC Act 1887 that provide exception clause and so excluded suits for possession and any recovery of interest. For better appreciation original Article 4 of second schedule of PSCC Act is reproduced hereunder:

"(4) a suit for the possession of immovable property or for the recovery of an interest in such property."

45. Now since suits under section 20 of rent control Act were prescribed for on certain specified grounds in that very section the UP Legislature amended article 4 of the second Schedule of the SCC Act in its application to Uttar Pradesh to maintain small cause suits in matters of eviction of tenants on grounds specified under section 20 of the Rent Control Act. The Amended Article 4 is already reproduced above in paragraph 39.

46. A comparative study of the original Article as is there on central statute and amended one by virtue of UP Amendment shows that legislature in order to maintain an eviction suit at the instance of a lessor in respect of buildings as defined under section 3(i) of old rent control Act, added such suits as exception. The definition of building given under section3(i) stands incorporated in the explanation added to amended Article 4 of Second Schedule of PSCC Act.

47. Consequently vide same Amendment Act a proviso was added to Section 15(3) of SCC Act enhancing valuation and so also section 25 of the Bengal,Agra and Assam Act, 1887 was amended enhancing valuation of such suits. Further in order to maintain such suits even before the District Judge or for that matter before the Additional District Judge for enhanced valuation subsection (2) was added to section 25 of the said Act.

48. Section 25 of Bengal, Agra and Assam Act,1887 as it stands after 1972 amendments in its application is reproduced hereunder:

"Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887, as amend in its application to Uttar Pradesh shall be re-numbered as sub-section (1) thereof, and--
(i) in sub-section (1), as so re-numbered, for the existing proviso, the following proviso shall be substitude, namely :

"Provided that in relation to suits of the nature referred to in the proviso to subsection (3) of Section 15 of the said Act the references in this sub-section to one thousand rupees and five hundred rupees shall be construed respectively as references to five thousand rupees and one thousand rupees."

(ii) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely :

*"**(2) The State Government may by notification in the official Gazette, confer upon any District Judge or Additional District Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease of** of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.*

Explanation--For the purposes of this sub-section, the expression 'building' has same meaning as in Art. (4) in the Second Schedule to the said Act.

(3) The State Government may by notification in the official Gazette delegate to the High Court its powers under this section."

49. The above provisions of Old Rent Control Act, PSCC Act, 1887 (with UP Amendments) and Benga,Agra and Assam Act make following two things absolutely clear about the legal position prior to new Tenancy Act.

a)- A suit by lessor for arrears of rent,eviction of tenant of premises/building and consequential possession of such premises was maintainable as small causes suit only and that too only on specified grounds mentioned under section 20 of Rent Control Act; and

b)- Civil Courts defined under section 3 of Bengal, Agra and Assam Civil Courts Act,1887 were notified as small causes courts to function as such to try tenancy dispute related suits under the PSCC Act, 1887. .

50. Thus the Small Causes Courts notified as such under the Civil Courts Act,1887 are basically civil courts. Small Causes Courts are courts especially provided for under a special law and their power to try suits is limited as per the jurisdiction defined under the PSCC Act,1887 though the procedure will be of CPC as provided for under

section 17 of the SCC Act. Further suits before the Small Causes Courts were the suits referred to and saved under Section 20 of the Old Rent Control Act.

51. Now coming to the arguments of Mr. Tandon as to whether proceedings pending in small causes courts Act relating to eviction suits and SCC revisions would abate after new Tenancy Act coming into force.

52. Entry 18 read with Entry 65 of the State Legislature empowers the State to legislate on subjects like *"land tenures including relation of land lord and tenant"* and *"jurisdiction and powers of all courts except the Supreme Court with respect to any matters in this list"*. Accordingly, the State of U.P. amended the Small Causes Courts Act in its application to the State to enable the Courts to entertain and try suits as saved under Section 20 of the old Rent Control Act.

53. On the point of repeal and implied repeal so as to suggest that U.P. Civil Laws Amendment Act, 1972 would stand repealed, Mr. Tandon put emphasis upon provisions as contained under Section 42 of the new Tenancy Act, 2021. He argued that reading provisions as contained under Section 42 alongwith Section 46 of the Act, the language in which they are couched so as to specifically not include SCC Suits and SCC Revisions coupled with the fact that Section 38 bars Civil Suits, would lead one to conclude the intendment of legislature to repealing Amendment Act, 1972.

54. In support of his above interpretation of the relevant provisions of the new Act, Mr. Tandon has relied upon certain authoriity of the Supreme Court in case of **New India Insurance Co. Ltd. v. Smt. Shanti Misra, AIR 1976 SC 237**, Section 38 and 46 of the Tenancy Act, 2021, has already been reproduced above in this judgment. Section 42 of the said Act at the cost of repetition is reproduced hereunder:

> *"42. Overriding effect- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law of the State of Uttar Pradesh for the time being in force*."

55. From a bare reading of Section 42, it clearly comes out that despite inconsistency with any other law of the State dealing with the subject, in force, the new Tenancy Act would prevail. The question still remains as to whether by the new Act, Amendment Act, 1972 would stand repealed so as to hold that suits not saved under Section 46, would abate for inconsistency with the new Tenancy Act, 2021 and forum of Small Causes Court would thus be not available

56. In the case of New India Insurance Company Ltd. (*supra*), the Court was interpreting the amendment brought in the then existing Motor Vehicles Act, 1939 by the Parliament as to the forum to adjudicate the claims. While the old provision provided forum of Civil Court to entertain claim petitions, but by virtue of Amendment Act, 100 of 1956 enacted by Parliament/ Central Legislature, new Section 110- A to 100-F were inserted and the original provision of Section 110 was deleted. Since Central Act 100 of 1956 came into force w.e.f 16.02.1956, the issue was as to whether in respect of accident taking place prior to 16.02.1956, the old forum would continue to entertain claim petitions. Further the issue was that since the Claim Tribunals were not constituted immediately by the State Governments and so the issue was if once Tribunals got constituted, whether civil courts still would continue to hear and decide the pending claim petitions.

57. By virtue of Amending Act, 100 of 1956, civil courts' jurisdiction in claim matters was absolutely barred unlike Section 38 of the Tenancy Act, 2021, which specified that Rent Authority would entertain petitions relating to agreements as entered on format prescribed in schedule 1 of the Act only. Section 110 A to 110F of the amending Act 100 of 1956 provide for change of forum, and Civil Courts' jurisdiction to entertain suits arising out of accident

claim was clearly barred. The limitation of 60 days prescribed under sections 110 A(3) "led the High Courts to fall back upon the proviso to sub section (3), and let others to say that the Tribunal will have no jurisdiction to entertain such an application and remedy of going to the Civil Court in such a situation was not barred under Section 110 F of the Act" Supreme Court held "High Court failed to notice that primarily the law engrafted in Sections 110A and 110 F was a law relating to the change of forum . *Vide* Paragraph 6 of the Court held thus:

> *"In our opinion in view of the clear and unambiguous language of section 110 A and 110F it is not reasonable and proper to allow the law of change of forum give way to the bar of limitation provided in sub-section (3) of section 110A. It must be vice versa. The change. Of the procedural law of forum must be given effect to. The underlying principle of the change of law brought about by the amendment in the year 1956 was to enable the claimants to have a cheap remedy of approaching the Claims Tribunal on payment of a nominal court fee where as a large amount of ad valorem court fee was required to be paid in Civil Court. It is legitimate to think that the legislature did not think it necessary to affect the pending suits but wanted the cheap remedy to be available as soon as the Tribunal was constituted by the State Governments, in all cases, irrespective of the date of the accident, provided the remedy of going to the Court was not barred on the date of the constitution of the Tribunal. Then, how is the difficulty of limitation in such cases to be solved is the question. "*

58. Elaborately principle vide paragraph 10, the Court held thus:

Apropos the bar of limitation provided in section 110 A(3), one can say, on the basis of the authorities aforesaid that strictly speaking the bar does not operate in relation to an application for compensation arising out of an accident which occurred prior to the constitution of the Claims Tribunal. But since in such a case there is a change of forum, unlike the fact of the said cases, the reasonable view to take would be that such an application can be filed within a reasonable time of the constitution of the Tribunal, which ordinarily and generally would be the time of limitation mentioned in sub-section (3). If the application could not be made within that time from the date of the constitution of the Tribunal, in a given case, the further time taken in the making of the application may be held to be the reasonable time on the facts of that case for the making of the application or the delay made after the expiry of the period of limitation provided in subsection (3) from the date of the constitution of the Tribunal can be condoned under the proviso to that sub-section. In any view of the matter, in our opinion, the jurisdiction of the Civil Court is ousted as soon as the Claims Tribunal is constituted and the

filing of the application before the Tribunal is the only remedy available to the claimant. On the facts of this case, we hold that the remedy available to the respondents was to go before the Claims Tribunal and since the law was not very clear on the point, the time of about four months taken in approaching the Tribunal after its constitution can be held to be either a reasonable time or the delay of less than 2 months could well be condoned under the proviso to sub-section (3) of section 110 A.

59. In my considered view, there should be no quarrel about the above proposition but one should equally acknowledge the fact that and it was Central Legislature that had amended a Central Act. So, there was no issue of competency involved. Had the State made new Tenancy Act, 2021 comprehensive enough to amend both the Transfer of Properties Act, 1882 and Provincial Small Cause Courts Act, 1887 with presidential assent, in their application to the State of U.P. with the Presidential assent the Amendment Act 1972, which had the presidential assent would have stood repealed. So, this judgment does not address the issue involved in the present case and hence would be of no help to Mr. Tandon.

60. In the case of **M/s Gamon India Ltd. Special Chief Secretary and Others, 2006(2) Supreme 454,** Mr. Tandon has relied upon paragraph 45, 46 and 47 to assert that saving clause (section 46 of the new Tenancy Act) deliberately did not save Small Causes suits and Small Causes Revisions. Paragraphs 45, 46 and 47 of this juddgment are reproduced hereunder:

> *45. A Seven Judge Bench of this Court by majority laid down in Keshavan Madhava Menon vs. The State of Bombay, (1951) SCR 228, that the Court was concerned with the legality of the prosecution of the appellant for contravention of the Indian Press (Emergency Powers) Act, 1931. The offence had been committed before the Constitution came into force and a prosecution launched earlier was pending after January 26, 1950. The enactment which created the offence was held to be void under Article 19(1)(a) read with Article 13 as being inconsistent with one of the Fundamental rights guaranteed by Part III of the Constitution. In the circumstances, the point that was debated before this Court was whether the prosecution could be continued after the enactment became void. In this case, the Court by a majority judgment held that the Constitution was prospective in its operation and that Art. 13(1) would not affect the validity of these proceedings commenced under pre-Constitution laws which were valid up to the date of the Constitution coming into force, for to hold that the validity of these proceedings were affected would in effect be treating*

the Constitution as retrospective. Therefore, it was considered that there was no legal objection to the continuance of the prosecution.

46. The controversy in issue was dealt with comprehensively with meticulous precision by a Constitution Bench of this Court in State of Punjab vs. Mohar Singh (1955) 1 SCR 893. Respondent Mohar Singh filed a claim as an evacuee under the East Punjab Refugees (Registration of Land Claims) Act, 1948. The claim was investigated into and it was found to be false; it was held to be an offence under the Act. At the trial, on his confession, the respondent was convicted and sentenced to imprisonment. On suo motu revision, the District Magistrate found the sentence to be inadequate and referred the case to the High Court. The High Court found that since the ordinance was repealed, he could not be convicted under Section 7 of the Act. This Court, on appeal, reversed the decision and upheld the conviction applying Section 6 of the General Clauses Act.

47. The principle which has been laid down in this case is that whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purposes of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore, subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section."

(emphasis added)

61. Learned Advocate has tried to put emphasis upon words and expression "*unless a different intention appears* "used in paragraph 47 highliged above, argued that when the legislature was placing saving Clause 46 under the new Tenancy Act, 2021, it consciously avoided to mention SCC Suits and Revisions and thus intendment of legislature reflected is that such suits and revisions would abate.

62. Advancing the argument of his interpretation of the saving clause and thereby by drawing intendment of legislature as he places, Mr. Tandon asserted that for taking the language of the statutory provision in its simple and plain form as they have been put in by the legislature.

63. On the point of Rule of construction Mr. Tandon has relied upon the judgment in the case of **Sri Jeyaram Educational Trust and**

Others v. A.G.Syed Mohideen and Others, AIR 2010 SC 671, in which vide paragraph 6 the Court has held thus:

> *"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."*

64. Relying upon the aforesaid, Mr. Tandon submits that the relevant provisions that are in issue here in the case of new Tenancy Act, if taken in their plain and simple language the words "civil court" or "appeal before any other court" and of course such proceedings " under any law" would denote the proceeding before civil courts and appeal arsing out of that. The worlds " any law" would denote the law that then prevailed/enforced. He thus, argues that SCC Suits and Revisions having not been expressly saved by the legislature, would mean that such suits and revisions would not any more continue and would abate.

65. Sri Ashish Kumar Singh and Sri Saurabh Srivastava, learned Advocates both have termed the interpretation placed above by Mr. Tandon to draw intendment of legislature, to be highly misplaced one. They argued that while upon rule of interpretation, there was no dispute but by borrowing that Rule to interprate the provisions of Tenancy Act, 2021 subject to scrutiny of this Court, the conclusion as sought to be drawn by Mr. Tandon cannot be supported. They argued that Mr. Tandon had developed a notion that since Tenancy Act dealt with the land lord- tenant relationship and had repealed the Old Rent Control Act, it would automatically become an exhaustive code and, therefore, the words and expression " any

other law time being enforce" occuring in Section 42 would include all laws relating to subject matter.

66. Mr. Singh, to be specific has placed reliance upon judgment of this Court in the case of **Ram Gopal and Others v Hari Shankar, 1985 SCC OnLine All 132** and placed paragraph 15 and 16 of the said judgment that run as under:

> *"15. The rule of construction is to intend the Legislature to have meant what they have actually expressed. The object of all interpretation is to discover the intention of Parliament "but the intention of Parliament must be deducted from the language used". The primary or literal construction according to Maxwell: Interpretation of Statutes (12th Edition) 29 implies that:—*
>
> *"Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. "The decision in this case," said Lord Morris of Borthy-y-Gest in revenue case, "Calls for a full and fair application of particular statutory language to particular facte as found. The desirability or the undesirabilltiy of one conclusion as compared with another cannot furnish a guide is reaching a decision". Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reasons appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others".*
>
> *16. With regard to what is meant by the expression, "the plain meaning of the words of a Statute", it is necessary on all occassions to give the Legislature credit for employing these words which will express its meaning more clearly than any other words". The cardinal rule for the construction of Acts of Parliament is that they should be construed according to tne intention expressed in the Act themselves. If the words of the Statute are themselves precise and unambiguous, then no more can be necessary than to expound these words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver". Graies on Statute Law, 7th Edition (1971) at p. 64-65."*

67. I have very carefully examined all sections of new Tenancy Act, 2021 and especially Sections 38, 42 and 46 and also sections of old Rent Control Act including its Section 20 and have also gone

through the authorities cited above and paragraphs thereof extracted hereinabove:

68. Firstly, Rule of Interpretation is placed by counsel appearing for the respective parties is not an issue and there could be no two opinions about that as well.

69. The Rule of literal construction of provision in an enactment is a well established rule on the principle that one should adhere as close as possible to literal meaning of the words used. This being cardinal Rule of Interpretation one should not ordinarily make any departure from this rule in a zeal to draw in a larger spectrum in its application as to the scope of the provision. " *The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.* (S.R.Das J: Jugalkishore Saraf v. Raw Cotton Co. Ltd AIR 1955 SC 376 p. 381).

70. Sri G.P.Singh in his treatise **"Statutory Interpretation"** incorporating Rule of construction has quoted justice Frank Furter on rule constitution and writes "*Thus the justification of the rule that the words are to be understood in their natural, ordinary or popular sense is well expressed by Justice FRANK FURTER: "After all legislation when not expressed in technical terms is addressed to common run (sic) of men and is therefore to be understood according to sense of the thing, as the ordinary man has a right to rely on ordinary words addressed. In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which every one conversant with the word and the subject-matter of statute and to whom the legislation is addressed, will give if the problem were put to him. (14th Edition p. 113)*

71. Emphasising upon preference to exact meaning than a loose meaning, he writes " *there is presumption that words are used in Act of Parliament correctly and exactly and not loosely and inexactly In ascribing to the word 'contiguous' its exact meaning i.e., 'touching' in preference to its loose meaning i.e. ' neighbouring', LORD HEWART, C.J., stated: "It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that the rule has been broke, the burden of establishing their proposition lies heavily, and they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred. (14th Edition pp. 115)"*

72. However, it is a question to be answered as to how with the above aid of rule of the construction, one can interpret Section 46 of new Tenancy act, 2021 to have not saved SCC suits and Revisions and so in view of sections 38 and 42, thes suits would fall under a repeal Act and that Rent Authority and Tribunal as conceived of under the new Tenancy Act, 2021 would be only forums and as such suits and revisions would abate and so must not continue any longer. Here, it is necessary first to refer to Section 6 of General Clauses Act, 1897.

> *"6 Effect of repeal. Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not.*
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
> *(b)* ***affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or***
> ***(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or***
> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
> *(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation,* ***legal***

proceeding or remedy may be instituted, continued or enforced*, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."*

(emphasis added)

73. So applying above section 6, the pending SCC suits and revisions would stand saved unless and until it is held that Section 46 expressely abates such suits and revisions even though having not referred to them, to *wit*, intention appears to be so.

74. In **M/s Gamon India Ltd. (*supra*),** the Supreme Court referred to an earlier judgment in the case of Brihan Maharashtra Sugar Syndicate v. Janardan AIR, 1960 SC 794, that interpreted Section 6 and held vide paragraph 48, 49 and 50 thus:

48. In the case of Brihan Maharashtra Sugar Syndicate v. Janardan AIR 1960 SC 794, it was observed as under:

" Section 6 of the General Clauses Act provides that where an Act is repealed, then, unless a different intention appears, the repeal shall not affect any right or liability acquired or incurred under the repealed enactment or any legal proceeding in respect of such right or liability and the legal proceeding may be continued as if the repealing Act had not been passed. There is no dispute that Section 153- C of the Act of 1913 gave certain rights to the share-holders of a company and put the company as also its directors and managing agents under certain liabilities. The application under that section was for enforcement of these rights and liabilities. Section 6 of the General Clauses Act would therefore preserve the rights and liabilities created by Section 153-C of the Act of 1913 and a continuance of the proceeding in respect thereof would be competent in spite of the repeal of the Act of 1913, unless of course a different intention could be gathered."

49. A Constitution Bench of this Court in State of Orissa v. M.A.Tulloch and Co., (1963) 4 SCR 461, also had an occasion to examine the controversy regarding repeal of the Act. The submission in this case was that the supersession of the Orissa Act by the Central Act was neither more nor less than a repeal. The reference was made to Section 6 of the General Clauses Act, 1897 which has been reproduced (supra). In the said case, the submission was that the interpretation of the Section was two-fold: (1) the word 'repeal' used in the opening paragraph was not confined to express repeal but that the word was comprehensive enough to include cases of implied repeals; (2) it was submitted that if the expression 'repeal' in Section 6(b) be deduced as being confined to express repeals, still the principle underlying Section 6 was of general application and capable of being attracted to cases of implied repeals also.

50. In M.A. Tulloch's case (supra), the Court aptly observed that we have to inquire the principle on which the saving clause in Section 6 is based. It is manifest that every later enactment which supersedes an earlier one or pouts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications - express or implied - in

the later enactment designed to completely obliterate the earlier state of the law.

75. Section 42 of new Tenancy Act, 2021 could have been read to mean that Amendment Act, 1972 having not been saved, it stood repealed but the issue is of competency of legislature. The State legislature is competent to repeal an Act having presidential assent by enacting a provision with presidential assent but it is not a case here.

76. Legislative competence of the State has to be read down in the spirit of legislative scheme provided under the Constitution and the subject matter provided for in the entries in different lists of the seventh schedule of the Constitution.

77. Law of "implied repeal" would be applied provided the method and manner in which a thing is required under the constitution is done in that manner alone. Here it is a case where Central Legislature's competency in enacting Transfer of Property Act, 1882 and the Provincial Small Causes Courts Act, 1887 is not an issue and they have continued to operate in the field since prior to constitution and are saved by virtue of Article 272 of the Constitution and so also Amendment Act of 1972 has been brought into force with the assent of the President of India by the State of U.P. making modification to the Small Causes Courts Act. The provisions so incorporated in its application to the State of U.P. would equally continue to apply and new Tenancy Act, 2021 would not be competent enough to encroach upon that field and if it encroaches then to that extent it would be repugnant. Whether there is mention or no mention of Small Cause suits and revisions under Section 46, such suits and revisions would continue at the prescribed forums. Any other interpretation to draw in intendment of legislature as argued by Mr. Tandon that such suits and revisions would abate not only would amount to reading something not provided but would also be contrary to the provisions as contained under Sub-Article 2 of Article 254 of the Constitution

and thereby eroding the principle of relationship between Central and State legislature as conceptualized in our constitution.

78. As I have already discussed above small causes courts are special courts constituted under the PSCC Act, 1887 which is a central Act and state amendments brought into it for its application vide presidential assent in modified form, would continue to be in force in their application to the State until such state amendments are repealed with presidential assent. The Amendment Act,1972 stands saved by virtue provisions contained under sub-article (2) of Article 254 of the constitution. Article 254 is reproduced hereunder:

> *"(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*
>
> *(2) Where a law made by the Legislature of a State[1][***] with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*
>
> *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."*

79. Looking at and examining all the provisions of the new Tenancy Act, 2021, I find that in the entire regime of the Act the written tenancy agreement has been made the only recognized mode of tenancy except for eleven months tenancy and even the old tenancies are made to survive but for written agreement. The Legislature in its wisdom seems to have given go by to unwritten tenancy agreements but no mechanism was laid down to meet claims arising out of such tenancy, possibly because the SCC suits were taken to be still maintainable as Amendment Act, 1972 was already in force. Thus by no cannon of construction Section 38 and 42 can be taken to have made SCC suits not maintainable any further more even in respect of unwritten existing tenancies.

80. While it is true that finding a defect in an enactment a judge should not sit back to find fault with the draftsman and should endeavour for an interpretation to find real intention of the Parliament but then he can not do violence to a provision in the zeal of achieving a law by substituting words or placing words in between the words, moreso when issue is of legislative competence. It was rightly held "we can not aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there (Crawford v. Spooner (1846) Moore PC 1 pp 8,9)". "It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so (Renula Bose (Smt.) v. Rai Manmathnath Bose, AIR 1945 PC 108, p.110). Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute (Pinner v. Everett, (1969) 3 All ER 257, p. 259) Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate (State of Keralav. Mathai Verghese, (1986) 4 SCC 746. (Statutory Interpretation by Justice G.P.Singh, 14th Edition pp 68,69)

81. So entire scheme of the new Tenancy Act if is minutely scrutinised, the legislative intent appears to be to enact a comprehensive law embracing every aspect of tenancy law relating to urban buildings viz a viz tenant-landlord relationship referable to entry 18 of the state list of the VIIth schedule of the constitution. However, still certain grey areas have remained unattended and in my view willingly by the lawmakers looking to the existing central enactments.

82. This above view of mine is for rule of harmonious construction in interpreting the provisions of the new Tenancy Act 2021, Amendment Act, 1972 and Transfer of Property Act 1882. The courts while they examine scope and ambit of an enactment must assume that lawmakers have surely held deliberations while enacting law covering a particular field and so also must have given due

consideration to the existing law touching the field and if still some areas have been left untouched, the legislative intent to permit interplay of existing law not expressly repealed, must be assumed. This assumption is based on sound principle that wisdom of Parliament is unquestionable and all that courts do is to interpret a provision in synthesis with the other to draw a meaning in context with the object with which the law is enacted. Any interpretation that makes a provision redundant or any over zealous approach to place in a word so as to enlarge the scope of a provision, would amount to substituting court's wisdom to that of law makers and that must be avoided. Courts interpret provisions of an Act to ensure that objectivity with which such law must have been enacted, is not lost and any effort of court beyond that would be intruding the field of legislation which is definitely beyond the competence of law courts.

83. In the present case the literal constructions leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction.

84. Thus to sum up on fist question "**(a)",** I hold that pending SCC suits and SCC revisions on the date of enforcement of the new Tenancy Act, 2021, shall not abate notwithstanding the provisions as contained under Section 42 of the New Tenancy Act, 2021 as no such intendment can be drawn inasmuch as, Section 6 of General Clauses Act would apply. Still further SCC suits would stand saved as where conceived of under old Rent Control Act, proceedings whereof have been saved under sub section 2 of Section 46 of the new Tenancy Act, 2021.

85. Now coming to the question "**(b)"**, Sri Srvastava, learned Advocate appearing for the respondent in the leading case, had submitted that the absence of competent legislative enactment to repeal an existing Act, saved under Article 254 (2) of the

Constitution, both the Acts would continue to operate in their respective fields.

86. He had argued that since State had enacted a new Tenancy Act, 2021 to apply to the cases covered under the agreement referable to schedule 1 of the said Act , the bar of Section 38 would operate to that extent and argued that in all other matters other matters where tenancy continued without agreement the eviction suit could be filed and so also SCC revisions arsing therefrom under the Provincial Small Causes Courts Act, 1887. He had submitted that provisions under the new Tenancy Act relating to old tenancies could not be said to be exhaustive, nor did they provide that any tenancy would stand *void* for non compliance of the provisions. He had argued that if tenancy was without any agreement in writing and land lord also failed to submit details as per schedule-1 of the new Act, new Act was a silent to meet that eventuality.

87. In such above situation, according to Mr. Srivastava either a civil suit would lie to evict the tenant and such tenancy dispute would stand covered under the Transfer of Property Act to attract Small Cause Suit.

88. Mr. Srivastava submitted that any right if accrued under the Transfer of Property Act, 1882 to a lessee would be enforceable at an appropriate forum and to that extent a provision of new Tenancy Act, 2021 was if found to be inconsistent, it would be liable to be held repugnant and for this repugnancy, the Tenancy Act, 2021 give way to the Central Act already occupying the field.

89. Mr. Srivastava, in support of his argument, relied upon the judgment of the Supreme Court in the case of **State of Tamil Nadu and Another etc. v. Adhiyaman Educational and Research Institute and Others etc., 1995 AIR SCW 2179:: (1995) 2 SCR 1075 (SC)** and emphasized upon paragraph 15 of the judgment that runs as under:

"15. What emerges from the above discussion is as follows:

[i] The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[ii] To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause [2] of Article 254, the State leg- islation being repugnant to the Central legislation, the same would be inoperative.

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) …….

(vi) ……..."

90. Besides the argument *qua* repugnancy, Sri Srivastava also placed the judgment of the Supreme Court in the case of **A.A. Padmanbhan v. State of Kerala and Others, (2018) 4 SCC 537,** which exhaustively covers not only the principle of repugnancy but also deals with doctrine of occupied field and that of "pith and substance". He has placed paragraph 32 to 35 that are discussed and referred to by various previous authority of that Court. Paragraph 30 to 35 are reproduced hereunder:

"30. The principles for ascertaining the inconsistency/ repugnancy between two statutes were laid down by this Court in Deep Chand Vs. State of U.P and others, AIR 1959 SC 648. K. Subba Rao, J. speaking for the Court stated following in paragraph 29:

"29……Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and (3) Whether the law

made by Parliament and the law made by the State Legislature occupy the same field."

31. This Court in State of Kerala and others Vs. Mar Appraem Kuri Company Limited and another, (2012) 7 SCC 106, in paragraph 47 held that:

> *"47. The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the Parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Article 246 (1); in the second, by reason of Article 254(1)."*

There cannot be any dispute to the proposition laid down by this Court to the State of Kerala case (supra).

32. This Court has time and again emphasised that in the event any overlapping is found in two Entries of Seventh Schedule or two legislations, it is the duty of the Court to find out its true intent and purpose and to examine the particular legislation in its pith and substance. In Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569, in paragraphs 59 and 60 following has been held:

> *"59....But before we do so we may briefly indicate the principles that are applied for construing the entries in the legislative lists. It has been laid down that the entries must not be construed in a narrow and pedantic sense and that widest amplitude must be given to the language of these entries. Sometimes the entries in different lists or the same list may be found to overlap or to be in direct conflict with each other. In that event it is the duty of the court to find out its true intent and purpose and to examine the particular legislation in its 'pith and substance' to determine whether it fits in one or other of the lists. [See : Synthetics and Chemicals Ltd. v. State of U.P; India Cement Ltd. v. State of T.N.]*
>
> *60. This doctrine of 'pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden."*

33. In A.S. Krishna and others Vs. State of Madras, AIR 1957 SC 297 this Court laid down following in paragraph 10:

> *"10. This point arose directly for decision before the Privy Council in Prafulla Kumar Mukherjee v. The Bank of Commerce Ltd. [1946 74 I.A. 23 There, the question was whether the Bengal Money-Lenders Act, 1940, which limited the amount recoverable by a money-lender for principal and interest on his loans, was valid in so far as it related to promissory notes. Money-lending is within the exclusive competence of the Provincial Legislature under Item 27 of List II, but promissory note is a topic reserved for the center, vide List I, Item 28. It was held by the Privy Council that the pith and substance of the impugned legislation begin money-lending, it was valid notwithstanding that it*

incidentally encroached on a field of legislation reserve for the center under Enter 28. After quoting its approval the observations of Sir Maurice Gwyer C.J. in Subrahmanyan Chettiar v. Muttuswami Goundan, (supra) above quoted, Lord Porter observed :

"Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation.

No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provision should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, must beneficent legislation would be satisfied at birth, and many of the subjects entrusted to Provincial legislation could never effectively be dealt with."..."

34. Further in Union of India and others Vs. Shah Goverdhan L. Kabra Teachers' College, (2002) 8 SCC 228 in paragraph 7 following was laid down:

"7. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of Parliament as well as the State Legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the court that there is apparent overlapping between the two entries the doctrine of "pith and substance" has to be applied to find out the true nature of a legislation and the entry within which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope and effect, is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of "pith and substance" has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made."

35. Even if it is assumed that, in working of two legislations which pertain to different subject matters, there is an incidental encroachment in respect of small

area of operation of two legislations, it cannot be held that one legislation overrides the other. When we look into the pith and substance of both the legislations, i.e., Act, 1958 and Act, 2013, it is clear that they operate in different fields and it cannot be said that Act, 1958 is repugnant to Act, 2013. It is also relevant to note that under Section 15(2) it is provided that where any school has vested in the Government under sub-section (1), compensation shall be paid to the persons entitled thereto on the basis of the market value thereof as on the date of the notification.

(emphasis added)

91. Yet another judgment of the Supreme Court in the case of **Transcore v. Union of India and Another, (2008) 1 SCC 125** had been placed by Srivastava to develop an argument that both the forum can simultaneously be utilized and may be an existing forum on the date of enforcement of new Tenancy Act, 2021 looses its significance with the passage of time and existing provisions that governed the filed become obsolete or redundant.

92. He had argued that since the new Tenancy Act, 2021 vide Section 4 provided that there can be tenancy except the one in writing as per first schedule, they saved old tenancies under Section 4(3) of the said Act and these old tenancies would be an extinct specie with passage of time. So, according to Mr. Srivastava every dispute would be referable to Section 21-22 and both the Provincial Small Causes Courts Act, 1887 and Transfer of Property Act in their application to buildings covered under the Tenancy Act, 2022 would become obsolete law.

93. Sri A.K.Singh, learned Advocate while argued that month to month tenancy was not covered under the new Tenancy Act as there would be no written agreement as per schedule 1. Section 38 would not be sufficient enough to encompass within it such tenancy disputes. He had further argued that only civil suit being barred, SCC suit would stand automatically exempted from the rigors of Section 38 of the new Tenancy Act, 2021.

94. Sri Singh had also adopted the argument advanced by Mr. Srivastava on point no. (b).

95. Basically Mr. Srivastava and Mr. Singh had sought to draw in doctrine of election to choose a forum of the two available. Again, I have carefully examined the relevant provisions of new Tenancy Act, 2021 and have gone through the authorities that were cited and placed before me by the learned Advocate.

96. In earlier part of this judgment, I have already referred to scope and ambit of the provisions of the new Tenancy Act, 2021 with reference to individual sections therein and I have also discussed the tenancy agreement referrable to Section 4 of the new Act. During discussion in respect of point no. (a) above, I found, while 11 months unwritten agreement tenancy was conceived under the new Act but the remedial aspects so as to enable land lord to seek eviction of tenant had not been touched by the legislature. Section 38(2) defines jurisdiction of Rent Authority and limits it to dispute relating to tenancy agreement submitted to it as specified in the first schedule. First schedule agreements are there that create tenancy after new Tenancy Act has come into existence and also the written tenancy agreements that were in existence when the new Act came into force, provided such agreements were submitted to the Rent Authority as per Section 4(3) of the new Act. The word "tenant" though includes old tenant at the time of enforcement of the new Act vide Section 2(j) but only for agreement in writing as per Rule 4 (3) and if there is no agreement in writing as per Rule 4(3), such tenant can be evicted only in one condition that is where land lord has submitted details as per first schedule but tenant has failed to discharge his part of obligation vide proviso to Section 4(3) of the new Tenancy Act. However, if land lord also fails and so also the tenant to comply with Section 4(3), no eviction of tenant has been provided for.

97. Thus the tenant has a narrow escape as noticed above and that is sufficient for him but the land lord cannot be left remediless. So if section 21 of the new Tenancy Act is found to be unworkable, a

SCC suit would be the only remedy available. Section 21(2)(j) which provides for land lord to apply for eviction *"where the tenancy stands determined by efflux of time"* would be referrable to such tenancy that are by written agreements and such agreements expired or 11 months unwritten agreement tenancy and would not apply to tenancies, not conceptualized under Section 4 but are in existence

98. The juddgment cited by Mr. Srivastava in Transcore case (*supra*) related to issue therein *qua* proceedings instituted under the Debt Recovery Tribunal Act, 1993 in the face of the fact that Section 13 of the subsequent Act, namely, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 empowered the financial institution to directly take action in cases where loan account got rendered NPA (Non Performing Assets Account). The argument in the said case was that Debt Recover Tribunal Act, 1993 was complete code for recovery of Debt and 2002 Act vide Section 13(4) empowered the bank to enforce measures against defaulting borrower to recover the amount. So the issue arose, whether there would be parallel proceedings with parallel remedies provided under the two Acts. Vide paragraph 37 of the said judgment, the Court framed following three issues.

> *"37 Points for determination:*
>
> *Three points arise for determination in these cases. They are as follows:*
>
> *(i) Whether the banks or financial institutions having elected to seek their remedy in terms of DRT Act, 1993 can still invoke the NPA Act, 2002 for realizing the secured assets without withdrawing or abandoning the O.A. filed before the DRT under the DRT Act.*
>
> *(ii) Whether recourse to take possession of the secured assets of the borrower in terms of Section 13(4) of the NPA Act comprehends the power to take actual possession of the immovable property.*
>
> *(iii) Whether ad valorem court fee prescribed under Rule 7 of the DRT (Procedure) Rules, 1993 is payable on an application under Section 17(1) of the NPA Act in the absence of any rule framed under the said Act. "*

99. In my considered view, point no. 1 is the only point referable herein for the argument advanced by learned counsel for the respondent in counter to what was argued by Mr. Tandon. Rejecting the argument in the first instance that both the Acts contemplated parallel proceedings, the Court vide paragraph 63 held thus:

> *Therefore, when Section 13(4) talks about taking possession of the secured assets or management of the business of the borrower, it is because a right is created by the borrower in favour of the bank/ FI when he takes a loan secured by pledge, hypothecation, mortgage or charge. For example, when a company takes a loan and pledges its financial asset, it is the duty of that company to see that the margin between what the company borrows and the extent to which the loan is covered by the value of the financial asset hypothecated is retained. If the borrower company does not repay, becomes a defaulter and does not keep up the value of the financial asset which depletes then the borrower fails in its obligation which results in a mis- match between the asset and the liability in the books of the bank/ FI. Therefore, Sections 5 and 9 talks of acquisition of the secured interest so that the balance sheet of the bank/ FI remains clean. Same applies to immovable property charged or mortgaged to the bank/ FI. These are some of the factors which the Authorised Officer of the bank/ FI has to keep in mind when he gives notice under Section 13(2) of the NPA Act. Hence, equity, exists in the bank/FI and not in the borrower. Therefore, apart from obligation to repay, the borrower undertakes to keep the margin and the value of the securities hypothecated so that there is no mis-match between the asset-liability in the books of the bank/FI. This obligation is different and distinct from the obligation to repay. It is the former obligation of the borrower which attracts the provisions of NPA Act which seeks to enforce it by measures mentioned in Section 13(4) of NPA Act, which measures are not contemplated by* ***DRT Act and, therefore, it is wrong to say that the two Acts provide parallel remedies as held by the judgment of the High Court in M/s Kalyani Sales Co.****. As stated, the remedy under DRT Act falls short as compared to NPA Act which refers to acquisition and assignment of the receivables to the asset reconstruction company and which authorizes banks/ FIs. to take possession or to take over management which is not there in the DRT Act. It is for this reason that NPA Act is treated as an additional remedy (Section 37) , which is not inconsistent with the DRT Act.*
>
> (emphasis added)

100. The Court also rejected the argument of any application of doctrine of election in respect of the two Acts providing two remedies, v*ide* paragraph 64 which runs as under:

> *"In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol. 25, page 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act.* ***Together they constitute one remedy and, therefore, the doctrine of election does not***

> ***apply.*** *Even according to Snell's Equity (Thirty-first Edition, page 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application. "*

(emphasis added)

101. Thereafter, the Court discussed various provisos of the two Acts and provisions as contained under Section 23 of the Code of Civil Procedure, 1908 and finally concluded that it was not necessary to first get the OA pending before Debt Recovery Tribunal withdrawn while pursuing remedy by the bank / financial institution under 2002 Act. Thus, two Acts having not been held to be complementary to each other as the Court has held that the scope of operation of 93 Act was to a certain extent. This judgment does not help the learned advocates in developing their argument that provisions may be continued for there being parallel remedies and doctrine of election should be made to apply.

102. Entry 6 of the concurrent list provides for Transfer of Property other than agricultural land. It means Central Legislature is competent to enact law on this subject and a lease of immovable property for possession and occupation for agreed rent should not be an exception. Section 105 to 108 of Transfer of Property Act, 1882 are relevant here and so are reproduced hereunder:

> ***105. Lease defined****.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*
> ***Lessor, lessee, premium and rent defined.****—The transferor is called the lessor, the transferee is calledthe lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.*
>
> ***[106. Duration of certain leases in absence of written contract or local usage.****—(1) <u>In the absence of a contract or local law or usage to the contrary,</u> a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.*

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

107. Leases how made.— *A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government may, (***) from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

108. Rights and liabilities of lessor and lessee.*— In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—*

(A) Rights and liabilities of the lessor

(a) the lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

(b) the lessor is bound on the lessee's request to put him in possession of the property:

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested;

(B) Rights and liabilities of the lessee

(d) if during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and 39 permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(g) if the lessor neglects to make any payment which he is bound to make, and which if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:
(h) the lessee may 1[even after the determination of the lease] remove, at any time 2[whilst he is in possession of the property leased but not afterwards,] all things which he has attached to the earth: provided he leaves the property in the state in which he received it:

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell 1[or sell] timber, pull down or damage buildings 1[belonging to the lessor or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(p) he must not, without the lessor's consent, correct on the property any permanent structure, except for agricultural purposes:

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property."

103. Upon bare reading of the above provisions, I find that Transfer of Property Act No. 1882 defines lease vide Section 105 and refers to duration of lease, rights and obligations vide Section 106 and 108, but both these Sections save contracts, operation of local law and usage. Section 107 provides how lease could be made. It refers to oral agreement if accompanied by delivery of possession, such contracts once stand saved under Section 107, in my considered view would not be rendered bad just for there being no agreement in writing and so right and obligation under Section 108 would be enforceable .

104. Entry 18 of the State list provides for States to make law related to land tenures including relationship of landlord and tenant. This being subject matter in the State list and it is the State that enacts laws relating to that, it would not be said to be in conflict with any power of Central Legislature but of course in the areas not covered under the Central Act.

105. The new Tenancy Act, 2021 having not covered the unwritten tenancies and rights and obligations in respect thereof, the existing law under the Transfer of Property Act, 1882 and the forum of SCC Suits, even in respect of buildings situate in areas covered under the Tenancy Act, 2021, therefore shall apply.

106. In my considered view when entry 18 of the State list provides for the State to enact law in matters of land tenure including land lord - tenants relationship, this power is exclusive to that extent, moreso in the face of the fact that contracts, local laws and usages have been saved under Section 105 and 108 of Transfer of Property Act in matters of Rent leases/ agreements. The Transfer of Property Act is pre-constitutional law saved under Article 272 and so power of State under entry 18 of the State list stands only protected to the extent of consistency. However, the areas of rent agreement that are left untouched in the State enactment, the Central Act would continue to prevail as per the constitutional scheme.

107. To sum up on question "(**b)**" I am of the view and so hold that Small Cause Suits would still be maintainable in cases of tenancies not covered under Section 4 and relating to rights accrued, if any under the Transfer Property Act, 1882 where a tenancy is unwritten, and a tenancy is on month to month basis. Overriding effect of Section 42 will give way to the Central Act, and there could be no doubt about that if the Central Act has occupied the field to certain extent. .

108. In view of above, I decline to interfere with the order impugned in SCC Revision No. 158 of 2022, however since suit is of the oldest category being of the year, 2009, the revision petition is disposed of with direction to the Judge, Small Causes to expedite hearing of the suit and decide the same within next six months time.

109. In so far as SCC Revision (Def.) No. 48 of 2022 is concerned, the order passed by Judge, Small Causes dated 13.07.2022 passed by District Judge, Saharanpur in Small Cause Suit No. Nil of 2022, impugned in revision petition is hereby set aside and the matter is remitted to be decided afresh by the Judge, Small Cause on the point of maintainability of the suit in the light of this judgment, expeditiously, preferably within three months.

110. Thus both the revision petitions stand disposed of.

111. Cost made easy.

Order Date: 15.05.2023
Sanjeev

Digitally signed by :-
SANJEEV RANJAN
High Court of Judicature at Allahabad