

been set in motion the right of arresting its progress rests with the State alone. This application stands dismissed.

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 MAUNG
 THU DAW
 v.
 U PO NYUN.
 DOYLE, J.

ORIGINAL CIVIL.

Before Mr. Justice Chari.

THE SOORATEE BARA BAZAAR Co., LTD.

v.

HOOSAIN HAMADANEE & Co.*

1927
 Jan. 27.

Effect of expiry of a temporary Act—Suit filed before expiry and coming up for hearing after expiry of Act—Effect of defence raised under the Act—Rangoon Rent Act (Burma Act IX of 1925), section 10.

Plaintiffs sued defendant for ejection from their premises, when the Rangoon Rent Act was in force. Defendant relied on the protection given to him under the said Act, but the Act expired by the date the suit came on for hearing.

Held, that as the Rangoon Rent Act was a temporary Act, on its expiration parties are relegated to the position they held under the general law except in respect of those matters specially provided for in the Act itself. Section 10 of the Act did not alter the law or created any new legal rights but merely placed a restriction on the Court and prevented it from passing a decree which it would otherwise have been bound to pass. Consequently on the expiry of the Act defendant's plea which he could only raise under the Act, had to be disallowed though the suit was instituted prior to the expiry of the Act and was pending when it expired.

Kishoredas v. Ahmed Suleman, 49 Bom. 567; *Kundanmal v. Daya*, 52 Cal. 551; *R. K. Modi & Co. v. Mahomed Bhai*, 49 Bom. 724—referred to.

N. M. Cowasjee and Leach—for the Plaintiffs.

Jawad—for Defendant.

CHARI, J.—This is a suit filed by the plaintiffs to eject the defendant from two rooms Nos. 3 and 4 in house No. 3, Mogul Street, Rangoon. The suit was filed on the 22nd of September 1926 when the Rangoon Rent Act of 1925 was in force. It came up for hearing on the 14th of January 1927 after that Act

* Civil Regular Suit No. 469 of 1926.

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had expired. The suit is based on the assumption that the tenant was in occupation of the premises paying Rs. 170 a month as such tenant, in respect of which by operation of the Notification of the Government, the Rent Act ceases to have any effect. The defence raised was that the defendant became tenant of rooms Nos. 3 and 4 on two different occasions, *i.e.*, in 1909 and 1916 paying Rs. 80 for room No. 4 which was first taken and Rs. 90 for room No. 3 which was leased later on. It is contended therefore that he should be treated as a separate tenant in respect of the two rooms and as such he is still within the protection of the Rangoon Rent Act and the plaintiffs have no right to eject him. The facts are admitted. It is admitted that after the first month of the later tenancy single bills were sent out for a collective rent of Rs. 170 in respect of the two rooms that the tenant with the permission of the landlord removed the partition between the two rooms and is in occupation of the whole as a single office.

Two questions arise for decision, first:—what is the effect of the expiry of the Rangoon Rent Act on the 31st December 1926 on the suit which was pending at that time and came up for trial after such expiry? Second:—is the defendant to be regarded as a tenant of the whole premises paying therefor a rent of Rs. 170? As regards the first point, both the Rangoon Rent Act of 1920 and the Rangoon Rent Act of 1925 are temporary Acts. They cease to have any operation on the expiry of the time fixed in the Act itself. The rule laid down in section 6 of the General Clauses Act and section 5 of the Burma General Clauses Act which deal with the effect of the repeal of an enactment by a subsequent one have therefore no application. The general principles applicable to the subject are laid down in Craies on Statute Law

second edition, page 364 : "As a general rule and unless it contains some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it and it ceases to have any further effect." The provision to the contrary contained in the Rangoon Rent Act, 1925, is in the proviso to section 1 which enacts that the expiration of the Act shall not render recoverable any rent which during its continuance was irrecoverable or affect the right of a tenant to recover any sum which during the continuance of the Act was recoverable by him. This proviso exempts two particular classes from the general effect of the expiration of a temporary Act and obviously refers to the disability placed on the landlord to recover any sum in excess of the standard rent and the rights given to the tenant of recovering any fine or premium paid by him in addition to the rent and, within a certain time, any sum paid in excess of the rent payable under the Act. If the Act when it expired loses all effect then the parties are relegated to the position which they occupied before the Act was passed and in which they would have been had no such Act been passed. Thus it stands to reason that the tenant who would in certain circumstances have been able to resist the landlord's suit for ejection will not be able to do so any longer. It is noteworthy that section 10 of the Act is carefully and cautiously worded. It merely provides that notwithstanding the provisions of the general law no order or decree for the recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay the rent to the full extent payable under the Act and performs the conditions of the tenancy. That section therefore does not alter the law or create any new legal rights but merely places a restriction on the

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Court and prevents it from passing a decree which it would otherwise have been bound to pass. As soon therefore as the Act has come to an end that restriction has been removed and the Court is bound to pass the decree which it would ordinarily grant. The mere fact that the suit was instituted before the expiry of the Act and continued to be pending till after such expiry makes no difference in the legal position. Mr. Cowasjee who raised this rather interesting question placed no authority before me and I have not been able to find any direct authority on the point. There are however rulings to which I shall shortly refer and which lend support to the conclusion arrived at by me. In the case of *Kishoredas v. Ahmed Suleman* (1), it has been held that when a notice determining the tenancy has been given during the continuance of the Bombay Rent Act and the tenant remained in possession under the protection of the Act, the landlord can obtain a decree on that notice after the expiry of the Act and it was not necessary for him to give a fresh notice. The basis of that decision was that the termination of the tenancy as a result of the notice issued by the landlord was not affected by the Bombay Rent Act under protection of which the tenant remained in occupation of the premises in spite of the fact that the tenancy was determined. The ordinary rights of the landlord and tenant remained in force, but were kept in suspense during the continuance of the Act. In the case of *R. K. Modi & Co. v. Mahomed Bhai* (2), the question arose in a different way. In that case the landlord sought to evict the defendant on the ground that he required the premises for his own use and occupation. On the faith of this representation, the tenant agreed to a consent decree. The tenant thereafter

(1) (1925) 49 Bom. 567.

(2) (1925) 49 Bom. 724.

applied for compensation under section 10 (a) of the Bombay Rent Act corresponding to section 10, clause 3 of the Rangoon Rent Act. It was found by the trial Court that the landlord's requisition was a false one and his occupation a pretence. The effect of that finding was that the tenant would have been entitled to be put back in possession of the premises and for compensation in addition thereto or in lieu thereof. The Bombay Rent Act however expired on the 31st of August 1924 with reference to the particular premises then in question. The tenant's application was filed on the 20th of August 1924 and was thus pending when the Act expired. The effect of the expiry of the Act was considered by the Bombay High Court and a Bench of that Court held that that effect was to put an end to the proceedings instituted on behalf of the defendant-tenants. The same reasoning would apply as regards a defence relied on by the defendant, which being a special defence open to the tenant under the Act, would not be available to him after the Act expired. I shall make my meaning clear. If instead of the landlord filing a suit for ejectment, the tenant had filed a suit for a declaration that on account of the protection given to him by the Rent Act, the landlord had no right to eject him, such a suit by a tenant pending when the Act expired, must necessarily be dismissed. Similarly, when the plea is raised as a defence it has to be disallowed since the Act which enabled the tenant to raise the plea had expired. In another case which came up before the Calcutta High Court *Kundanmal v. Daya* (3), it was held that the proceedings before the President of the Calcutta Improvement Tribunal pending before him on appeal from the decision of the Rent Controller came to an end

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on the expiry of the Calcutta Rent Act in respect of premises for which rental above a certain amount was being paid.

It seems to me therefore that on an application of the principles relating to the effect of the expiry of a temporary Act I am bound to hold that as soon as the Act expired the parties are relegated to the position they held under the general law except in respect of those matters specially provided for in the Act itself. The result is that the defendant cannot be allowed to raise and rely upon the particular plea on which he seeks to resist the plaintiffs' suit, though the suit was instituted prior to the expiry of the Act and was pending when it expired. The plaintiffs would therefore be entitled to the decree they claim. In this view it is unnecessary to decide the other point raised before me but in case the appellate Court should take a different view of the law I shall briefly state my conclusion on that point.

It is admitted that the defendant took the two rooms on two different occasions but when he took the adjoining room in 1916 his subsequent conduct clearly shows that he took it as an adjunct to the room of which he was already tenant with the intention of converting the whole into a single office. He has been admittedly paying rent in a lump sum and he has also removed the partition dividing the two premises. He must therefore be deemed to be in the position of a person who has enlarged his original tenancy by the acquisition of additional accommodation for which he pays additional rent. There will therefore be a decree for the plaintiffs as claimed with costs.

The defendant is given time till the 31st of March 1927 to vacate the premises. The execution of the decree is stayed till then.