

1925.

HABIB
ROWJI
v.
THE
STANDARD
ALUMINIUM
AND BRASS
WORKS,
LTD.

the time the shares were forfeited. In this case, the plaintiff company exercised the power of forfeiture on August 3, 1921, and the suit having been instituted on July 31, 1924, is not barred by limitation.

Solicitors for appellant: Messrs. *Payne & Co.*

Solicitors for respondents: Messrs. *Mulla & Mulla.*

Appeal dismissed.

O. H. B.

ORIGINAL CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice and
Mr. Justice Coyajee.*

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March 18.

R. K. MODY & Co., KHUSHIRAM HIRANAND (APPELLANTS AND ORIGINAL DEFENDANTS) v. MAHOMEDBHAI ABDOL HOOSEIN & Co. (RESPONDENTS AND ORIGINAL PLAINTIFFS)⁵.

Bombay Rent (War Restrictions) Act (Bombay Act II of 1918), sections 1, proviso, and 10A—Ejectment by landlord—Application for restoration of possession—Expiry of Rent Act—Determination of proceedings.

The plaintiffs filed a suit to recover possession of certain business premises from their tenants, the defendants, alleging that the premises were required reasonably and *bona fide* for their own use and occupation. In accordance with a consent decree subsequently passed therein the defendants vacated the premises on January 31, 1924. The plaintiffs, however, did not occupy the premises themselves but in fact re-let them at a higher rent. The defendants, thereupon, on August 20, 1924, took out a notice of motion under section 10A of the Rent Act, for an order restoring them to possession and directing the plaintiffs to pay compensation. On August 31, 1924, before the motion came on for hearing, the Rent Act ceased to be in operation in respect of business premises.

Held, affirming the judgment of Pratt J., that the defendants were not entitled to the relief claimed, the Act being a temporary Act, and the proceedings, on the expiration of the Act, having *ipso facto* determined.

Applicability of the proviso to section 1 of the Act considered.

⁵Appeal No. 121 of 1924, O. C. J. Suit No. 2244 of 1923.

MAHOMEDBHAI Abdool Hoosein & Co., the plaintiffs in this suit, purchased an immoveable property at Nagdevi Street, Bombay. They let a shop on the ground floor of the property to Messrs. R. K. Mody, the present defendants, at a rent of Rs. 150 per mensem. On February 5, 1923, Hoosein & Co., by their attorneys' letter called upon Messrs. R. K. Mody to vacate the shop occupied by them on or before March 31, 1923, as the plaintiffs required the premises for their own use and occupation inasmuch as their premises at Princes Street, Bombay, were insufficient for their requirements. The defendants failed to comply with the notice and the plaintiffs filed a suit against the defendants in ejectment, on May 29, 1923.

When the suit came on for hearing a decree was passed by consent whereby the defendants were ordered to vacate the premises, on or before January 31, 1924. The defendants duly vacated the premises on the date mentioned in the decree. The plaintiffs, however, did not enter upon, or occupy the vacated premises, but re-let them at an enhanced rent to one Jamnadas Chaturbhuj. On this fact coming to the defendants' knowledge they took out a notice of motion on August 20, 1924, for an order, under section 10A of the Rent Act, that they should be placed in possession of the premises on the original terms and conditions, and that the plaintiffs should pay Rs. 15,600 by way of compensation. On August 31, 1924, however, the operation of the Rent Act in respect of business premises ceased. On November 14, 1924, the notice of motion came on for hearing before Pratt J., and was discharged, his Lordship holding, that, although the motion was taken out before the expiry of the Rent Act, nevertheless as from August 31, 1924, when the Rent Act expired, all proceedings thereunder *ipso facto* expired.

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The defendants appealed.

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& Co.*B. J. Desai*, for the appellants.*Kanga*, Advocate General, with *Khan*, for the respondents.

MACLEOD, C. J.:—Plaintiffs filed Suit No. 2244 of 1923 on June 14, 1923, to evict two defendants from their two shops in Nagdevi Street on the ground that they had given them notice to quit as the plaintiffs wanted the premises for their own use and requirements. On the faith of this requisition the defendants agreed to vacate under a consent decree passed on August 24, 1923, by which they agreed to give possession by January 31, 1924.

On August 20, 1924, defendants took out a notice of motion asking the Court to pass an order not only for the restoration of the premises to the defendants on the ground that the plaintiffs' requisition had not been fulfilled, but also for damages on the ground that the requisition on which they were evicted was *mala fide*.

The learned Judge found that the requisition on which the plaint proceeded was a false requisition, and the occupation of the plaintiffs was a pretence. It was not, therefore, *bona fide* and in the ordinary circumstances the defendants would have been entitled on the notice of motion to an order for restoration, and also for an order for payment of such compensation as the Court might think fit. But unfortunately for the defendants the Bombay Rent (War Restrictions) Act (No. 11 of 1918) with reference to business premises expired on August 31, 1924, and no order on the motion had been made before that date.

The question would arise then, whether the defendants' right to apply to the Court for restoration, and for payment of compensation, would survive the expiration

of the Act. That must depend, as the Act was a temporary one, upon the construction of the Act itself, because section 7 of the Bombay General Clauses Act will not apply to temporary statutes. The proviso to the first section of the Rent Act is as follows:—

“Provided that the expiration of this Act shall not render recoverable any rent which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.”

That proviso originally was clearly intended to apply to the provisions of sections 3 and 12. The learned Judge remarks:—

“The proviso, therefore, refers to two cases: (1) proceedings taken by a landlord and (2) proceedings taken by a tenant. The reference to proceedings taken by a landlord is evidently to section 3 of the Act, and the restriction on the recovery of rent in excess of the standard rent is continued after the expiration of the Act in respect of rent accruing during the continuance of the Act. Then with reference to the proceedings taken by a tenant, the reference is evidently to section 12 of the Act, which enacts that where a tenant has paid any sum on account of rent in excess of what is recoverable in case of standard rent, he has a right to recover that sum from his landlord.”

It has been argued that that proviso would also include the right of a tenant to ask the Court for payment of compensation under the provisions of section 10A. Now section 10A was inserted by Bombay Act XIV of 1920, section 2, and it was argued by the respondents in support of the judgment, that if it had been intended to reserve the rights of the tenant to ask the Court for payment of compensation under section 10A after the expiration of the Act, the proviso to section 1 would have been amended. It seems most probable that the question whether the rights of a tenant under section 10A survived the expiration of the Act was not considered by the Legislature.

But even if that question was not considered, the defendants might still succeed if they could bring themselves within the proviso to section 1. Before I

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deal with that question, I will deal with the question whether when proceedings have commenced before the expiration of the Act they can be competent after the expiration of the Act in spite of their not coming within any proviso reserving the rights of a tenant to continue proceedings then pending. Reference has been made to a passage in Halsbury's Laws of England, Vol. XXVII, p. 158, para. 301, where it is stated that if proceedings taken under a temporary statute are not terminated before the period of the statute expires, then on the expiration of the statute the proceedings *ipso facto* are determined. Various authorities are quoted for that proposition, the earliest being *Miller's case*⁽¹⁾, and no case has been cited to us in which civil proceedings of this nature, which only arise by virtue of a temporary statute, have been held competent to be continued after the expiration of the statute.

The fact, therefore, that these proceedings were commenced on August 20, 1924, before the expiration of the statute, will not by itself avail the defendants. They must come, if at all, within the proviso. It has been contended that as this is a suit for an unliquidated sum to be ascertained as compensation for the plaintiffs' want of *bona fides*, it cannot, in any event, come within the proviso, which only applies to any sum recoverable by the tenants under the Act during the continuance thereof. I doubt very much whether it can be said that an action by a tenant to recover rent, which should not have been paid under the provisions of section 12, would be a suit for an ascertained sum, because although he might mention the amount of the claim in suit, the actual amount due could only be ascertained by means of an inquiry. However I quite agree that such an action would be of a different character from an action for unliquidated damages and

⁽¹⁾ (1764) 1 Wm. Bl. 451.

I think the answer to the appellants' case lies in the fact that proceedings which it is permissible for a tenant to take under section 10A are not primarily proceedings to recover either an ascertained sum or liquidated damages. They must be instituted in the first instance for the purposes of getting an order for restoration from the Court, and it is only when the Court is of opinion not only that the defendant in the circumstances of the case is entitled to restoration, but also that the plaintiff has not acted *bona fide*, that the Court can direct payment of compensation to be made to the tenant by the landlord. If the appellants' contention were correct, then even after the expiration of the Act, the defendants on proving want of *bona fides* on behalf of the landlord in turning them out, would be entitled to ask the Court to grant them compensation, although there would be no jurisdiction in the Court to restore the defendants to the premises. But it is perfectly clear that no right is given to the tenant to apply to the Court for compensation only, irrespective of whether he can get restoration or not.

We think, therefore, this particular question was not in the mind of the Legislature when section 10A was inserted in the original Act, and that the rights of a tenant to recover compensation under the section after the expiration of the Act were not reserved. The appeal, therefore, will be dismissed with costs.

COYAJEE, J.:—I agree.

Solicitors for appellants: Messrs. *Shah & Co.*

Solicitors for respondents: Messrs. *Nanu, Hormusji & Co.*

Appeal dismissed.

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