possession of the remaining property is dismised. Considering all circumstances I leave the parties to bear their own costs throughout.

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Khanna, J.

At the time of the pronouncement of the judgment, the learned counsel for the respondents requests for leave to file letters Patent Appeal. Considering the circumstances of the case, I grant the leave sought for.

*R.S.*

## REVISIONAL CIVIL

*Before S. S. Dulat and D. K. Mahajan, JJ.*

SUKH LAL SINGH AND ANOTHER,—*Petitioners*

*versus*

JOGINDER SINGH AND ANOTHER,—*Respondents*

**Civil Revision No. 338 of 1961**

1962

July, 17th.

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 4—Determination of fair rent—Whether can be made in a case where fair rent has already been determined under the Pepsu Ordinance—The Punjab Laws (Extension No. 4) Act (XVIII of 1958)—S. 6—Effect of.*

*Held*, that the effect of the provisions of section 6 of the Punjab Laws (Extension No. 4) Act, 1958, whereby the East Punjab Urban Rent Restriction Act, 1949, was extended to the erstwhile Pepsu territory, is that previous decisions made between the parties under the previous law are not to be disturbed merely because of the extension of a new enactment to the Pepsu territory. There is no indication in the statute that previous decisions could be ignored. It, therefore, follows that the rent of the disputed shop having been fixed under a valid law in 1953, the same matter cannot be reopened, under the new enactment, that is, the Punjab Act, after its extension to the erstwhile Pepsu territory.

*Case referred by Hon'ble Mr. Justice Dulat, on 24th November, 1961, to a larger Bench for decision of the legal*

*question involved in the case and finally decided by Hon'ble Mr. Justice Dulat, Acting Chief Justice and Hon'ble Mr. Justice Mahajan, on 17th July, 1962.*

*Petition under section 15(4) of Act III of 1949 and Section 115 of the Civil Procedure Code for revision of the order of Shri H. S. Bhandari, Appellate Authority, (District Judge), Patiala, dated the 1st February, 1961, affirming that of Shri Joginder Singh Sekhon, Rent Controller, Patiala, dated the 28th November, 1960, fixing the fair rent of the shop in dispute at Rs. 16-13-3 (16.84) with effect from the date of the application.*

T. S. MANGAT, ADVOCATE, for the Petitioner.

B. R. AGGARWAL, ADVOCATE, for the Respondents.

JUDGMENT

Dulat, J.

DULAT, J.—Before the 15th May, 1958, urban rents in the territory previously included in Pepsu were controlled by the terms of the Pepsu Urban Rent Restriction Ordinance, and basic rent was under that statute to be fixed with reference to the prevailing rents in 1947. An application for fixing the fair rent of a shop in Patiala was made by the tenants under that enactment and the Rent Controller fixed the rent of that shop as Rs. 60 per mensem by his order dated the 20th April, 1953. That order was made in the presence of the parties and it became final. On the 15th May, 1958, the East Punjab Urban Rent Restriction Act, 1949, which was in force in the Punjab territory, was extended to the erstwhile Pepsu territory and under that statute basic rents were to be fixed with reference to the prvailing rents during 1938. The tenants of the same shop made an application sometime in 1960 for the fixation of the fair rent afresh. The main objection taken to that application on behalf of the landlords was that fair rent had already been fixed under a valid enactment and the decision of the Rent Controller, which was

*inter partes*, had become final, and the same could not be reopened. This contention was over ruled by the Rent Controller and also by the Appellate Authority to whom an appeal was taken and the rent was reduced to Rs. 16.84 nP. per month. It is against that decision that the present revision petition has been brought on behalf of the landlords. The petition came before me sitting alone in the first instance and, although I formed the impression that the landlords' objection was well-founded, I considered the matter sufficiently important to be finally decided by a larger Bench, and in this way the case has come before us.

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The East Punjab Urban Rent Restriction Act was extended to the Pepsu territory by Punjab Act, 18 of 1958, and section 6 of that Act, which repealed the previously existing law in Pepsu, made a provision in these words—

"Provided that such repeal shall not affect—

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired or incurred under any law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

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and 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 said Act had not been passed:

Provided further that anything done or any action taken under any law so repealed shall be deemed to have been done or taken under the corresponding provision of the enactment extended by section 4 to the transferred territories, and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the enactment so extended."

The argument on behalf of the petitioners is that the question of fair rent for the disputed premises had been finally settled under the old law and neither, therefore, the right of the landlords to recover such fair rent nor the liability of the tenants to pay that much rent could be affected by the extension of the new law to the Pepsu territory and the rent thus fixed could not later be reopened and reconsidered. There is, in my opinion, substance in this contention and the saving clause in section 6 of the extending Act, seems to have provided that matters settled under the previous law will not be reopened. Mr. Babu Ram Aggarwal, appearing for the tenants, however, contends that this saving clause concerns only such rents as may have been paid or recovered under any order made before the Punjab Act, was extended to the Pepsu territory, but that once that statute was so extended, future rents have to be governed by the new Act. I am unable to find anything in Punjab Act, 18 of 1958 to support such an interpretation of the

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saving clause and, in fact, it appears to me that the particular proviso, on which Mr. Aggarwal expressly relies, has the opposite effect. That proviso is the second one mentioned by me, namely, the one providing that anything done under the law repealed shall be deemed to have been done under the new law. Mr. Aggarwal for his argument emphasises not this part of the second proviso, but the later part which says that the previous decision shall continue to be in force unless and until superseded by anything done or any thing done or any action taken under the enactment extended to the Pepsu territory, and his argument is that the previous decision could remain in force only till a new application under the new Act was fined by the tenants concerned and once that was done the new order would supersede the previous decision. I am unable to accept this line of reasoning because what the proviso clearly says is that any decision made under the old statute will be deemed to have been made under the new enactment. There is thus a statutory fiction here which makes the previous decision a decision under the new enactment and once that position is accepted, then it follows that no new application under the new enactment could lie. Mr. Aggarwal had to admit that ordinarily if an application is made under the East Punjab Urban Rent Restriction Act, and a decision arrived at and the fair rent fixed, then no second application for the same purpose would be entertainable, and if that is so then obviously by virtue of the statutory fiction the second application made by the tenants in the present case must be held totally incompetent because there was in existence already a decision which, the law says, must be accepted as a decision under the new enactment. The second part of the proviso emphasised by Mr. Aggarwal merely means this that if any previous decision can be lawfully superseded

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or varied, that may of course be done, but obviously in the present case no second decision could have been lawfully made so long as the previous decision deemed to have been made under the new enactment was in existence. It seems to me, in the circumstances, that whether we consider merely the saving clause without the second proviso, or whether we consider it along with the second proviso, the intended result is the same, and it is that previous decisions made between the parties under the previous law are not to be disturbed merely because of the extension of a new enactment to the Pepsu territory. There is no indication in the statute that previous decisions could be ignored. I would, therefore, hold that the rent of the disputed shop having been fixed under a valid law in 1953, the same matter could not have been reopened by the Rent Controller under the new enactment and, in the result, I would allow the present petition and set aside the order fixing the fair rent afresh. In all the circumstances, however, I would leave the parties to their own costs throughout.

D. K. MAHAJAN, J.—I agree.
*B.R.T.*

## APPELLATE CIVIL

*Before Mehar Singh and Shamsher Bahadur, JJ.*

RAGHBIR SINGH,—*Appellant*

*versus*

SMT. GIAN DEVI AND ANOTHER,—*Respondents*

**Regular Second Appeal No. 754 of 1954**

1962

July, 24th

*Specific Relief Act (I of 1977)—S. 14—Minor obtaining loan by misrepresenting himself as major—Whether bound to restore amount in equity—Plea as to restitution—Whether should be taken in the form of attack or as a shield in defence.*