
K. Ramnarayan and Others Vs Pukhraj and Others

Civil Writ Petition Nos. 2581, 2655, 3925, 3926, 3968 and 5072 of 2015

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: May 18, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 41 Rule 5, Order 6 Rule 17, Order 7 Rule 11#General Clauses Act, 1897 - Section 6#Transfer of Property Act, 1882 - Section 106

Citation: (2015) 3 CDR 1637 : (2015) 4 RLW 2993 : (2015) 2 WLN 514

Hon'ble Judges: Bela M. Trivedi, J

Bench: Single Bench

Advocate: M.M. Ranjan, Senior Counsel assisted by Saurabh Bhandari, B.L. Agarwal, Alok Chaturvedi and M.A. Khan, for the Appellant; J.P. Gupta, Shikha Parnami and Anil Mehta, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Bela M. Trivedi, J.

In this bunch of petitions, the Coordinate Bench had passed the following order on 28/4/2015:--

Arguments of learned counsel for both the sides were heard at some length and various judgments of the Supreme Court and High Courts cited

by them were perused. On consideration of the matter in entirety, it is deemed appropriate to invite participation of Members of the Bar to address

the court on following questions of law involved in the matter:--

1. Whether, as a result of extension and applicability of the Rajasthan Rent Control Act, 2001 to 12 municipal towns, namely, Kishangarh(Ajmer),

Beawar, Bhiwadi, Hindaun city, Gangapur city, Sujangarh, Makrana, Fatehpur, Suratgarh, Ratangarh, Sardarsahar, Balotra, tenants would be

entitled to protection provided under Section 9 of the Rajasthan Rent Control Act, 2001 in pending suits filed after 01.04.2003 on the ground of

determination of tenancy by recourse to Section 106 of the Transfer of Property Act, and their eviction can be ordered only on the grounds

mentioned therein.

2. Whether decree of eviction challenged in the appeals arising out of such suits, would be liable to be set aside for mere reason of applicability of

the Rajasthan Rent Control Act, 2001 in the town concerned.

3. Whether the extension and applicability of the Rajasthan Rent Control Act, 2001, to the towns referred to above, would be retrospective in

nature.

Learned Advocate General is requested to assist the Court in the matter. A copy of this order be endorsed to his office and name of his associates

Shri Sheetanshu Sharma and Shri Vishal Sharma be shown in the cause-list.

Deputy Registrar (Judicial) of this court shall cause a notice to be published in the cause-list two days before the next date fixed in the matter.

Matters to come up on 06.05.2015.

2. Though the questions of law are common, the facts of each case are little different, and therefore are narrated as under:--

2(i). S.B. Civil Writ Petition No. 2581/2015:--

The present petition arises out of the order dated 14/10/2014 passed by the Civil Judge (Junior Division), Beawar in Civil Suit No. 162 of 2012,

filed under Section 106 of the Transfer of Property Act (hereinafter referred to as "the TP Act"), by the respondent-plaintiff-landlord against the

petitioner-defendant-tenant, by which order, the Trial Court has dismissed the application of the petitioner-defendant, seeking amendment in the

written statement under Order VI, Rule 17 of CPC, on the Rajasthan Government having issued the notification dated 11/7/2014 making

applicable the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the said Act of 2001") to the Municipal Area of Beawar.

2(ii). S.B. Civil Writ Petition No. 5072/2015:--

The present petition arises out of the order dated 11/3/2015 passed by the Additional Civil Judge No. 2, Beawar in Civil Suit No. 94 of 2013,

filed under Section 106 of the TP Act, by the respondents-plaintiffs-landlords against the petitioner-defendant-tenant, by which order, the Trial

Court has dismissed the application of the petitioner-defendant, seeking amendment in the written statement under Order VI, Rule 17 of CPC, on

the Rajasthan Government having issued the notification dated 11/7/2014 making applicable the said Act of 2001 to the Municipal Area of

Beawar.

2(iii). S.B. Civil Writ Petition No. 2655/2015:--

The present petition arises out of the order dated 24/01/2015 passed by the Additional Civil Judge and Judicial Magistrate First Class No. 2,

Beawar in Civil Suit No. 21 of 2013 filed under Section 106 of the TP Act, by the respondent-plaintiff-landlord against the petitioners-defendants-

tenant, by which order, the Trial Court has dismissed the application of the petitioners-defendants, seeking rejection of the plaint under Order VII,

Rule 11 of CPC on the ground that the said Act of 2001 having been made applicable to the municipal area of Beawar, the Civil Court would not

have the jurisdiction to try the suit.

2(iv). S.B. Civil Writ Petition Nos. 3925/2015, 3926/2015 and 3968/2015:--

All the three writ petitions arise out of the common order dated 23/2/2015 passed by the Additional District Judge, Kishangarh, District Ajmer,

whereby the said Appellate Court has dismissed the application of the petitioners-appellants, seeking amendment in the appeal memo for bringing

on record the subsequent event, namely, the issuance of the notification dated 3/7/2014 by the State Government making applicable the said Act

of 2001 to the Municipal Area of Kishangarh. In all the three appeals, the Trial Court had passed the decree against the petitioners-defendants in

the suit filed by the respondents-plaintiffs under Section 106 of the TP Act.

3. It is not disputed by the learned counsels for the parties that all the suits were filed by the respective respondents/landlords against their

respective petitioners-tenants under the provisions contained in the TP Act, as at the relevant point of time when the said suits were filed, the said

Act of 2001 was not applicable to the concerned Municipal Areas, where the suit properties were situated. It is also not disputed that the said Act

of 2001 came into force on 1/4/2003, and that the Rajasthan Premises (Control of Rent and Eviction) Act, 1950(hereinafter referred to as "the

said Act of 1950") was repealed with effect from 1/4/2003, as per Section 32 of the said Act of 2001. It is also not disputed that on 11/7/2014,

the notification was issued by the State Government extending the provisions of the said Act of 2001 to the Municipal Areas of the Kishangarh,

Beawar, Bhiwadi, Hindon City, Gangapur City, Sujangarh, Makrana, Fatehpur, Suratgarh, Ratangarh, Sardarshahar and Balotra, in exercise of the

powers conferred by sub-section (2) of Section 1 of the said Act of 2001.

4. In view of the aforesaid undisputed position, it is sought to be submitted by the learned counsels for the petitioners relying upon the provisions

of the said Act of 2001 that though Section 32 of the said Act of 2001 had saved the proceedings pending under the Repealed Act of 1950, the

pending proceedings filed under the TP Act were not saved. They further submitted that Section 18 of the said Act of 2001 had barred the

jurisdiction of the Civil Court and it was the Rent Tribunal only, which could hear and decide the petitions relating to the disputes between the

landlord and tenant, and therefore on the application of the provisions of the Act of 2001 to the Municipal Areas in question, all Civil Courts had

ceased to have jurisdiction to entertain the suit between the landlord and the tenant. According to them, the said notification would apply

retrospectively to all the pending suits and appeals. They also submitted that even if it is assumed that it would apply prospectively, then also in

view of Section 9 of the Act of 2001, the tenant could not be evicted and no decree of eviction could be passed unless the grounds specified

therein are satisfied, after the said Act of 2001 having come into force in the areas in question. The learned counsels for the petitioners have relied

upon various decisions of Apex Court in case of Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha, AIR

1961 SC 1596 : (1962) 2 SCR 159 , Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others, AIR 1964 SC 1511

: (1964) 6 SCR 876 , H. Shiva Rao and Another Vs. Cecilia Pereira and Others, AIR 1987 SC 248 : (1986) 2 SCALE 909 : (1987) 1 SCC 258

: (1987) 1 UJ 15 , Sarwan Kumar and Another Vs. Madan Lal Aggarwal, AIR 2003 SC 1475 : (2003) 1 JT 607 : (2003) 1 SCALE 722 :

(2003) 4 SCC 147 : (2003) 1 SCR 918 : (2003) 1 UJ 513 : (2003) AIRSCW 813 : (2003) 1 Supreme 946 ; Sushil Kumar Mehta Vs. Gobind

Ram Bohra (Dead) through his Lrs., (1989) JT 329 Supp : (1990) 97 PLR 182 : (1989) 2 SCALE 1104 : (1990) 1 SCC 193 : (1989) 2 SCR

149 Supp , Amarjit Kaur Vs. Pritam Singh and Others, AIR 1974 SC 2068 : (1975) 77 PLR 19 : (1974) 2 SCC 363 : (1975) 1 SCR 605 and in

case of Lakshmi Narayan Guin and Others Vs. Niranjana Modak, AIR 1985 SC 111 : (1984) 2 SCALE 924 : (1985) 1 SCC 270 : (1985) 1

SCC 200 : (1985) 2 SCR 202 : (1985) 17 UJ 294 in support of their submissions.

5. Lastly, the learned counsels have relied upon the decision of the Coordinate Bench in case of Gopal v. Smt. Chanda Devi and Ors. in S.B. Civil

First Appeal No. 313/2011, decided on 26/2/2015, whereby the Coordinate Bench has held inter alia that in view of the subsequent notification

dated 11/7/2014 making applicable the Act of 2001 to the Municipal Area of Beawar, the decree passed on the basis of termination of lease

under Section 106 of the TP Act had become nullity. They submitted that the said order passed by the Coordinate Bench would be binding to this

Court, and if the Court desires to take a different view, the matter should be placed before Hon"ble The Chief Justice for referring it to the Larger

Bench in view of the decision of Apex Court in case of Rashmi Metaliks Ltd. and Another Vs. Kolkata Metropolitan Development Authority and

Others, (2013) 4 BC 244 : (2013) 11 SCALE 248 : (2013) 10 SCC 95 : (2013) 2 SCC(L&S) 858 .

6. Per contra, the learned counsels for the respondents submitted that all the suits were filed by the respective respondents-landlords under Section

106 of the TP Act, as during the period 1/4/2003 to 11/7/2014, neither the Act of 1950 nor the Act of 2001 was applicable and that the law

existing on the date of institution of the suit would govern the suit and the Appeal arising out of such suit. They further submitted that Section 9 of

the said Act of 2001 was subject to Section 18, and the Rent Tribunal was not constituted in the respective area till 11/7/2014. They also

submitted that the Rent Tribunal would have jurisdiction to hear and decide the petitions filed under the provisions of the said Act of 2001, and the

suits in question having been filed under the TP Act, the bar contained in Section 18 of the Act of 2002 had no application to the facts of the

present case. The learned counsels have also relied upon the decision of Apex Court in case of Atma Ram Properties (P) Ltd. Vs. Federal Motors

Pvt. Ltd., (2005) 1 CTC 53 : (2004) 10 JT 410 : (2005) 141 PLR 643 : (2004) 10 SCALE 345 : (2005) 1 SCC 705 to submit that when the

tenant had suffered the decree or order of eviction, his tenancy had stood terminated with effect from the date of the decree, and since then he is

required to be treated as the trespasser and not the tenant. Hence according to them the doctrine of merger would not have the effect of

postponing the date of termination of tenancy merely because the decree of eviction had stood merged in the decree passed by the higher forum.

Pressing into service Section 6 of the General Clauses Act and the principles governing interpretation of statutes, they have submitted that a statute

which affects substantive rights of the parties is presumed to be prospective in operation, unless made retrospective, either expressly or by

necessary intendment, and the application of the Act of 2001 has to be treated as prospective in nature and not retrospective. In this regard, they

have relied upon the decision of Apex Court in case of Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others, AIR 1994 SC

2623 : (1995) CriLJ 517 : (1994) 2 Crimes 916 : (1994) 4 JT 255 : (1994) 3 SCALE 109 : (1994) 3 SCALE 105 : (1994) 4 SCC 602 : (1994)

1 SCR 360 Supp : (1994) 2 UJ 786 and in case of S.L. Srinivasa Jute Twine Mills P. Ltd. Vs. Union of India (UOI) and Another, (2006) 108

FLR 1166 : (2006) 2 JT 397 : (2006) 2 LLJ 225 : (2006) 2 SCALE 345 : (2006) 2 SCC 740 : (2006) SCC(L&S) 440 : (2006) 2 SLJ 457 :

(2006) AIRSCW 1025 : (2006) 2 Supreme 161 : (2006) 2 Supreme 162 . The learned counsels have also relied upon the decision of Apex

Court in case of Beg Raj Singh Vs. State of U.P. and Others, AIR 2003 SC 833 : (2002) 10 JT 417 : (2003) 1 SCC 726 : (2002) 5 SCR 530

Supp : (2003) AIRSCW 280 : (2003) 1 Supreme 91 , in case of M. Subbarao and Sons Vs. Yashodamma and Others, AIR 2002 SC 3284 :

(2002) 7 JT 230 : (2002) 6 SCALE 532 : (2002) 7 SCC 553 : (2002) 2 SCR 448 Supp , in case of Shri Kishan @ Krishan Kumar Vs. Manoj

Kumar Etc. Etc., (1998) 2 AD 162 : AIR 1998 SC 999 : (1998) 2 CTC 37 : (1998) 1 JT 633 : (1998) 118 PLR 593 : (1998) 1 SCALE 582 :

(1998) 2 SCC 710 : (1998) 1 SCR 830 : (1998) AIRSCW 769 : (1998) 2 Supreme 478 , in case of R. Kapilnath (Dead) through Lr. Vs.

Krishna, AIR 2003 SC 565 : (2002) 10 JT 271 : (2003) 1 SCC 444 : (2002) 5 SCR 66 Supp , and the decision of this Court in case of Mangi

Lal Saini v. Civil Judge (JD), Chomu and Anr, in S.B. Civil Writ Petition No. 12872/2008, decided on 6/4/2009.

7. In order to appreciate the rival contentions raised by the learned counsels for the parties, it would be appropriate to reproduce the relevant

provisions of the said Act of 2001. Section 1(2) of the Act of 2001 reads as under:--

1(2) It shall extend in first instance to such of the municipal areas which are comprising the District Headquarters in the State and later on to such

of the other municipal areas [xxx] as the State Government may, by notification in the Official Gazette, specify from time to time"".

7.1 The relevant part of Section 9 reads as under:--

9. Eviction of tenants. Notwithstanding anything contained in any other law or contract but subject to other provisions of this Act, the Rent

Tribunal shall not order eviction of tenant unless it is satisfied that,.....

7.2. The relevant part of Section 18 reads as under:--

18. Jurisdiction of Rent Tribunal.--(1) Notwithstanding anything contained in any other law for the time being in force, in the areas to which this

Act extends, only the Rent Tribunal and no civil court shall have jurisdiction to hear and decide the petitions relating to disputes between landlord

and tenant and matters connected therewith and ancillary thereto, filed under the provisions of this Act:

Provided that Rent Tribunal shall, in deciding such petitions to which provisions contained in Chapter II and III of this Act do not apply, have due

regard to the provisions of Transfer of Properties Act, 1882 (Act No. 4 of 1882) the Indian Contract Act, 1872 (Act No. 9 of 1872), or any

other substantive law applicable to such matter in the same manner in which such law would have been applied had the dispute been brought

before a civil court by way of suit"":

7.3. The relevant part of Section 32 reads as under:--

32. Repeal and savings.--(1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No. 17 of 1950) shall stand repealed with

effect from the date notified under sub-section (3) of section 1 of this Act.

(2) The repeal under sub-section (1) shall not affect,-

(a) anything duly done or suffered under the enactment so repealed; or

(b) -any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.

(3) Notwithstanding the repeal under sub-section

(a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any court shall be

continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had

not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to

withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject

matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purpose limitation such

petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on

the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of

which such appeal or proceeding originated, was filed;

(b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of

thereunder....;

8. The said Act of 2001 had come into force with effect from 1/4/2003, and was made applicable in the first instance to the municipal areas in the

State as notified by it and not to all the areas in the State. Hence, prior to coming into force of the said Act of 2001, the Act of 1950 was

applicable to all the areas in the State, and therefore there were certain litigations pending under the Old Act of 1950, in the areas where the new

Act of 2001 was made applicable. Under the circumstances, while repealing the Act of 1950, the suits and other proceedings filed under the

Repealed Act and pending before the Courts were saved as per Section 32 of the Act of 2001. Since the old Act of 1950 was applicable to the

entire State of Rajasthan in respect of the disputes between the landlords and tenants, no suits or proceedings under TP Act between the landlord

and tenant would be pending, when the Act of 2001 came into force, and therefore there was no question of mentioning such proceedings filed

under the TP Act in the Repeal and Saving Provision i.e. Section 32 of the Act of 2001. The Court therefore does not find any substance in the

submission made by the learned counsels for the parties that because the proceedings filed under the TP Act were not saved under Section 32 of

the Act of 2001, all such proceedings had stood terminated on the application of Act of 2001. As stated hereinabove, earlier the Act of 1950 only

was in existence in the State of Rajasthan, which was applicable to the suits and proceedings filed by the landlords and tenants, and the said Act

having been repealed by the Act of 2001, only the suits and proceedings filed under the said Act of 1950 were saved under Section 32 of the said

Act of 2001. The legislature therefore was not expected to mention anything in the said section 32 of the said Act of 2001 about the suits and

proceedings filed under the General Law or the TP Act by the landlords or the tenants.

9. Since the old Act of 1950 was repealed from the entire State of Rajasthan and the new Act of 2001 was made applicable at the first instance

only to some of the Municipal Areas comprising the District Headquarters in the State with effect from 1/4/2003, the suits came to be filed in the

rest of the areas, where the said Act of 2001 was not made applicable, under the provisions contained in the TP Act. Thereafter the State

Government having issued the notification dated 11/7/2014, making applicable the provisions of the Act of 2001 to the other Municipal Areas as

mentioned therein, the question has arisen as to whether by virtue of the said notification, the Act of 2001 would be applicable prospectively or

retrospectively. In other words, whether the tenants would be entitled to the protection provided under Section 9 of the said Act of 2001 in the

pending suits filed under the TP Act after 1/4/2003, and before 11/7/2014, on which date the notification has been issued by the State

Government making the said Act of 2001 applicable to the rest of the Municipal Areas mentioned in the said notification. The question also has

arisen in respect of the appeals pending before the Appellate Court against the eviction decree passed under the TP Act in the suits filed after

1/4/2003 and before 11/7/2014 in the areas where the Act of 2001 was not earlier applicable.

10. The Apex Court in case of Hitendra Vishnu Thakur v. State of Maharashtra (supra) while dealing with the ambit and scope of the Amending

Act had culled out certain principles in para 26 of the said judgment, which read as under:--

26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation

was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law

settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an

Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary

intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in

its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is

substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or

obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation,

unless otherwise provided, either expressly or by necessary implication.

11. The Apex Court also in case of S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India and Anr (supra) has laid down the cardinal principle

of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective. In para

18 of the said judgment, it has been observed as under:--

18. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to

have retrospective operation.(See Keshvan Madhavan Memon v. State of Bombay).But the rule in general is applicable where the object of the

statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show

the intention of the Legislature to affect existing rights, it is deemed to be prospective only "nova constitutio futuris formam imponere debet, non

praeteritis". In the words of LORD BLANESBURG, ""provisions which touch a right in existence at the passing of the statute are not to be applied

retrospectively in the absence of express enactment or necessary intendment."" (See Delhi Cloth and General Mills Co. Ltd. vs. Income Tax

CommissionerAIR 1927 242 (Privy Council)). ""Every statute, it has been said"", observed LOPES, L.J., ""which takes away or impairs vested

rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions

already past, must be presumed to be intended not to have a retrospective effect.""(See Amireddi Raja Gopala Rao v. Amireddi Sitharamamma).

As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express

words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger

retrospective operation than its language renders necessary. (See Reid v. Reid). In other words close attention must be paid to the language of the

statutory provision for determining the scope of the retrospectivity intended by Parliament. (See Union of India v. Raghubir Singh. The above

position has been highlighted in ""Principles of Statutory Interpretation"" by Justice G.P. Singh. (Tenth Edition, 2006) at PP. 474 and 475)

12. From the aforesaid settled legal position, there remains no shadow of doubt that a statute which affects substantive rights is presumed to be

prospective in operation unless made retrospective either expressly or by necessary intendment, and that the law relating to the right of action and

right of appeal being substantive in nature has to be construed to have prospective effect. It is also settled that a statute which not only changes the

procedure but also creates new rights and liabilities should be considered to be prospective in operation unless otherwise provided. In the instant

cases, the said Act of 2001 which not only changes the procedure but also creates new rights and liabilities, cannot be construed to have

retrospective effect, so as to make it applicable to the suits and other proceedings filed under the General Law or the TP Act in the Courts situated

in the municipal areas where the said Act of 2001 was not applicable till the notification dated 11/7/2014 was issued by the State Government.

When the lessor had a right to determine the lease under the provisions contained in the TP Act, in the areas where the Act of 2001 was not

applicable during the period April, 2003 till the issuance of notification dated 11/7/2014, and when the suits were filed by the lessors seeking

possession of the tenanted premises after the determination of tenancy under the TP Act in the Civil Court, such suits can not be dismissed on the

Act of 2001 having come into force w.e.f. 11/7/2014, making it applicable retrospectively to the pending suits. The net effect of the said

notification would therefore be that the Act of 2001 would be applicable to the municipal areas mentioned therein prospectively, and would be

applicable to the suits relating to the disputes between landlord and tenant filed after 11/7/2014 in such areas.

13. Though it was sought to be submitted by the learned counsels for the petitioners that even if the effect of the said Act of 2001 is treated as

prospective from the date of notification i.e. 11/7/2014, then also no decree or order of eviction of tenant could be passed by the Civil Court after

11/7/2014, the Court is not impressed with the said submission. Section 9 of the said Act of 2001 states that notwithstanding anything contained in

any other law or contract, but subject to other provisions of the Act, the Rent Tribunal shall not pass the order of eviction of tenant unless it is

satisfied about the existence of any of the grounds mentioned therein. It is very pertinent to note in this regard that Section 9 is made subject to the

other provisions of the Act and it is the Rent Tribunal which could not pass the order of eviction of tenant unless satisfied about the existence of any

of the grounds mentioned therein. The Rent Tribunals are constituted under Section 13 of the said Act of 2001, and there were no Rent Tribunals

constituted for the areas where the said Act of 2001 was not applicable during the period 1/4/2003 to 1/11/7/2014. Further though Section 18 of

the Act of 2001 bars the jurisdiction of Civil Court to hear and decide the petitions relating to the disputes between the landlord and tenant, it is to

be noted that such bar applies when the said Act is made applicable to the area in question, when the Rent Tribunal is constituted in such area and

most importantly when the eviction petition or suit is filed under the said Act of 2001. Since suits in question were filed under the TP Act and not

under the Act of 2001, as at the relevant time of filing of the said suits, the Act of 2001 was not in force in the areas in question, the provisions of

Section 18 of the Act of 2001 can not be pressed into service. Section 18 of the said Act of 2001, would apply only to the petitions filed under the

provisions of the said Act, and not to proceedings filed under the General Law or the TP Act.

14. As rightly submitted by the learned counsel for the respondents relying upon the decision of Apex Court in case of R. Kapilnath (Dead)

through LR v. Krishna (supra), a new law bringing about a change in forum does not affect pending actions unless a provision is made in it for

change over of proceedings or there is some other clear indication which would affect pending actions also. There is no provision contained in the

said Act of 2001 which would take away the jurisdiction of the Civil Court, to dispose of the suit validly instituted at the relevant time. There is also

nothing in the Act of 2001 which would prevent the Civil Court from continuing with the suit and other proceedings filed under the TP Act and

passing the decree therein. The decisions relied upon by the learned counsels being on the interpretation of the other Rent Control Acts prevailing

in other states, are not applicable to the facts of the instant case.

15. This takes the Court to the next issue as to whether the decree of eviction challenged in appeals arising out of such suits would be liable to be

set aside merely on the applicability of the Act of 2001 in the areas in question after the notification dated 11/7/2014. In this regard, it may be

noted that there cannot be any disagreement with the proposition that appeal is a continuation of the suit and that the decree passed in the suit

would merge with the decree passed by the Appellate Forum. However, in case of *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*

(supra) the Apex Court while affirming the view of Nagpur High Court in case of *Bhagwandas Lakhamsi vs. Mst. Kokabai W/o Kesheoram* AIR

1953 186 (Nagpur) held that after determination of tenancy, the position of tenant is akin to that of a trespasser and that the rent control order

governing the relationship of landlord and tenant, has no relevance for determining the question of what should be the measure of damages which a

successful landlord should get from the tenant for being kept out of the possession and enjoyment of the property. The Apex Court in para 19 of

the said decision has concluded as under:--

19. To sum up, our conclusions are:--

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to

put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in

execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such

terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of

Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the

decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at

the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The

landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

(3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands

merged in the decree passed by the superior forum at a latter date.

16. Thus, in view of the aforesaid legal position, the Court is of the opinion that the tenancy stands determined on the decree of eviction having

been passed in the suit filed under the TP Act and such tenant ceases to have status of tenant during the pending of the Appeal arising out of such

decree. Such appeal would be governed by the law prevailing on the date of institution of the suit. Since Section 9 of the said Act of 2001 speaks

about the order of eviction of tenant, the same could not be made applicable to the proceedings of appeal, when the tenancy had already stood

determined on the passing of the decree of eviction under the TP Act and the tenant had lost his status of being the tenant.

17. The learned counsels for the petitioners have drawn the attention of the Court to the decision of the Coordinate Bench in case of Gopal v. Smt.

Chanda Devi and Ors.(supra), in which it has been held that the decree passed on the basis of termination of lease under Section 106 of the TP

Act would become nullity on the notification having come into force in the areas in question. However, in this regard it is required to be noted that

no such issues as raised in the present petition were raised in the said First Appeal. Further, it appears that the coordinate bench has followed the

decision of the Supreme Court in case of Lakshmi Narayan Guin and Ors. v. Niranjana Modak (supra) in which the Supreme Court had the

occasion to deal with the provisions of the West Bengal Premises Tenancy Act, 1956. The provisions of the said West Bengal Act more

particularly Section 13, being totally different from the provisions of Section 9 of the said Act of 2001, the said decision can not be made

applicable to the instant petitions.

18. In view of the aforesaid position, the Court has no hesitation in holding that the tenants would not be entitled to the protection provided under

Section 9 of the Act of 2001 in the pending suits filed after 1/4/2003 in the courts situated in the Municipal Areas, where the said Act of 2001 was

not applicable till the notification dated 11/7/2014 was issued by the State Government, and that the said Act of 2001 would have application to

the areas mentioned therein only prospectively and not retrospectively. The Court also holds that the decree of eviction passed under the TP Act

and challenged in the appeal would not be liable to be set aside merely for the reason of applicability of the said Act of 2001 in the area concerned

by virtue of the notification dated 11/7/2014.

19. For the reasons stated above, the Court does not find any illegality or infirmity in the impugned orders passed by the respective Trial Courts

and Appellate Courts rejecting the applications of the petitioners/tenants seeking amendment in the written statement or in the appeal memo as the

case may be. All petitions therefore deserve to be dismissed and are accordingly dismissed.

20. At this juncture, considering the request made by the learned counsels for the petitioners, the office is directed to place the copy of this

judgment and the copy of the judgment dated 26/2/2015 passed by the Coordinate Bench in S.B. Civil First Appeal No. 313/2011 before the

Hon'ble the Chief Justice for necessary consideration for referring the issues involved in these petitions to the Division Bench, if deemed fit.