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general rule. That, in substance, is the view which the Mysore High Court has taken in the matter and we think that the said view is right.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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April 18.

 RAM LAL KAPUR AND SONS (P) LTD.

v.

RAM NATH AND OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AYYAR, JJ.)

Supreme Court.—Application for special leave.—Delay.—Condonation.—Necessity to give notice to respondent before making order.—Supreme Court Rules, 1950, O. XIII, r. 1. proviso (v).

Against the judgment of the Single Judge of the Punjab High Court dated January 5, 1953, in which he followed the decision of a Division Bench holding that s. 7A of the Delhi and Ajmer Rent Control Act, 1947, was unconstitutional and void, the appellants preferred an appeal under the Letters Patent. Meanwhile the judgment of the Division Bench was brought up by way of appeal to the Supreme Court, and as the appeal was getting ready to be heard, the appellants made an application on January 3, 1959, for special leave to appeal to the Supreme Court against the judgment of the Single Judge. No notice was given to the respondent to the application, and special leave was granted ex-parte. The Letters Patent appeal was thereafter withdrawn by the appellants. When the appeal came on for hearing in due course, the respondent raised an objection to the hearing of the appeal on the grounds that the application for special leave was barred by limitation, that there were no sufficient reasons for condoning the long delay of four years, and that the special leave granted ex-parte should be revoked.

Held, that, in the peculiar circumstances of the case, leave should not be revoked.

Expect in very rare cases, if not invariable, the Supreme Court should adopt as a settle rule that the delay in making an application for special leave should not condoned ex-parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave.

Desirability of the Rules of the Supreme Court being amended suitably pointed out.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 476 of 1961.

Appeal by special leave from judgment and order dated January 5, 1955, of the Punjab High Court of (Circuit Bench) at Delhi in Civil Misc. Petn. No. 71/D of 1954.

N. C. Chatterjee, Hardayal Hardy and N. N. Keswani, for the appellant.

R. S. Narula, for the respondents Nos. 1 to 3.

1962. April 18. The Judgment of the Court was delivered by

AYYANGAR, J.—This is an appeal by special leave against a judgment of a learned Single Judge of the Punjab High Court holding that s. 7 A of the Delhi and Ajmer Rent Control Act, 1947 (hereinafter called the Act), was unconstitutional as violative of the fundamental right guaranteed by Art. 14 of the Constitution.

The first respondent Ram Nath owns a building in Delhi of which, among others, the appellant-company was a tenant. The appellant moved the Rent Controller, Delhi, under s. 7A of the Act for fixation of the fair rent of the portion in its occupation. These proceedings have had a chequered history which it is not material to set out, but suffice it to say that the Rent Controller,

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Delhi, computed the fair rent for the entire building at Rs. 565/- p. m. and the fair rent payable by the appellant at Rs. 146/- per month. It is necessary to mention that under the Act the Rent Controller would have had jurisdiction to entertain the appellant's application for the fixation of fair rent and for so fixing it only if the construction of the building in question was completed after March 24, 1947, but if the construction of the building was completed earlier the ordinary Civil Courts and not the Rent Controller would have had jurisdiction to determine the matter. The date of the completion of the first respondent's building therefore loomed large in the enquiry before the Rent Controller and that authority recorded a finding on this matter adverse to the first respondent in his order.

The landlord-first respondent preferred an appeal against the order of the Rent Controller to the learned District Judge, Delhi, but the appeal was dismissed. Thereafter he moved the High Court of the Punjab under Art. 227 of the Constitution challenging the correctness and propriety of every finding by the Rent Controller and of the District Judge on appeal. This petition came on for hearing before a learned Single Judge of the High Court. A Division Bench of the High Court had sometime previously held in another batch of cases (*British Medical Stores v. Bhagirath Mal*) (1) arising under the Act, that s. 7A was unconstitutional and void and following this decision he allowed the petition of the first respondent and set aside the order of the Rent Controller as without jurisdiction, without considering the other matters which would arise if the section was valid and the Rent Controller had jurisdiction. From this decision of the learned Single Judge, the appellant preferred an appeal under the Letters Patent to a Division Bench.

(1) [1955] I. L. R. 8 Punjab, 639.

Mean while the judgement in *British Medical Stores v. Bhagirath Mal* ⁽¹⁾ was brought up by way of appeal to this Court, and as the appeal was getting ready to be heard, the appellants applied for and obtained special leave to appeal to this Court even during the pendency in the High Court, of the appeal by it under the Letters Patent. The Letters Patent appeal was thereafter withdrawn by the appellant.

The appeal in the *British Medical Stores case* ⁽¹⁾ was heard by this Court and the same was allowed by a judgment dated August 2, 1961, and this Court held reversing the judgment of the Punjab High Court that s. 7 A of the Act was valid ⁽²⁾.

It would thus be seen that the only point which the learned Judge considered and on which the revision petition of the landlord-first respondent was allowed no longer subsists and hence the appellant is entitled to have the appeal allowed. As the learned Single Judge did not consider the other objections raised by the first respondent to the order of the Controller fixing the standard fair rent payable by the appellant, the appeal has to be remanded to the High Court for being dealt with according to law.

Before concluding it is necessary to advert to a preliminary objection to the hearing of the appeal raised by learned Counsel for the landlord-respondent. His submission was that the special leave which was granted by this Court *ex parte* should be revoked as having been improperly obtained. The facts in relation thereto were these. The judgment of the learned Single Judge to appeal from which the leave was granted was dated January 5, 1955, and the application to this Court seeking leave was

(1) (1955) I.L.R. 8 Punjab 639.

(2) See *Roshan Lal Mehra u. Ishwar Dass* [1962] 2 S. C. R. 947.

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made on January 5, 1959, i.e., after a lapse of four years. It is obvious that it was an application which had been filed far beyond the period of limitation prescribed by the rules of this Court. Learned Counsel for the respondent urged that there were no sufficient grounds for condoning that long delay and that we should therefore revoke the leave.

We are not disposed to accede to this request for revoking the leave in the peculiar circumstances of this case. Learned Counsel invited our attention to a few decisions in which leave granted *ex parte* was revoked at the stage of the hearing of the appeal on an objection raised by the respondent; but we do not consider that the facts of the present appeal bear any analogy to those in the decisions cited. In the first place, there was no by-passing the High Court, because the appellant had filed an appeal under the Letters Patent and it was during the pendency of that appeal that he moved this Court for leave. Next, there was no suppression of any fact which would have relevance to the granting or withholding of the leave, and the exact position as it stood at the time the petition was filed was set out in it. Thirdly, it is obvious that if the delay had not been condoned and leave refused when application therefor was made in January 1959, the appellant would have prosecuted his Letters Patent appeal and he could obviously have come up here if the decision went against him. In fact, the grant of special leave in the circumstances of this case, merely served to shorten the proceedings, and this Court acceded to the petition for leave obviously because the appeal in this Court from judgments in the case of *the British Medical Stores etc.* (1) were getting ready for hearing and there was some advantage if the appellant was in a position to intervene in those other appeals. In

(1) (1955) I.L.R. 8 Punjab 632.

view of these considerations we are of the opinion that this is not a case in which the leave should be revoked.

Nevertheless, we consider that we should add that, except in very rare cases, if not invariably, it should be proper that this Court should adopt as a settled rule that the delay in making an application for special leave should not be condoned ex-parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave. Such a course besides being just, would be preferable to having to decide applications for revoking leave on the ground that the delay in making the same was improperly condoned years after the grant of the leave when the Court naturally feels embarrassed by the injustice which would be caused to the appellant if leave were then revoked when he would be deprived of the opportunity of pursuing other remedies if leave had been refused earlier. We would suggest that the rules of the Court should be amended suitably to achieve this purpose.

The result is that the appeal is allowed and the order of the learned Single Judge accepting the revision petition under Art. 227 preferred by the landlord-first respondent is set aside. The case is remanded to the High Court for considering the petition of the respondent in accordance with law and on the footing that s. 7 A of the Rent Control Act is a valid piece of legislation.

It is admitted that the point as regards the constitutionality of s. 7 A of the Rent Control Act was not raised by the landlord-respondent, and in the circumstances of the case we direct the parties to bear their own costs in this Court. The costs in the High Court will be as directed by that Court.

Appeal allowed.

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