

DULAREY LODH

v.

THE THIRD ADDL. DISTRICT JUDGE, KANPUR & ORS.

May 3, 1984

[S. MURTAZA FAZAL ALI AND A. VARADARAJAN, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, Section 9 & U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act 1976—Decree of eviction passed against tenant under 1972 Act—Executing court holding decree inexecutable—1976 Amendment Act making section 9 of 1972 Act applicable with retrospective effect—Decree of eviction whether revived and becoming operative and executable—Doctrine of eclipse—Applicability of.

Interpretation of Statutes—Doctrine of eclipse—Applicability of—When arises.

The respondent landlord filed a suit for ejectment in the year 1971 and obtained a decree for ejectment against the appellant-tenant. By virtue of the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the case was transferred to the court of the Judge, Small Causes, who tried the case and passed a decree in favour of the respondent. No appeal or revision was filed against the said judgment. Thereafter, the decree-holders filed an execution petition. The appellant, raised a jurisdictional objection on the basis of the judgment of the Allahabad High Court, (*K.K. Saxena v. S.N. Misra* 1975 ALR 360) to the effect that the transfer of the suit, before conferment of the jurisdiction to the Judge, Small Causes Court was not competent and therefore, the decree was not executable. The respondent's counsel contended that the suit would have to be tried all over again and the Court held that the decree was without jurisdiction. The decree remained inexecutable, but by virtue of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 s. 9 of the 1972 Act was made applicable with retrospective effect to remove the injustice and remedy the mischief which had been caused to the decree-holders. As a result of the amendment, the aforesaid judgment of the Allahabad High Court stood over ruled and effaced.

In view of the aforesaid amendment, the respondents filed an application before the Executing Court for revival of the suit and the decree, which was accepted by the Court, and a Civil Revision filed against the said Order was dismissed by the High Court,

A In the appeal to this Court, it was contended on behalf of the appellant, that in view of the Allahabad High Court decision and the 1972 Act, the decree stood set aside and could not be revived or made executable even by the 1976 Amendment Act.

Dismissing the appeal,

B HELD : 1. The courts below have rightly decided that after the 1976 Amendment Act the decree became legally executable. [747A]

2. By virtue of the 1972 Act the decree could not have been set aside or invalidated and the only consequence which would ensue is that the decree would be lying dormant and could not be executed. Once the bar placed by the 1972 Act is removed, by virtue of the doctrine of eclipse the decree will revive and become at once operative and executable, [750H; 751A]

3. Even if the 1972 Act were to apply, the utmost consequence would be that the decree would remain inexecutable but could not be struck off from the records of the case. This is a clear case where the doctrine of eclipse would apply, and in view of the 1976 Amendment Act, the decree will revive and become executable. This principle has been applied by this Court in several cases and flows from the well-known doctrine of eclipse which has been enunciated not only in India but in other countries also. [747G-H]

E *Bhikaji Narain Dhakras & Ors. v. State of Madhya Pradesh & Anr;* [1955] 2 SCR 589, *Deep Chand v. State of U.P. & Ors;* [1959] 2 Supp. SCR 8, *Mahendra Lal Jaini v. The State of Uttar Pradesh & Ors;* [1963] 1 Supp. SCR 912, *S. Anbalagan v. B. Devarajan;* [1984] 2 SCC 91, *Kailash Sonkar v. Smt. Maya Devi;* [1984] 2 SCC 91, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1574 of 1980.

F Appeal by Special leave from the Judgment and Order dated the 27.7.1979 of the Allahabad High Court in C.M.W. No. Nil of 1979.

Anil Dev Singh, S.L. Aneja and K.L. Taneja for the Appellant.

G *M.C. Manchanda, Mrs. Shobha Dikshit and Pramod Swarup* for the Respondent.

The Judgment of the Court was delivered by

H FAZAL ALI, J. This appeal by special leave against a judgment of the Allahabad High Court unfolds a tell-tale plight of an unfortunate litigant who, after obtaining a decree for ejectment, was driven from pillar to post to get the said decree executed. His attempts to get the said decree executed were stalled sometimes by objections filed by the tenant-appellant and sometimes by amendments made

in the law with the result that even after 13 years of litigation the landlord respondent was not able to get possession of the premises. This was because of a statutory amendment which made the decree obtained by him inexecutable and was, therefore, lying dormant and ineffective.

The legislature having realised the hardship of such landlords came to their rescue by an amendment in 1976 to the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short, to be referred to as the '1972 Act') which was expressly given retrospective operation so as to revive the decrees which had become inexecutable.

*When the appeal was heard and the arguments were concluded the respondents had made a good gesture in agreeing to allow the tenant two years' time to vacate the premises on giving the usual undertaking and accordingly we adjourned the case to enable the parties to come to a settlement. However, we were informed by counsel for the parties that no settlement could be reached; hence we have now to decide the case on merits.

And now to the facts of the case. The respondent-landlord filed a suit for ejectment in the year 1971 and obtained a decree for ejectment against the appellant-tenant. By virtue of the provisions of 1972 Act, the case was transferred to the court of the Judge, Small Causes, who tried the case and passed a decree in favour of the respondent on 4.4.1973. It may be noted that the tenant did not object to the jurisdiction nor did he prefer an appeal or revision against the said judgment dated 4.4.73 and the same became final.

Thereafter, the decree-holders filed an execution petition being Execution Case No. 4 of 1973. The appellant, however, raised a jurisdictional objection on the basis of a judgment of the Allahabad High Court reported in 1975 *A.L.R.* 360 that the transfer of a suit before conferment of jurisdiction to the Judge, Small Causes Court was not competent and, therefore, the decree was not executable. Counsel for the respondents under some misconception conceded that the suit would have to be tried all over again and the Execution Case was, therefore, disposed of by an Order dated 31.1.1976 passed by the Executing Court. The Court held that the decree was without jurisdiction. The respondents, however, took the stand that a concession on a point of law was not binding on him nor was his Advocate authorised to make such a concession. However, the decree

A remained inexecutable but by virtue of the U.P. Urban Buildings
(Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976
(hereinafter referred to as the '1976 Amendment Act'), section 9 of
B the 1972 Act was made applicable with retrospective effect to remove
the injustice and remedy the mischief which had been caused to the
decree-holders. The relevant portion of the said amendment may be
extracted thus :

"26. Transitory Provision

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C (6) The provision of section 9 of the Uttar Pradesh
Civil Laws Amendment Act, 1972 shall apply and shall be
deemed always to have applied in relation to suits of the
nature referred to therein which before the commencement
D of that Act had been transferred to a competent court and
were pending immediately before the date of commencement
of that Act in such transferee court as they apply in relation
to suits which were pending in the court in which they were
instituted:

E Provided that any such suit decided by the transferee
court between the commencement of the said Act and the
commencement of this Act on the assumption that the said
Section 9 did not apply to such suits shall be deemed to
have been validly decided as if the said section did not
apply to such suits."

F As a result of the amendment extracted above, the judgment
of the Allahabad High Court reported in 1975 A.L.R. 360 stood
overruled and effaced.

G In view of this amendment, the respondents filed an applica-
tion before the Executing Court for revival of the suit and the decree
which was accepted by the court and a civil revision filed against the
said Order was dismissed by the High Court; hence this appeal by
special leave in this Court.

H In order to understand the implication of the 1976 Amend-
ment Act, it may be necessary to peruse s. 26(5) of the said Amend-
ment, which is extracted thus :

"(5) Notwithstanding any judgment, decree or order of any court or authority, the provisions of Rule 16 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 shall be deemed to have been made under the provisions of the principal Act as amended by this Act as if this Act were in force on all material dates."

A close analysis of the above reveals that the intention of the legislature was to remove the injustice done to the landlords whose decrees became inexecutable. The logical consequence which flows from an interpretation of clauses (5) and (6) of s. 26 of the 1976 Amendment Act would be that all decrees which hitherto had been lying dormant would revive and the landlord could get the decree executed.

The Executing Court as also the High Court upheld the contention of the respondents and directed execution of the decree.

The sheet-anchor of the arguments of the counsel for the appellant was that in view of the Allahabad High Court decision (*supra*) and the 1972 Act, the decree stood set aside and could not be revived or made executable even by the 1976 Amendment Act. It is, however, impossible for us to accept this contention, because the dominant purpose of the 1976 Amendment Act was to remedy the injustice done to the landlords by the 1972 Act.

Another flaw in the argument of the counsel for the appellant is that it presumes that the decree became completely without jurisdiction and stood set aside. That, however, could not be the position in law. Even if the 1972 Act were to apply, the utmost consequence would be that the decree would remain inexecutable but could not be struck off from the records of the case. This is a clear case where the doctrine of eclipse would apply and in view of the 1976 Amendment Act, the decree will revive and become executable. This principle has been applied by this Court in several cases and flows from the well-known doctrine of eclipse which has been enunciated not only in India but in other countries also. In *Sutherland Statutory Construction* by Horack (Vol. I, 3rd Edn.), the following passages may be noted :

"In a majority of the jurisdictions the courts recognise

A the mistake of the legislature and try to determine and give effect to its intent. If the legislature has expressed its purpose intelligibly in the amendatory act and provided fully upon the subject considered, a majority of courts hold that it is a reasonable conclusion that the legislature did not intend to make the enforcement of the statute contingent on the continued existence of the repealed statute...
 B (p. 329)

C The unconstitutional act physically exists in the official statutes of the state and is there available for reference, and as it is only unenforceable, the purported amendment is given effect. If the law as amended is constitutional, it will be enforced."
 (p. 335)

D It is true that the American Constitution as also the American courts have been most reluctant to apply the doctrine of eclipse but this Court has pointed out in more than one case that the American view cannot be applied to our Constitution. The matter first came up for consideration before this Court in *Bhikaji Narain Dhakras & Ors. v. State of Madhya Pradesh & Anr.*⁽¹⁾ where in a similar situation the doctrine of eclipse was fully applied and the court observed thus :

E "The true position is that the impugned law became, as it were, eclipsed, for the time being, by the fundamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity.....Such
 F laws were not dead for all purposes. They existed for the purposes of pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens.....In our judgment, after the amendment, of clause (6) of Article 19 on the 18th June 1951, the impugned Act ceased to be unconstitutional and became revived and enforceable against citizens as well as against non-citizens...
 G But after the amendment of clause (6) the impugned Act immediately became fully operative even as against the citizens."

In *Deep Chand v. State of U.P. & Ors.*⁽²⁾ similar observations

H (1) [1955] 2 SCR 589.

(2) [1959] 2 Supp. SCR 28.

were made by this Court which may be extracted thus :

"As, however, our learned Brother has thought fit to embark upon a discussion of these questions, we desire to guard ourselves against being understood as accepting or acquiescing in the conclusion that the doctrine of eclipse cannot apply to any post-Constitution law. A post-Constitution law may infringe either a fundamental right conferred on citizens only or a fundamental right conferred on any person, citizen or non-citizen. In the first case the law will not stand in the way of the exercise by the citizens of that fundamental right and, therefore, will not have any operation on the rights of the citizens, but it will be quite effective as regards non-citizens. *In such a case, the fundamental right will, qua the citizens, throw a shadow on the law which will nevertheless be on the Statute Book as a valid law binding on non-citizens and if the shadow is removed by a constitutional amendment, the law will immediately be applicable even to the citizens without being re-enacted.....* In other words, the doctrine of eclipse as explained by this Court in *Bhikaji Narain Dhakras v. The State of Madhya Pradesh* [1955 (2) SCR 589] also applies to a post-Constitution law of this kind.....

A pre-Constitution law, stating in the words of Das, J., as he then was, exists notwithstanding that it does not exist with respect to the future exercise of the fundamental rights. That principle has been extended in this decision, by invoking the doctrine of eclipse. *As the law existed on the statute book to support pre-Constitution acts, the Court held that the said law was eclipsed for the time being by one or other of the fundamental rights and when the shadow was removed by the amendment of the Constitution, the impugned Act became free from all blemish or infirmity."*

(Emphasis ours)

In *Mahendra Lal Jaini v. The State of Uttar Pradesh & Ors.*⁽¹⁾ this Court held as follows :

"The pre-Constitution laws which were perfectly valid when they were passed and the existence of which is recognised in the opening words of Art. 13(1) revive by the removal of the inconsistency in question. *This in effect is*

(1) [1963] 1 Supp. SCR 912.

A *the doctrine of eclipse, which, if we may say so with respect, was applied in Bhikaji Narain's case.....*

B So far as pre-Constitution laws are concerned, the amendment of the Constitution which removes the inconsistency will result in the revival of such laws by virtue of the doctrine of eclipse, as laid down in *Bhikaji Narain's case*, for the pre-existing laws were not still-born and would still exist though eclipsed on account of the inconsistency to govern pre-existing matters." (Emphasis supplied)

C In two recent decisions, this Court has applied the doctrine of eclipse in similar situations. In *S. Anhalagan v. B. Devarajan*⁽¹⁾ the following observations were made :

D "Unless the practice of the caste makes it necessary no expiatory rites need be performed and, ordinarily, he regains his caste unless the community does not accept him.....The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deep-rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. *If it disappears, it disappears only to reappear on reconversion.*" (Emphasis ours)

E Similarly, in the case of *Kailash Sonkar v. Smt. Maya Devi*,⁽²⁾ to which one of us (Fazal Ali, J.) was a party, this Court made the following observation :

F "In our opinion, when a person is converted to Christianity or some other religion the original caste remains under eclipse and as soon as during his/her life-time the person is reconverted to the original religion the eclipse disappears and the caste automatically revives."

G Thus, applying the rule of law laid down by this Court, there would be no difficulty in upholding the judgments of the courts below in this particular appeal. By virtue of the 1972 Act, the decree could not have been set aside or invalidated and the only consequence which would ensue is that the decree would be lying dormant and could not be executed. Once the bar placed by the 1972 Act is

H (1) [1984] 2 SCC 91.

(2) [1984] 2st SCC 91.

removed, by virtue of the doctrine of eclipse the decree will revive and become at once operative and executable. The courts below have rightly decided that after the 1976 Amendment Act the decree became legally executable.

Some other arguments were also advanced on behalf of the appellant but in view of the express language of the 1976 Amendment Act and the doctrine of eclipse, they seem to be futile.

For the reasons given above, we uphold the decree for ejectment passed by the courts below against the appellant and dismiss the appeal with costs. As the litigation has taken more than a decade, it is not possible for us to give any time to the tenant for vacating the premises and the decree may now be executed forthwith and the landlord put into possession.

NV..K.

Appeal dismissed.