IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 120 OF 2023

1. M.B.K. Enterprises
2. M/s. Mangla International Pvt. Ltd.
3. M/s. Shubh Mangal Finvest Pvt. Ltd.
4. M/s. Marve Beach Realtors Pvt. Ltd.
5. M/s. Garden View Realtors Pvt. Ltd.
6. M/s. Dahlia Estate Developers Pvt. Ltd } ....*Applicants*

(Appellants in Appeal/
Org. Def Nos. 1 & 3 to 7)

: Versus :

1. Saidpur Jute Co. Ltd
2. Mid-Day Publications Pvt. Ltd.
3. Vinod Mahabirprasad Gupta }....*Respondents*

(Respondent Nos. 1, 2 & 3 in appeal/
Org. Plff & Def Nos. 2 & 8 respectively)

WITH

CIVIL REVISION APPLICATION NO. 215 OF 2023

WITH

INTERIM APPLICATION NO. 15717 OF 2023

Vinod Mahabiprasad Gupta }.... *Applicant*

(Original Defendant)

: Versus :

1. Saidpur Jute Co. Ltd.
2. M.B.K. Enterprises
3. Mid Day Publications Pvt. Ltd.
4. M/s. Mangla International Pvt. Ltd.
5. M/s. Shubh Mangal Finvest Pvt. Ltd.
6. M/s. Marve Beach Realtors Pvt. Ltd.
7. M/s. Garden View Realtors Pvt. Ltd.
8. M/s. Dahlia Estate Developers Pvt. Ltd *}.... Respondents*

(Original Defendants)

Mr. Chetan Kapadia, *Senior Advocate with Mr. Yuvraj Singh and Ms. Madhura Kathe i/b Ms. Snehal Raju Modi, for the Applicant in CRA/120/2023.*

Mr. G.S. Godbole, *Senior Advocate with Mr. Hufeza Nasikwal, Mr. Bupesh Dhumatkar and Ms. Farzana Rine, for the Applicant in CRA/215/2023.*

Mr. Gautam Ankhad, *Senior Advocate with Mr. Anosh Sequiera, Mr. Ankur Shah, Mr. Vikrant Shetty, Mr. Kush Shah and Ms. Netra Haldankar i/b Dhurve Liladhar & Co., for Respondent No.1 in both Civil Revision Applications.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 10 October 2024.

Pronounced On : 12 November 2024.

JUDGMENT :

A. THE CHALLENGE

1) These Revision Applications are filed challenging the judgment and order dated 12 January 2023 passed by the Appellate Bench of the Small Causes Court dismissing (A-1) Appeal Nos.396/2015 and 95/2016 and confirming the eviction decree dated 25 June 2015 passed by the Small Causes Court in R.A.E. Suit No. 147A/306 of 1996. By decreeing the suit, the Small Causes Court has directed the Revision Applicants (Defendant Nos.1 to 8) to hand over possession of the suit premises to the Plaintiff.

B. FACTS

2) Plaintiff claims to be the owner of Godown No. 63 in Sitaram Mill, Delisle Road, Mumbai-400 001 are the suit premises. By Agreement dated 2 July 1975 entered into between the Plaintiff-Saidpur Jute Co. Ltd and Defendant No.1-MBK Enterprises, Plaintiff granted lease in respect of portion of the Godown No. 63 admeasuring 8800 sq. ft (**suit premises**) in favour of Defendant No.1 for a period of 60 years at monthly rent of Rs.4,488/-. Plaintiff found Defendant No.2-Mid-Day Publications Pvt. Ltd. in occupation of the suit premises and accordingly filed R.A.E. Suit No. 147A/306 of 1996 on 9 February 1996 seeking recovery of possession of the suit premises on the grounds of (i) unlawful subletting by Defendant No.1 to Defendant No.2 (ii) commission of acts contrary to the provisions of Section 108 of the Transfer of Property Act and (iii) carrying out structural additions and alterations of permanent nature in the suit premises and erecting structures of permanent nature without

obtaining written permission from Plaintiffs. Defendant No.1 appeared in the suit and filed Written Statement contending that under the covenants of lease, it was entitled to grant sublease in respect of the suit premises and that accordingly Defendant No.1 have subleased the premises to M/s. Mangla International Pvt. Ltd and Ors. who are associate companies having Directors from the same family and the said companies in turn had given the premises on license to Defendant No.2-Mid-Day. Defendant No.1 denied the allegations regarding to commission of act contrary to the provisions of section 108(o) of the Transfer of Property Act, as well as, erecting of structure of permanent nature without the consent of the landlord. Defendant No.2-Mid-Day also filed its Written Statement admitting its use and occupation of the suit premises from July 1995 but pleaded that such occupation was under agreement with Defendant No.1. Mid-Day also denied the allegations in the plaint.

3) On account of disclosure made by the Defendant No.1 about grant of sublease in favour of its associate companies, Plaintiff was allowed to amend the suit by order dated 7 June 2003 and impleaded Defendant Nos. 3 to 7 to the suit alleging unlawful sublease/subletting of the suit premises by Defendant No.1 in favour of Defendant Nos.3 to 7 with further allegation that Defendant No.1 allowed Defendant No. 2 to use and occupy the suit premises under some arrangement without obtaining Plaintiff's consent. It appears that Defendant No.8-Vinod Mahabirprasad Gupta (Revision Applicant in CRA -215/2023) was also impleaded in the suit by way of subsequent amendment.

4) After amendment of the suit, Defendant No.1 filed additional Written Statement. Defendant No.2 also filed additional Written Statement stating that during pendency of the suit, Defendant No.2 vacated the suit premises and handed over possession thereof to Defendant No.3 to 7 vide letter dated 25 November 2005. Defendant No.2 therefore requested its deletion from the suit. Defendant Nos.3 to 7 filed their Written Statement contesting the suit. Defendant No.8 also filed his own Written Statement opposing the suit.

5) Based on pleadings of the parties, the Small Causes Court framed following issues:

1 Whether the Plaintiff prove that the Defendant No.1 has unlawfully sublet the suit premises to Defendant No.2?

2 Whether the Defendants have carried out structural additions and alterations of permanent nature in the suit premises?

3 Whether the Defendants have committed acts of waste contrary to the provisions of clause 'O' of Section 108 of Transfer of Property Act??

4 Whether the Plaintiffs are entitled to the decree for possession?

5 What order & decree?

Additional Issue dated 17/6/2010

1 Whether this Court has jurisdiction to entertain and try the suit?

Additional Issue dated 20/4/2011

2 Whether suit is maintainable?

6) Rival parties led evidence in support of their respective claims. Plaintiff examined Bhagwat Narayan Sharma as P.W.1 whose cross-examination was conducted through a Court Commissioner. P.W.1 filed additional Affidavit of Evidence after addition of Defendant Nos. 3 to 8. Plaintiffs also examined Milind Subhash Khatkar from the office of the Deputy Municipal Commissioner, G-South Ward, M.C.G.M. as P.W.2, Mr. Harsharaj Madhukar Jadhav, another witness from the office of the Deputy Municipal Commissioner, G-South Ward, MCGM (Assessment Department) as P.W.3 and Ghanshyam Punamchand Khandelwal, Court Commissioner as P.W.4. Plaintiff closed its evidence on 23 February 2015. Defendant No.1 examined Shri. Susheel Mahavir Gupta as D.W.1. Defendant No.2-Mid-Day did not contest the suit after filing additional Written Statement disclosing surrender of possession of the suit premises. Defendant Nos.3 to 7 did not lead evidence but adopted the evidence adduced by Defendant No.1. Defendant No.8 examined himself as a witness.

7) After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to decree the suit by answering the issues of unlawful subletting, carrying out structural additions and alternations of permanent nature and commission of acts contrary to the provisions of Section 108(o) in favour of the Plaintiffs and against the Defendants. The Small Causes Court accordingly directed eviction of Defendants from the suit premises by ordering them to handover possession thereof to the Plaintiffs within three months.

8) Two separate Appeals came to be filed challenging the eviction decree dated 25 June 2015 passed in R.A.E. Suit No.147A/306 of 1996. Defendant No.1 and Defendant Nos.3 to 7 filed Appeal No.396/2015, whereas Defendant No.8 filed Appeal No.95/2016. The Appellate Court passed order dated 10 March 2017 granting stay to the execution of eviction decree subject to payment of interim compensation at the rate of Rs.4,00,000/- per month by Defendant No.1. Order dated 10 March 2017 passed by the Appellate Bench was challenged in Writ Petition (Lodg.) No. 10234/2017. Since Defendant No.1 was unable to pay interim compensation of Rs.4,00,000/- per month, it agreed to handover possession of the suit premises to the Plaintiff on/or before 4 July 2017 subject to return of possession in the event of it succeeding in the Appeal. Plaintiff was directed not to part with possession of the suit premises.

9) The Appellate Court heard Appeal Nos.396/2015 filed by Defendant No.1, 3 to 7 and Appeal No.95/2016 filed by Defendant No.8 and proceeded to dismiss both the Appeals by judgment and order dated 12 January 2023. Accordingly, Defendant No.1, 3 to 7 have filed Civil Revision Application No.120/2023 challenging the decree of the Appellate Court dated 12 January 2023 in Appeal No.396/2015. Defendant No.8 has filed Civil Revision Application No.215/2023 challenging the decree of the Appellate Court dated 12 January 2023 passed in Appeal No.95/2016. By order dated 9 March 2023 and 20 April 2023, this Court continued the arrangement as recorded in the order dated 5 July 2017 passed in Writ Petition No.6892/2017 in both the Civil Revision Applications.

C. SUBMISSIONS

10) Mr. Chetan Kapadia, the learned senior advocate appearing on behalf of the Applicants in Revision Application No.120/2023 (Defendant Nos.1, 3 to 7) submits that the Trial and the Appellate Court have erred in decreeing the suit on the grounds of unlawful subletting, commission of act of waste and erecting structure of permanent nature without consent of the landlord. So far as the ground of unlawful subletting is concerned, Mr. Kapadia would submit that the lease-deed specifically recognized right of subletting in favour of Defendant No.1-lessee which is borne out from various clauses of the lease-deed. He would submit that the provisions of Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 **(Bombay Rent Act)** is subject to the provisions of Section 15. That though subletting by a tenant is unlawful, both under the provisions of Section 15, as well as, Section 13(1)(e), the same is subject to the contract to the contrary. That in the present case, there is express contract between the parties to the contrary enabling Defendant No.1-lessee to sublet the suit premises. That by exercising the right under Clauses-2(i) and 3(d) of the lease-deed, Defendant No.1 has sublet the suit premises to Defendant Nos. 3 to 7 who are the associate companies of Defendant No.1 having Directors of the same company. That Defendant Nos. 3 to 7 granted license in respect of the suit premises to Defendant No.2-Mid-Day. That the lease-deed does not contain any stipulation prohibiting further subletting/subleasing of the suit premises or granting the same on license. That Clauses-2(i) and 3(d) of the lease-deed specifically permits not only Defendant No.1-lessee but also its assignees to sublease the suit premises or any part thereof for

unexpired term of the lease. That therefore grant of license through subleasing by Defendant Nos.3 to 7 was preferably within the impermissible acts under the stipulations of lease. That upon grant of sublease by Defendant No.7, they stepped into the shoes of Defendant No.1 and possessed necessary right to further transfer their interest in the lease of Defendant No.2.

11) Mr. Kapadia would further rely upon the provisions of Section 108(j) of the Transfer of Property Act, which according to him, recognizes a right of lessee to transfer or sublease whole or part of lessees' interest in the property and such lessee can further transfer the same. That therefore in additional to specific covenants in the lease-deed, Defendant No.1 otherwise was entitled to transfer the leasehold rights under the provisions of Section 108(j) of the Transfer of Property Act.

12) Mr. Kapadia would further submit that the suit, as originally filed, was flawed as the same alleged unlawful subletting by Defendant No. 1 in favour of Defendant No.2 by ignoring the provisions of the lease-deed permitting Defendant No.1 to do so. That Plaintiff thereafter improved upon its original case by including the ground of unlawful subletting by Defendant No.1 in favour of Defendant Nos.3 to 7 and Defendant Nos.3 to 7 allowed Defendant No.2 to use and occupy the suit premises. Thus, the original case of the Plaintiff in the unamended plaint was clearly contrary to the covenants of the lease-deed and no different case was sought to be made out by the Plaintiff to challenge act of grant of license in favour of Defendant No.2 as contravention of the lease-deed and/or provisions of the Bombay Rent Act.

13) Mr. Kapadia would further submit that Plaintiff never seriously contested the issue of unlawful subletting as it was always aware about presence of Defendant No.2 in the suit premises as is borne out by several correspondences on record. That Plaintiff never objected to occupation of suit premises by Defendant No.2. He would submit that there is no covenant in the lease-deed prohibiting Defendant No.1 from subletting/assigning the leasehold rights and that therefore the Appellate Court has erred in holding that induction of Defendant No. 2 was proved without permission of the Plaintiff. That the Appellate Court also erred in concurring with the findings of the Trial Court that the lease-deed did not permit or allowed the suit premises to be subleased one after another. That there is no such express prohibition under the lease deed from subletting/subleasing the premises by the sublessees/sublettees. That far from absence of any restrictive covenant to that effect, such an act is otherwise permissible under the provisions of the Transfer of Property Act.

14) Mr. Kapadia would further submit that Plaintiff was otherwise not entitled to initiate action of eviction of Defendant No.1 without notice of forfeiture, contrary to the provisions of Clause-4(b) of the lease-deed which required service of notice alleging breach or non-performance of any covenant or condition of lease-deed and period of 60 days for curing the said breach. Admittedly, no notice of forfeiture was given by Plaintiff to Defendant No.1 with regard to the alleged breaches of terms of lease. He would rely upon the provisions of Section 111(g) of the Transfer of Property Act under which two conditions specified for valid forfeiture of a subsisting lease (i) that there is an express condition in the lease-deed providing that the lessor may reenter on breach thereof and (ii) the lessor gives notice in

writing to the lessee of his intention to determine the lease. That neither of the said two conditions are available in the Indenture of lease. There is no clause in the lease-deed providing that the lessor would have a right to re-enter on the ground of subletting or assigning the demised premises. That the purported forfeiture of the lease by Plaintiff by institution of suit is *per-se* contrary to the requirements of Clause-4(b) of Indenture of lease on two grounds of (i) absence of any covenant prohibiting subletting and assignment of demised property and (ii)failure to serve notice of 60 days to remedy the alleged breach. Mr. Kapadia would take me through the evidence of Plaintiff's witness to demonstrate non-issuance of any notice.

15) Mr. Kapadia would rely on the judgment of the Apex Court in ***Laxmidas Bapudas Darbar and another Versus. Rudravva (Smt) and others***[1] in support of his contention that it was incumbent for the Plaintiff to issue notice of termination or forfeiture for recovery of possession of the suit premises notwithstanding the law laid down by the Constitution Bench in ***V. Dhanapal Chettiar Versus. Yesodai Ammal***[2]. He would submit that in ***Laxmidas Bapudas Darbar*** (supra), the Apex Court has held that the judgment in ***V. Dhanapal Chettiar*** (supra) was incorrectly construed in the judgment in ***Shri. Lakshmi Venkateshwara Enterpirses (P) Ltd. Versus. Syeda Vajhiunnissa Begum***[3], as well as in Full Bench decision of Karnataka High Court in ***Bombay Tyres International Ltd. Versus. K.S. Prakash***[4]. That in ***Laxmidas Bapudas Darbar,*** the Apex Court has held that the provisions of the Rent Act do not completely obliterate the terms of the lease-deed and hence according to Mr. Kapadia, the covenant in

[1] (2001) 7 SCC 409
[2] (1979) 4 SCC 214
[3] (1994) 2 SCC 671
[4] AIR 1997 Kant 331

the lease-deed for service of notice of forfeiture would continue to operate in the present case notwithstanding the judgment of the Constitution Bench in ***V. Dhanapal Chettiar***. He would also rely upon judgment of Division Bench of Gujarat High Court in ***Jabal C. Lashkari Versus. O. L. of Prasad Mills Limited and Ors***[5] as upheld by the Apex Court in ***Jabal C. Lashkari and others Versus. Official Liquidator and others***[6] in support of his contention that proceedings for eviction of a tenant under the fixed term contractual lease can be initiated during subsistence of currency of the lease only if the grounds enumerated in Section 13(1) of the Bombay Rent Act is also specified as a ground for forfeiture in the lease-deed and not otherwise. He would also rely upon judgment of the Apex Court in ***Modern Hotel, Gudur, represented by M. N. Narayanan Versus. K. Radhakrishnaiah and others***[7].

16) So far as the ground of structural additions and alterations of permanent nature is concerned, Mr. Kapadia would submit that the burden was on the landlord to prove his case first by proving unaltered condition of the demised premises. That Plaintiff did not produce the approved plans of M.C.G.M and the Trial and the Appellate Courts ought to have drawn adverse inference against the Plaintiff for such non-production. That Plaintiff's witness in his cross-examination admitted that Plaintiff's architect in the report of 19 August 1995 did not mention about alleged changes made by Defendant No.2 in the suit premises and Plaintiff did not appoint any other Architect subsequently to inspect the suit premises. That thus there is no expert technical evidence on record that Plaintiff was fully

[5] 2008 SCC OnLine Guj 171
[6] (2016) 12 SCC 44
[7] (1989) 2 SCC 686

aware about the works being carried out in the suit premises prior to filing of the suit as evidenced in correspondence between the parties. Plaintiff however did not think it necessary to terminate the lease-deed by issuance of notice of forfeiture.

17) Mr. Kapadia would further submit that the Defendants carried out only necessary tenantable repairs and did not erect any structure of permanent nature, which is evident from the correspondence between the parties. He would take me through various correspondence between the parties reflecting the ceiling of the premises sinking on account of UCO Bank stocking heavy load and Plaintiff itself agreed for necessity to repair the ceiling. That Plaintiff never objected to such repairs and accepted Defendant No.1 to carry out the said repairs. The correspondence ensued between the parties not with regard to the permission for carrying out repairs to the ceiling, but about bearing of expenditure. That therefore carrying out repairs to the ceiling is not only with permission of Plaintiff but does not otherwise amount to erecting any structure of permanent nature, nor repairing of ceiling by reinforcing a deteriorating wooden beam with iron girders amount to cause of any damage or injury to the tenanted premises so as to attract the provisions of Section 108(o) of Transfer of Property Act. So far as allegation of removal of walls is concerned, Mr. Kapadia would submit that the tenanted premises did not have any load bearing internal walls as falsely alleged. That the report dated 19 August 1995 did not refer to removal or destruction of partition walls. That no independent documentary evidence was produced to prove existence of any load bearing walls in the suit premises. Even according to the Plaintiff, what is removed are only partition walls. There is no allegation of erection of walls by

any of the Defendants in the plaint or in the evidence. That in any case, destruction of a partition wall does not tantamount to erection of permanent structure under Section 13(1)(b) of the Bombay Rent Act or commission of any act injurious or destructive under Section 108(o) of the Transfer of Property Act.

18) So far as the allegation of construction of mezzanine floor is concerned, Mr. Kapadia has submitted that there is no evidence of lowering of floor by the Defendants. That what is constructed is merely a loft and there is no evidence to prove that the nature of structure is that of a mezzanine floor. The Commissioner himself did not measure the height between the floor of the loft and height of the ceiling. That it is admitted position that the loft like structure is constructed by use of hard plywood. That the evidence produced by the Plaintiff itself shows that what is constructed is merely a loft and not a mezzanine floor. So far as the allegation of removal of doors is concerned, he would submit that there is no evidence on record to suggest location or nature of doors which is alleged to have been removed. That the report of the Court Commissioner about existence of three entrances to the suit premises is contradicted by Plaintiff's own claim that there was only one existing door and the remaining two doors were closed by brick masonry works. In any case, opening or closing of door did not attract provisions of Section 13(1)(a) or 13(1)(b) of the Bombay Rent Act. Mr. Kapadia would pray for setting aside the impugned decrees.

19) Mr. Godbole, the learned senior Advocate appearing for the Revision Applicant in Civil Revision Application No. 215 of 2023 (Defendant No.8) has also canvassed detailed submissions on the

issues of right of Defendant No.1 to sublet the suit premises and right of sublessees to create license in favour of Defendant No.2-Mid-Day. It is not necessary to record detailed submissions of Mr. Godbole on the issue of subletting as most of the submissions are already captured in foregoing paragraphs while recording submissions of Mr. Kapadia. So far as the allegation of erecting structure of permanent nature and act of waste is concerned, Mr. Godbole would invite my attention to the detailed chart reflecting comparison of pleadings, evidence and findings about the alleged structural changes. He would submit that Clause-4(c) of the Agreement expressly permitted alterations, erection of strong room doors, grills, Air-Conditioners, partition of premises by erecting partition walls. That it also permitted 'subblocks' in the premises, which would necessarily entail creation of partition walls. That permission to construct strong room doors would indicate the extent of changes that the lessee was permitted to effect in respect of the demised premises. That the lessor was not to unreasonably withhold consent for additions and repairs under Clause-2(h) of the lease-deed. That despite repeated requests and reminders, the lessor did not take any action in respect of any damage caused by UCO Bank (the tenant on upper floor). That by various correspondence, lessor had consented to change of user, installation of sewing machines, change of electric meters, change of electric wiring etc. He would take me through various correspondence with regard to the repair and ceiling due to excess load in the premises by UCO Bank. That there are no load bearing walls within the premises except the partition walls. That there were iron pillars supporting the ceiling which is clear from the photographs in the report of the Court Commissioner and therefore there is no question of removal of load bearing walls. He would submit that the overhead

ceiling was supported by old columns which were strengthened. That if there were any load bearing walls and the same were removed, the entire structure would have collapsed. That changing of tiles and flooring and creation of toilets and bathrooms were for beneficial use of the premises and such acts did not cause any damage or injury to the premises. That in any case, no evidence is produced to prove damage or injury to the main structure. The allegation of construction of mezzanine floor is totally fallacious. That the Court Commissioner himself described the structure as 'loft like structure' which was made by use of plywood. That the structure was not of permanent nature. That MCGM did not issue notice or demolish the structure again, thereby proving that the same was not of permanent nature. Mr. Godbole would rely upon judgments in ***Venkatlal G. Pittie and another Versus. Bright Bros. (Pvt.) Ltd.***[8], ***Om Prakash Versus. Amar Singh and others***[9], ***Brijendra Nath Bhargava and another Versus. Harsh Wardhan and others***[10] and ***Dinesh Jagannath Khandelwal Versus. Kundanlal s/o Perumal Chhabriya and others***[11].

20) Mr. Gautam Ankhad, the learned senior advocate appearing for Respondent No.1-Plaintiff in both the Revision Applications would oppose the same submitting that both the Revision Applications are without merits and are required to be dismissed. That there are concurrent findings of fact based on pleadings and evidence. That both the Courts have concurrently upheld the grounds of unlawful subletting, as well as erecting of permanent structure and causing of waste and damage to the suit premises. That this Court would not interfere in exercise of

[8] (1987) 3 SCC 558
[9] (1987) 1 SCC 458
[10] (1988) 1 SCC 454
[11] 2010(7) Mh.L.J. 719

revisionary jurisdiction in absence of demonstration of any material irregularity or perversity in the findings recorded by the Small Causes Court and its Appellate Bench. He would rely upon judgments of the Apex Court in ***Gandhe Vijay Kumar Versus. Mulji alias Mulchand***[12] and ***Hindustan Petroleum Corporation Ltd. Versus. Dilbahar Singh***[13].

21) Mr. Ankhad would submit that the ground of unlawful additions and alterations violating provisions of Section 13(1)(b) of the Bombay Rent Act has correctly been accepted by both the Courts. That the Plaintiff pleaded the case of demolition of two load bearing walls dividing the premises admeasuring 8,800 sq.ft into three parts, as well as removal of respective entrance doors by plastering the wall, as well as construction of independent rooms without Plaintiff's consent. That Defendant No.1 denied demolition of load bearing walls, it however admitted construction of two brick partition walls and partly demolition/removal thereof. That such an act would be clearly covered by the expression 'permanent structure' under Section 13(1)(b) of the Bombay Rent Act. That it is immaterial as to whether the walls are load bearing or merely partition walls. Admittedly, removal/reconstruction and again removable of walls clearly falls foul of Section 13(1)(b). That there is specific admission by Defendant No.2 in the written statement that the two dividing walls were constructed to convert the suit premises into three rooms, which were removed later. That Defendant No.2 had further admitted existence of three entrance doors. That even P.W.1 deposed existence of three sections divided by brick walls which were amalgamated into one vacant space affecting the stability of the structure. He would rely upon judgment of this Court in ***Prafulkumar Damaji Gala Versus.***

[12] (2018) 12 SCC 576
[13] (2014) 9 SCC 78

Narayan Govind Gavate (since deceased) his legal heirs Jitendra Narayan Gavate and others[14] in support of his contention that demolition of partition walls amounts to permanent alterations causing waste and damage to the suit premises.

22) Mr. Ankhad would further submit that P.W.1 has also deposed about massive structural additions by removal of load bearing/partition walls and removing of doors. That, additionally officer of Municipal Corporation (PW2) deposed about notices dated 3 July 1999 and 5 July 1999 about illegal additions. The notices speak volumes about erecting of permanent structures by the Defendants. That the Court Commissioner has also deposed about unauthorized additions and alterations. Mr. Ankhad would further submit that unauthorized construction of mezzanine floor is also proved through evidence. That Defendant No.1 has not denied such construction, but has sought to brand the same as 'loft' which was removable in nature. He further contended that the existing loft was merely strengthened which did not exceed one-third of the suit premises. Plaintiff examined Assessment Officer of the Municipal Corporation, who deposed about construction of mezzanine floor admeasuring 250.92 sq.mtrs (approximately 2700 sq.ft) resulting in increase in the rateable value. That the Court Commissioner report clearly suggests height of the mezzanine floor as 7 ft. That the said evidence of three independent witnesses (two municipal officers and Court Commissioner) has gone uncontroverted. He would rely upon judgments of this Court in ***Ravindra D. Ahirkar Versus. Ravikishore s/o Ramkisanji Pashine and another***[15] and ***Safiya Sabirbhai Wadhvanwala***

[14] 2018(2) Mh.L.J. 735
[15] 2008(5) Mh.L.J. 955

Versus. Mazban Minocher Irani and another[16] in support of his contention that construction of mezzanine floor amounts to permanent additions and alterations to the suit premises. That after examining the evidence on record, the Trial and the Appellate Courts have recorded finding of fact about construction of mezzanine floor which does not warrant interference by this Court in revisionary jurisdiction.

23) Mr. Ankhad would submit that even on interpretation of various clauses of the lease-deed, impugned orders do not call for interference so far as allegations of unauthorized additions and alterations are concerned. That Clause-2(h) of the lease-deed expressly prohibits the lessee from additions and alterations of permanent nature without first obtaining consent in writing of the Plaintiff. That Defendant Nos.3 to 7 had filed Commercial Summary Suit No.33/2009 against Defendant No.2 in this Court for recovery of Rs. 4.78 crores with interest for overstaying in the premises and the suit was dismissed on 4 May 2023. That Defendant Nos.3 to 7 contended in the said suit that Defendant No.2 carried out illegal alterations exposing Defendant No.1 to a decree of eviction. Though the said contention is rejected by this Court on account of lack of pleadings to that effect in the R.A.D. Suit, the conduct demonstrates malafides of Defendant Nos.1 and 3 to 7 who have approached the Court with unclean hands.

24) So far as the issue of notice of forfeiture is concerned, Mr. Ankhad would submit that such notice was indeed given to Defendant No.1 on 21 December 1995. That Clause-4(c) of the lease-

[16] 2015 SCC OnLine Bom 2804

deed covered only furniture and fixtures, which were of removable in nature and such work consequently fell outside Clause-2(h). That Plaintiff's letter dated 2 December 1995 amounts to sufficient notice under Clause-4(b) of the lease-deed and it was for Defendant Nos.1 and 2 to remedy the illegal alterations within 60 days from 2 December 1995. Relying upon judgment of Constitution Bench in ***V. Dhanapal Chettiar Versus. Yesodai Ammal***[17] and ***Nopany Investments (P) Ltd. Versus. Santokh Singh (HUF)***[18] he would submit that issuance of notice of forfeiture is not necessary before filing suit for eviction under the Rent Control Legislation. In the Written Statement, plea of failure to issue notice of forfeiture was never raised. Relying on judgment in ***Kizhakke Kuruvatteri Sankaran Nambian and others Versus. Thirumangalathmeethal T.M. Thambayi Pilla***[19] *and* ***Mrs. Margaret Jean Massy Westmorland Wood Versus. Colonel Granville Alric Richard Spain***[20], he would submit that what is required is mere intimation of breaches to the noticee and therefore the notice dated 2 December 1995 was sufficient intimation to the Defendants to remedy the breach.

25) Mr. Ankhad would further submit that unlawful subletting by Defendant Nos.3 to 7 in breach of Clause-2(i) of the lease-deed is clearly established. That the Trial and the Appellate Court have correctly held that Clauses to the lease-deed cannot be interpreted to mean that sublessee is entitled to further license the premises. He would submit that correct interpretation of Clause-2(i) of the lease-deed is permission to grant sublease only once and the

[17] (1979) 4 SCC 214
[18] (2008) 2 SCC 728
[19] 2003 SCC OnLine Ker 322
[20] 1952 SCC OnLine Mad 130

same cannot be interpreted to mean that the sublessee can further assign the leasehold rights. He would submit that reference in the Lease Deed to the word 'lessor' includes 'assignees' but for 'lessee', it would include only 'permitted assignees'. That this is not a case of assignment of lease and only lessee is permitted to sublet, which is why only first subletting is allowed and subsequent subletting is not permissible as per true and correct interpretation of Clause-2(i). That Clause-2(i) is a contract between the commercial parties including restrictive clauses and the same cannot be expanded.

26) Mr. Ankhad would therefore submit that no interference is warranted in the concurrent findings recorded by the Trial and the Appellate Court on the issues of unlawful subletting, commission of act contrary to Section 108(o) and erecting structure of permanent nature under Section 13(1)(b) of the Bombay Rent Act. He would pray for dismissal of both the Revision Applications.

D. REASONS AND ANALYSIS

27) The decree for eviction has been passed against Defendants on three grounds of (i) unlawful subletting; (ii) commission of acts contrary to provision of Section 108(o) of the Transfer of Property Act and (iii) erecting structure of permanent nature within Section 13 (1)(b) of the Bombay Rent Act.

28) Defendant No.1 is the original lessee and claims to have created sub-lease in favour of Defendant Nos. 3 to 7, who are associate companies of Defendant No.1 having directors from same

family. Defendant No.2-Mid-Day was inducted from 1995 to 2005 as a licensee in respect of the suit premises. Plaintiff initially believed that Defendant No.1 had inducted Mid-Day as licensee, but Defendant No.1 took a plea in the written statement that it has created a sub-lease in favour of Defendant Nos.3 to 7, who in turn inducted Defendant No.2- Mid Day as the licensee. As observed above, Defendant No.2- Mid Day has already surrendered possession of the suit premises to Defendant Nos.3 to 7 on 25 November 2005. Thereafter eviction decree came to be passed against all the Defendants on 25 June 2015. Defendant Nos.1 and 3 to 8 could not deposit interim monthly compensation @ Rs.4,00,000/- per month during pendency of appeals before the Appellate Bench and accordingly have handed over possession of the suit premises to the Plaintiff on 4 July 2017. This is how Plaintiff has secured possession of the suit premises during pendency of the appeals, which came to be finally dismissed by the Appellate Bench vide judgments and orders dated 12 January 2023, which are subject matter of challenge in the present Revision Applications.

D.1 UNLAWFUL SUBLETTING

29) The Small Causes Court has answered the issue of unlawful subletting in favour of Plaintiff and against the Defendants by holding that Defendant No. 1 has unlawfully sublet the suit premises to Defendant No.2. The Appellate Court has additionally held that Defendant Nos. 3 to 7 have also unlawfully sublet the suit premises to Defendant No.2.

30) There is no dispute to the position that the tenancy of Defendant No.1 is protected by provisions of the Bombay Rent Act, which was in force on the day on which the eviction suit was instituted. Apart from the fact that the lease, executed on 2 July 1975 for a period of 60 years, subsisted on the date of institution of R.A.E. Suit No.147A/306 of 1996 (9 February 1996), the tenancy of Defendant No.1 is otherwise protected under the provisions of the Bombay Rent Act. Before discussing the covenants of the Lease dated 2 July 1975, it would be necessary to first consider the statutory framework of the Bombay Rent Act since recovery of demised premises is sought by Plaintiff under provisions of Section 13 of the Bombay Rent Act.

31) Under Section 12 of the Bombay Rent Act, landlord is not entitled to recover possession of any premises so long as tenant pays and is ready and willing to pay the amount of standard rent and permitted increases and observes and performs the other conditions of tenancy, in so far as they as consistent with the provisions of the Act. Sub-Section 1 of Section 12 reads thus:

> **12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.**
> (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

32) However, under Section 13, landlord is entitled to recover possession of premises notwithstanding the factum of tenant paying the rent, if any of the eventualities incorporated in clauses (a) to (l) of sub-section (1) of Section 13 are proved before the Rent Court. Under

Clause (e) of Section 13(1), landlord becomes entitled to recover possession of the tenanted premises if the tenant has unlawfully sublet or given on license whole or part of the premises or has assigned or transferred his interest therein. Section 13(1)(e) of the Bombay Rent Act provides thus:

> **13. When landlord may recover possession.—**(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15; a landlord shall be entitled to recover possession of any premises if the court is satisfied—
>
> (*e*) that the tenant has, since the coming into operation of this Act unlawfully sublet or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on license, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

33) Apart from making landlord entitled to recover possession of the suit premises on the ground of unlawful subletting under Section 13(1)(e) of the Bombay Rent Act, Section 15 thereof provides for prohibition on subletting. Section 15 of the Bombay Rent Act provides thus:

> **15. In absence of contract to the contrary tenant, not to sublet or transfer or to give on license—**
> (1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on license the whole or part of such premises :
> Provided that the State Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on license any premises or class of premises and no such extent as may be specified in the notification.

> (2)The prohibition against the sub-letting of the whole or any part of the premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the provisions of this sub-section be deemed to have had no effect before the 1st day of February, 19731, in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order a Court, any such sub-lease, assignment or transfer of any such purported sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub-section (1) as purported sub-lessee, assignee or transferee and has continued in a possession on the date aforesaid shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13.The provisions aforesaid of this sub-section shall not affect in any manner the operation of sub-section (1) after the date aforesaid.

34) Thus, under Section 15 of the Bombay Rent Act, it is not lawful for a tenant to sublet whole or any part of the premises let to him or to assign or transfer his interest therein and after 1 February 1973, not to give license in respect thereof. However, sub-section (1) of Section 15 begins with the words '*Notwithstanding anything contained in any law, but subject to any contract to the contrary ...'*. It appears that the words '*but subject to any contract to the contrary'* are inserted by the Amendment Act of 1959. Therefore, the fetter on subletting of premises or assignment /transfer of interest in tenancy or license is not applicable where there is a contract to the contrary. Additionally, Proviso to Section 15(1) excludes leases or class of leases as the State Government may specify in the notification published in the Official Gazette. Thus, the prohibition on subletting does not apply either where there is contract to the contrary or where a lease is included by the notification issued by the State Government. For this case, the issue of inclusion of lease in the Notification issued

by the State Government is not relevant and what is relevant is existence of contract to the contrary.

35) It is the case of Revision Applicants that there is a contract to the contrary within the meaning of Section 15(1) of the Bombay Rent Act, which makes the prohibition on subletting as well as on assignment /transfer of tenancy right or licensing under Section 15 or landlord's entitlement to seek eviction under Section 13(1)(e) of the Bombay Rent Act inapplicable in the present case.

36) Having broadly set out the statutory scheme relating to the ground of subletting for recovery of possession by the landlord under the Bombay Rent Act, it is time to consider the covenants of Deed of Lease dated 2 July 1975. By the said Deed of Lease, leasehold rights in respect of the suit premises were granted by Plaintiff in favour of Defendant No.1 for 60 years on payment of rent of Rs.4,488/-. Clause 2 of the Lease Deed contains rights and obligations applicable to the lessee. Clause 2(i) of the Lease Deed provides thus:-

> (i) The Lessees shall be entitled to assign or sublet the demised premises or any part thereof for the whole or part of the term of the demise remaining unexpired and so that on the assignment of the demised premises the Lessees' liability hereunder shall cease and determine, to that extent.

37) Similarly, Clause 3 of the Deed of Lease sets out rights and obligations of Lessor and Clause 3(d) provides thus:

> (d) The Lessees shall be entitled to assign or sublet the demised premises or any part thereof for the whole or a part of the term of the demise remaining unexpired and so that on the assignment of the demised premises the Lessees' liability hereunder shall **cease** and determine to that extent.

38) Thus, both under Clause 2(i) and 3(d) of the Deed of Lease, the lessee was entitled to assign or sublet demised premises or part thereof for the whole or a part of the term of the demise remaining unexpired. Thus, there is clear contract to the contrary within Section 15(1) of the Bombay Rent Act.

39) Both the Trial as well as the Appellate Courts have appreciated the position of existence of contract to the contrary and have not decreed the Suit on the ground of subletting created by Defendant No.1 in favour of Defendant Nos. 3 to 7. However, both the Courts have held that Clauses 2(i) and 3(d) of the Lease Deed did not permit successive subleasing and therefore has held grant of licenses by Defendant Nos. 3 to 7 in favour of Defendant No.2 to be unlawful.

40) It is the contention of Mr. Kapadia and Mr. Godbole that the Deed of Lease permits even sublessee to further sublease the suit premises. In support of this contention, reliance is placed both on the covenants of Lease Deed as well as provisions of Section 108 (j) of the Transfer of Property Act, 1882. Revision Applicants rely upon opening words of clause (2) of the Lease Deed, which provides thus:

> 2. The Lessees (**for itself and its permitted assigns** and to the intent that the obligation may continue throughout the term hereby created) hereby covenant with the Lessor as follows:

(emphasis added)

41) According to Revision Applicants, the rights and obligations of lessee during currency of lease also applies to 'permitted assigns'. That since the lessee is permitted under Clause 2(i) to assign or sublease the demised premises, the 'permitted assign' is also permitted to further assign or sublet the demised premises. Furthermore, the Revision Applicants have highlighted part of Clause 2(i) of the Lease Deed providing for cessation of lessee's liability upon assignment or subletting. The relevant part of clause 2(i) reads *'and so that on the assignment of the demised premises the Lessee's liability hereunder shall cease and determine, to that extent'.* Relying on above part of clause 2(i) it is sought to be contended that the sub-lessee steps into the shoes of lessee on assignment or subletting and therefore all that could be done by lessee could also be done by the sub-lessee.

42) In addition to covenants of the Lease Deed, Revision Applicants have also relied upon provision of Section 108 (j) of the Transfer of Property Act, which provides thus:

> (j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and **any transferee of such interest or part may again transfer it**. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;
>
> nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;
>
> *(emphasis added)*

43) Relying on clause (j) of Section 108, it is contended by Revision Applicants that Transfer of Property Act confers right on the

lessee to transfer whole or part of his interest in the property and transferee of such interest can again transfer it. I am unable to agree with the contention of the Revision Applicants that Defendant Nos.3 to 7, who are sub-lessees, had right to further sublease the suit premises. In my view the contention about sub-lessee's right to further sublet the premises arises out of skewed and myopic reading of the covenants of the Deed of Lease. Clause (2) uses the word 'permitted assigns', the emphasis being on the word '*permitted'*. Furthermore, while describing the expression 'lessor', the Lease Deed include Lessor's successors in title and 'assigns' whereas while describing the term 'lessee' the Lease Deed uses the word '*permitted* assigns' and not merely 'assignees'. Thus, the only 'permitted assigns' under the Lease Deed would be included in the term 'lessee' and not 'every successive assign', as sought to be suggested by Revision Applicants. In my view, clause 2(i) and 3(d) of the Lease Deed permits assignment and subletting of the demised premises only once. There is nothing in the entire Lease Deed which permits the sublettee to further sublet the suit premises. The latter part of Clause 2(i) and 3(d) relieving the lessee of its liability upon execution of sublease does not mean that the sub-lessee becomes entitled to further assign or sublet the suit premises. True it is that upon execution of sublease or assignment, the sub-lessee would step into the shoes of lessee for the purpose of observance of covenants of agreement, which is clear from the use of the words '*permitted assigns'* in description of parties as well as in the opening part of Clause 2 of the Deed of Lease. However, merely because a sub-lessee steps into the shoes of lessee (for limited purpose of observance of obligations under the agreement), the same does not mean that the sub-lessee has been conferred with a right to create further sub-lease in favour of a third party. The words '*The Lessees*

(for itself and its permitted assigns ....)' appearing in the opening portion of Clause 2 of the Lease-Deed are incorporated essentially to ensure that the sub-lessee of permitted assign does not claim absence of liability to observe the obligations under the lease deed. The intention behind incorporation of those words is not to create a right of further subletting on the sub-lessee. If there was any such intention, the same would have been expressed by parties in express words.

44) Clauses 2(i) or 3(d) of the Lease Deed, while conferring right of subletting consciously use the word *'lessees'* and not *'permitted assign'*. If the intention of parties was to confer the right on sub-lessee or permitted assignee to further assign or sublease, Clauses 2(i) and 3(d) would have used the word '*permitted assignee'* rather than using the word '*lessee'*. Therefore, though in the opening portion of Clause 2 of the Lease Deed the lessee is described to include even permitted assigns, the parties have carefully used the word only '*lessees'* in clause 2(i) meaning thereby that while all other obligations in clauses (a) to (h) and (j) to (m) apply both to lessees and its permitted assign, clause 2(i) is restricted only to lessee and does not extend to permitted assign. This would be the correct reading of the covenants of the Lease Deed.

45) Also of relevance is the fact that the contract to the contrary under Section 15(1) of the Bombay Rent Act needs to be express. It cannot be inferred. This is because subletting is otherwise prohibited and is permitted only in accordance with an express contract between the parties to the contrary. Rent control legislation *inter alia* seeks to offer protection to the tenant from rent escalation

and eviction. This right to retain possession of tenanted premises on payment of standard rent is subject to the condition that the tenant uses the premises for his own use and does not let the outsider to use the same. Seen from this legislative intent of offering protection from rent escalation and eviction available to Defendant No.1, the contract to the contrary must be strictly construed and effect thereof cannot be widened by undertaking the process of interpretation and drawl of inference. It bears mention that being a protected tenant under the Bombay Rent Act and currently under the Maharashtra Rent Control Act, 1999, Defendant No.1-tenant and its subtenants would not vacate the possession of tenanted premises despite expiry of tenure of the lease. Thus, the rent control legislation provides a much wider umbrella of protection for Defendant No.1 and its sub-tenants beyond the covenants of the Lease Deed. In that view of the matter, recognizing right of successive subletting by undertaking the exercise of interpretation of covenants of Lease Deed would be impermissible in absence of express right of successive subletting by the sublettees.

46) So far as reliance of Revision Applicants on provisions of Section 108(j) of the Transfer of Property Act is concerned, there is a clear exclusion in clause (j) which provides that *'nothing in this clause shall be deemed to authorize a tenant having untransferrable right of occupancy'*. Since Defendants claim protection of Bombay Rent Act, the tenancy is governed by provisions of Section 15, which specifically prohibits subletting except where there is a contract to the contrary. Therefore, the subletting has to be strictly in accordance with the contract to the contrary and general provisions under Section 108(j) of the Transfer of Property Act would have no application to a case governing landlord-tenant relationship under the Bombay Rent

Act, which contains express prohibition on subletting. Though Section 15 permits subletting in accordance with the contract to the contrary, the contract in the present case does not permit the sub-lessee to further sublease the suit premises. Therefore, Section 108(j), on a standalone basis, does not come to the assistance of the Defendants.

47) I am therefore, in agreement with Trial and Appellate Courts that the Lease Deed did not permit successive subletting by the sub-lessee. Therefore Defendant Nos. 3 to 7 have committed breach of the Lease Deed by granting license in respect of the suit premises in favour of Defendant No.2. Grant of such license is clearly hit by the provisions of Section 15 of the Bombay Rent Act thereby attracting folly under Section 13(1)(e) of the Bombay Rent Act making the landlord entitled to recover possession of the suit premises.

D.2 NOTICE OF FORFEITURE

48) Mr. Kapadia has submitted that even if any breach of any of the covenants of the Lease Deed has occurred, forfeiture of lease could be resorted only in accordance with Clause 4(b) of the Deed, mandating service of notice and grant of 60 days to cure the breach. It would therefore be apposite to reproduce Clause 4(b) of the Lease Deed as under:

> (b) If the rent hereby reserved or any other moneys payable hereunder or by virtue of these presents or any part thereof respectively shall at any time be unpaid for twenty one days after becoming due (whether formally demanded or not) or if any

> covenant on the Lessors' part herein contained shall not be performed by them in whom for the time being the term hereby created shall be vested or shall become bankrupt or being a company be taken into liquidation or shall enter into any competition with their his/their or its creditor or suffer any distress or execution to be levied on their or his or its goods and in any of the said cases it shall be lawful for the Lessors at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the lessor, in respect of any breach of the lessees stipulations and covenants herein contained **PROVIDED ALWAYS that the Lessor shall not be entitled to forfeit this lease for breach or non-observance or non-performance of any covenant or agreement or addition herein contained and on the lessees' part to be observed and performed unless the Lessor shall have given to the Lessees notice in writing specifying the breach or omission complained of and requiring the Lessees to remedy the same and the Lessees shall have committed default in doing so within a period of sixty days from receipt of such notice by the Lessees.**
>
> *(emphasis and underlining added)*

49) According to Mr. Kapadia, Lessor was not entitled to forfeit the Lease during subsistence thereof for breach or non-observance or non-performance of any covenant or agreement or condition unless the Lessor gave to the Lessee a notice in writing specifying the breach or omission complained of and requiring the lessee to remedy the same and where the Lessee commits a default in doing so within a period of 60 days of receipt of such notice.

50) Since Lease between the parties is governed by the provisions of the Bombay Rent Act and since the suit is filed for recovery of possession under the provisions of the Bombay Rent Act, Mr. Kapadia faces a hurdle in his submission of mandatory issuance of notice under Section 4(b) of Lease Deed before forfeiture of tenancy for institution of the Suit in view of Seven Judges Bench judgment in ***V. Dhanapal Chettiar*** (supra). The Constitution Bench has held that issuance of notice for forfeiture of tenancy is not required to

be issued in filing of Suit for recovery of possession on the ground specifying in the State rent control legislation :

> If we were to agree with the view that determination of lease in accordance with the Transfer of Property Act is a condition precedent to the starting of a proceeding under the State Rent Act for eviction of the tenant, we could have said so with respect that the view expressed in the above passage is quite correct because there was no question of determination of the lease again once it was determined by efflux of time. But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. **That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act.**
>
> *(emphasis added)*

51) In that view, in ordinary course, for maintaining the Suit for recovery of possession of the suit premises in the present case, issuance of prior notice was not necessary. However, the Lease Deed provides for issuance of such notice and giving time of 60 days for the Lessee to remedy the breach before forfeiting the Lease during its subsistence. There is no dispute to the position that as on 9 February 1996, when the Suit was filed the tenure of the Lease was subsisting. It is sought to be terminated on account of commission of acts by Defendants under Sections 13(1)(a), 13(1)(b) and 13(1)(e) of the Bombay Rent Act.

52) The issue therefore is whether the condition in the contract for issuance of prior notice before forfeiture of Lease would continue to operate notwithstanding ratio of the Apex Court in *V.*

Dhanapal Chettiar not requiring issuance of notice for filing eviction Suit under the Bombay Rent Act ?

53) In ***Shri Lakshmi Venkateshwara Enterprises (P) Ltd.*** (supra), the issue that arose for consideration before the two Bench of the Supreme Court was whether during the subsistence of a contractual tenancy, it is open to the landlord to resort to proceedings under Rent Control Act. The Supreme Court held as under:

> 3. The only point that is argued by Mr N. Santosh Hegde, learned counsel for the appellant is that during the subsistence of the contractual tenancy for the period of 32 years under the registered deed, it is not open to the respondents/landlords to seek eviction under the Karnataka Rent Control Act, 1961. No doubt, Section 21 of the Act says 'notwithstanding'. But this does not mean that provision can be availed of by the respondents since this is the beneficial legislation in favour of the tenant. In support of this submission, reliance is placed on the Full Bench judgment of Karnataka High Court reported as *Sri Ramakrishna Theatres Ltd.* v. *General Investments & Commercial Corpn. Ltd.*
>
> 5. This Court in *V. Dhanapal Chettiar* v. *Yesodai Ammal* categorically laid down that contractual tenancy will lose its significance in view of the Rent Control Act. In that case, even the notice under Section 106 of the Transfer of Property Act was held to be a surplusage. It is, therefore, urged that if a landlord could found an action on any one of the enumerated grounds under Section 21 of the Act, the action would be maintainable notwithstanding the existence of a contractual lease.
>
> 6. **Having regard to the above arguments, the only question that arises for our consideration is, whether during the subsistence of a contractual tenancy, it is open to the landlord to resort to proceedings under Rent Control Act**?
>
> **11. Therefore, this authority clearly holds that the provisions of Rent Control Act would apply notwithstanding the contract.** However, what is sought to be relied on by the learned counsel for the appellant is the Full Bench judgment of Karnataka High Court in *Sri Ramakrishna case* . In that ruling the decision of this Court in *Dhanapal Chettiar case* is sought to be distinguished as one relating to the necessity for issuance of notice under Section 106 of the Transfer of Property Act. On that basis, the other ruling of this

> Court namely *Firm Sardarilal Vishwanath v. Pritam Singh* is also distinguished. However, the Full Bench chose to rely on *Modern Hotel v. K. Radhakrishnaiah* wherein the term 'lease' was excluded from the ambit of the said Act.
>
> **12.** We are of the view that the statement of Full Bench will have no application to this case. The appellant filed OS No. 1690 of 1990 on the file of City Civil Court, Bangalore in which he challenged the decree for eviction and for declaration. He also prayed for injunction. The suit was contested by the respondents. In that case, the plea of jurisdiction was also raised. The trial court dismissed the suit observing that it had no jurisdiction. For reasons best known, the appellant did not prefer any appeal or revision against the dismissal. Therefore, that judgment has become conclusive and binding between the parties. **Hence, the effect of Section 21 of the Act on the contract entered into between the parties need not be gone into.**
>
> *(emphasis added)*

54) Thus, in ***Shri Lakshmi Venkateshwara Enterprises,*** the Apex Court held that the provisions of Rent Control Act would prevail over the covenants of contract.

55) However, later three Judge Bench of the Apex Court in ***Laxmidas Bapudas Darbar*** (supra) had an occasion to decide the same issue that was decided in ***Shri Lakshmi Venkateshwara Enterprises.*** Before the three Judges' Bench in ***Laxmidas Bapudas Darbar*** the issue was whether the Petition under Karnataka Rent Control Act, 1961 (**Karnataka Rent Act**) for eviction of a tenant under fixed term contractual lease was maintainable on the ground of reasonable and bonafide requirement of landlord ? The case involved fixed term contractual Lease of 99 years with option of one renewal. During currency of lease, Lessor served a notice calling upon the Lessee to vacate the premises on the ground of non-payment of rent as well as on the ground of *bonafide* requirement. The Lessor thereafter filed application under Section 21(1)(h) and 21(1)(p) of the Karnataka

Rent Act on the ground of *bonafide* requirement. The Trial Court passed eviction decree on the ground that Section 21 of the Karnataka Rent Act would apply notwithstanding the tenure of lease. The Appellate Court however held that the lease was of permanent nature and Section 21 of the Karnataka Rent Act had no application and the eviction decree was set aside. Karnataka High Court allowed the Revision holding that provisions of the Karnataka Rent Act would apply *de hors* the contract of lease.

56) In the above factual background, the three Judges Bench of Apex Court has decided the issue in ***Laxmidas Bapudas Darbar*** as to whether the Lessor was entitled to seek recovery of possession of suit premises on the ground of *bonafide* requirement during currency of contractual fixed term lease. The Apex Court encountered view taken by Full Bench of Karnataka High Court in ***Bombay Tyres International Ltd.*** (supra), which in turn had relied upon the Apex Court decision in ***Shri Lakshmi Venkateshwara*** and had held that the landlord was entitled to order of eviction under Section 21 of the Karnataka Rent Act notwithstanding the tenure of Lease. In ***Laxmidas Bapudas Darbar*** the Apex Court has held both Full Bench judgment of the Karnataka High Court in ***Bombay Tyres International Ltd.*** as well as Apex Court judgment in ***Shri Lakshmi Venkateshwara Enterprises*** (supra) did not correctly construe the seven Bench judgment in ***V. Dhanapal Chettiar.*** The Apex Court held that in ***V. Dhanapal Chettiar*** that the question of curtailment of fixed term contractual rent was not involved. Thus in ***Laxmidas Bapudas Darbar***, the Apex Court ultimately held that recovery of possession of premises under a fixed term lease could be sought under Section 21 of the Karnataka Rent Act only after expiry of fixed term lease. It has

further held that during subsistence of contractual lease, proceedings for eviction under Section 21 of the Karnataka Rent Act could be instituted only if the grounds enumerated in clauses (a) to (p) thereof are also provided as one of the grounds for forfeiture of lease in the Lease Deed. It would be apposite to reproduce what Apex Court held in paragraphs 8 to 19 as under:

> **8.** We would, therefore, proceed to examine the other question relating to applicability of Section 21(1)(*h*) of the Karnataka Rent Control Act to a subsisting fixed-term contractual lease, as in the case in hand.
>
> **9.** While dealing with the aforesaid question, the High Court has relied upon a Full Bench decision of the Karnataka High Court reported in *Bombay Tyres International Ltd. v. K.S. Prakash* [AIR 1997 Kant 311 : (1997) 1 Arb LR 278 (FB)] where it has been held that a proceeding for eviction under Section 21 of the Karnataka Rent Control Act would be maintainable notwithstanding the fact that the lease under which the tenant enjoys possession is an unexpired term lease. The relevant paragraph from the Full Bench decision aforesaid, is quoted below: (AIR p. 317, para 17)
>
> > "*17.* In view of what is stated above, we are clearly of the opinion that the decision of the Full Bench of this Court in *Sri Ramakrishna Theatres case* is no longer good law in the light of the decision of the Supreme Court in *Shri Lakshmi Venkateshwara Enterprises case*
> >
> > Accordingly, we hold that a landlord is entitled to an order of eviction if he satisfies one or other conditions mentioned in Section 21 of the Karnataka Rent Control Act notwithstanding the fact that the lease under which the tenant is in possession of the premises is for a term and that it has not expired on the date when the application for eviction is filed."
>
> **10.** It is clear that the Full Bench in *Bombay Tyres* followed the decision of this Court in the case of *Shri Lakshmi Venkateshwara Enterprises (P) Ltd. v. Syeda Vajhiunnissa Begum* .
>
> **11.***Shri Lakshmi Venkateshwara Enterprises* while holding that provisions of the Rent Control Act would be applicable to a fixed-term contractual lease relied upon a decision reported in *V. Dhanapal Chettiar v. Yesodai Ammal* . It is further observed in *Bombay Tyres* that interpretation of *Dhanapal Chettiar case*

given by the Supreme Court in *Shri Lakshmi Venkateshwara Enterprises* is binding on it. It will be beneficial to peruse para 15 of the judgment in *Bombay Tyres* which is quoted below:

> "It was contended by the learned counsel for the tenants that the decision of the Supreme Court in *Dhanapal Chettiar case* is confined only to a case of determination of a lease under Section 106 of the TP Act and that the principles cannot be extended to cases where a term is provided for in the lease. Learned counsel also relied on various observations of the Supreme Court in the above decision in support of his case. But we are afraid that we cannot accept the contention of the learned counsel for the tenants. In *Shri Lakshmi Venkateshwara Enterprises case* the Supreme Court has considered the very same decision and has stated that the above decision clearly holds that the provisions of the Rent Control Act would apply notwithstanding the contract. The effect of the decision in *Dhanapal Chettiar case* is stated by Their Lordships of the Supreme Court and we are bound by the same. This Court cannot take a different view as to what was laid down in *Dhanapal Chettiar case*. What is decided in *Dhanapal Chettiar case* is stated by Their Lordships in para 11 of the judgment of *Shri Lakshmi Venkateshwara Enterprises case*. It is to the effect that the provisions of the Rent Control Act would apply dehors the contract. When the Supreme Court has laid down the law to that effect, this Court has necessarily to follow the same and we do so."

12. This necessarily leads us to see and find out the proposition of law as laid down in the case of *Dhanapal Chettiar.* It is a decision by a Bench of seven Judges. The facts being that the landlady moved an application for eviction of her tenant under the provisions of the Tamil Nadu Rent Act on the ground of her personal need. The petition was dismissed. On appeal, though her case of bona fide requirement was upheld but eviction was refused due to lack of notice to quit in accordance with law. The High Court dealing with the matter in revision, held that notice to quit under Section 106 of the Transfer of Property Act was not necessary for seeking an eviction of a tenant under the provisions of the Rent Act. The question therefore, as was under consideration before this Court is mentioned in para 1 of the judgment itself which is quoted below:

> "… as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice under Section 106 of the Transfer of Property Act."

13. It has been held that the purpose of giving a notice under Section 106 of the Transfer of Property Act is only to terminate the contract of tenancy but it would not be necessary if the tenant

incurs the liability of eviction under the provisions of the statute. In such a case the notice under Section 106 of the Transfer of Property Act would only be a formality and a surplusage and it need not be given by way of any double protection to the tenant. It has been further observed that even though tenancy may be terminated by giving a notice under Section 106 of the Transfer of Property Act yet the landlord will not be in a position to initiate the proceedings for eviction in the absence of any liability incurred by the tenant as provided in the statute. Therefore, notice under Section 106 of the Transfer of Property Act loses significance. At the end of para 18 of the judgment it has been observed as follows: (SCC p. 229)

> "But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act."

14. It is to be significantly noted that in para 5 of the judgment in *Dhanapal Chettiar case* this Court while generally referring to the different provisions of the Transfer of Property Act and the effect of the Rent Acts of different States observed thus:

> "But in all social legislations meant for the protection of the needy, not necessarily the so-called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the allotment of a particular premises to him by the authority concerned. *Under Section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision."*
>
> (emphasis supplied)

As a matter of fact the question of curtailment of fixed-term contractual lease was not involved in the case of *Dhanapal Chettiar* .

15. It has nowhere been held that by virtue of the provisions of the Rent Act the contract of term lease is completely obliterated in all respects. The effect of the Rent Act on tenancy under contract has been considered only to a limited extent, confining it to the

necessity of giving notice under Section 106 of the Transfer of Property Act.

16. Next we may consider the decision in the case of *Shri Lakshmi Venkateshwara Enterprises* . It was a case relating to a term lease of 32 years. In para 5 it has been observed as follows: (SCC p. 673)

> "*5.* This Court in *V. Dhanapal Chettiar v. Yesodai Ammal* categorically laid down that contractual tenancy will lose its significance in view of the Rent Control Act. In that case, even the notice under Section 106 of the Transfer of Property Act was held to be a surplusage. It is, therefore, urged that if a landlord could found an action on any one of the enumerated grounds under Section 21 of the Act, the action would be maintainable notwithstanding the existence of a contractual lease."

The above observations have been made by referring the decision in *Dhanapal Chettiar case* without taking into account the context in which *Chettiar case* was decided. The Court then proceeds to consider Section 21 of the Act which reads as under:

> "21. *Protection of tenants against eviction.*—Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant:
> Provided that the court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds *only*, namely—
> * * *"
>
> (emphasis supplied)

On the basis of the above provision it has been observed that anything contained to the contrary, in any contract cannot prevail.

17. It may have to be scrutinized as to what extent the provisions of Section 21 of the Karnataka Rent Act shall have an overriding effect over any other law or a contract. The Rent Acts have primarily been made, if not wholly, to protect the interest of tenants, to restrict charging of excessive rent and their rampant eviction at will. In that view of the matter, Section 21 of the Karnataka Rent Act provides that notwithstanding anything to the contrary contained in any contract, no order for eviction of a tenant shall be made by the court or any other authority. Undoubtedly, it is a provision providing statutory protection to the tenants as it is also evident from the heading of Section 21 of the Act. This prohibition is however relaxed under the proviso saying that an order for recovery of possession of the premises can be made on an application made on that behalf only on the grounds as

enumerated in clauses (*a*) to (*p*) to the proviso. The non obstante clause contained under Section 21 of the Act, will override any condition in any contract which may provide a ground for eviction other than those enumerated in clauses (*a*) to (*p*) of sub-section (1) of Section 21. Such an additional ground in a contract shall be rendered ineffective. The use of the word "only" in the proviso is significant to emphasise that it relates to grounds alone which cannot be added over and above as provided. The whole contract or other conditions not related to eviction or grounds of eviction shall not be affected. So far as a fixed-term lease is concerned, it shall be affected only to the extent that even after expiry of period of the lease the possession cannot be obtained by the lessor unless one or more of the grounds contained in Section 21 of the Act are available for eviction of the tenant. There is nothing to indicate nor has it been held in any case that in view of Section 21 of the Karnataka Rent Act a contract of fixed-term tenancy stands obliterated in totality. As indicated in the earlier part of this judgment in the case of *Dhanapal Chettiar* [(1979) 4 SCC 214 : AIR 1979 SC 1745] it has been observed in para 5 that none of the State Rent Acts have abrogated or affected the provisions of Section 107 of the Transfer of Property Act which provides for lease of immovable property from year to year or for a term more than a year or reserving a yearly rent. As indicated earlier, the proviso to sub-section (1) of Section 21 of the Karnataka Rent Act limits the grounds on which a landlord can seek eviction of a tenant. Nothing has been indicated by reasons of which it can be concluded that a contract of tenancy loses significance on coming into force of the Karnataka Rent Act. The effect of the non obstante clause, in our view has been rightly explained in the Full Bench decision in the cases of *Sri Ramakrishna Theatres Ltd. v. General Investments and Commercial Corpn. Ltd*. In one of the decisions of this Court reported in *Modern Hotel v. K. Radhakrishnaiah* it has been held that period of a subsisting lease for fixed term could not be curtailed in the absence of a forfeiture clause in the lease.

18. The effect of the non obstante clause contained under Section 21 of the Karnataka Rent Act on the fixed-term contractual lease may be explained as follows:

(*i*) On expiry of period of the fixed-term lease, the tenant would be liable for eviction only on the grounds as enumerated in clauses (*a*) to (*p*) of sub-section (1) of Section 21 of the Act.

(*ii*) Any ground contained in the agreement of lease other than or in addition to the grounds enumerated in clauses (*a*) to (*p*) of sub-section (1) of Section 21 of the Act shall remain inoperative.

(*iii*) Proceedings for eviction of a tenant under a fixed-term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be

> enumerated in clauses (*a*) to (*p*) of sub-section (1) of Section 21 of the Act and it is also provided as one of the grounds for forfeiture of the lease rights in the lease deed, not otherwise.
>
> (*iv*) The period of fixed-term lease is ensured and remains protected except in the cases indicated in the preceding paragraph.
>
> 19. With great respect therefore, in our view, the decision in the case of *Dhanapal Chettiar* has not been correctly construed in the case of *Shri Lakshmi Venkateshwara Enterprises (P) Ltd.* and it no more holds good nor the Full Bench decision following it, in the case of *Bombay Tyres International Ltd.* The earlier judgment of the Full Bench of the High Court in the case of *Sri Ramakrishna Theatres Ltd.* lays down the law correctly.
>
> *(emphasis added)*

57) Thus, in ***Laxmidas Bapudas Darbar,*** three Judges Bench held that the decision in ***Dhanapal Chettiar*** was not correctly construed in two Judges' judgment in ***Lakshmi Venkateshwara Enterprises.***

58) The same issue attracted attention of Division Bench of Gujarat High Court in ***Jabal C. Lashkari*** (supra) in the context of provisions of the Bombay Rent Act. The Division Bench of Gujrat High Court observed the marked difference in wordings of non-obstante clause in Section 21 of the Karnataka Rent Act providing that '*Notwithstanding anything to the contrary contained in any other law or* ***contract****'* and the non-obstante clause in Section 13 of the Bombay Rent Act providing that *Notwithstanding anything contained* ***in this Act*** *but subject to provisions of Section 15'.* The Division Bench noted that while Section 21 of Karnataka Rent Act seek to give overriding effect even on a contract, the overriding effect in Section 15 of the Bombay Rent Act is only *qua* other provisions of the Act. The Division Bench of Gujarat High Court therefore held that the

decision of the Apex Court in ***Laxmidas Bapudas Darbar*** applies with much greater force for benefit of lessee under the fixed term lease in respect of eviction proceedings initiated under the Bombay Rent Act. The Division Bench of Gujrat High Court held in paragraphs 66 & 67 as under:

> **66.** A perusal of the aforesaid provisions, particularly sub-section (1) of Section 13 of the Bombay Rent Act makes it clear that the non-obstante clause with which subsection (1) of Section 13 (providing for various grounds of eviction) commences gives sub-section (1) overriding effect only over other provisions of the Bombay Rent Act (but makes it subject to the provisions of Section 15 of the Bombay Rent Act) and the non-obstante clause does not give any overriding effect over any other law or contract, unlike the non-obstante clause in Section 21 of the Karnataka Rent Act quoted in para 16 hereinabove. In other words, the contention urged by the lessor in the State of Karnataka that Section 21 of the Karnataka Rent Act (providing for similar grounds of eviction as contained in Section 13(1) of the Bombay Rent Act) is given overriding effect even over the Transfer of Property Act and the terms of the fixed long term lease (which contention was negatived by a three Judge Bench of the Apex Court in *Laxmidas Bapudas case*, (2001) 7 SCC 409) is not even available to a similarly placed lessor in the State of Gujarat, that is to say, **the ratio of the decision of the three Judge Bench of the Apex Court in *Laxmidas Bapudas case* : (supra) would apply with much greater force for the benefit of the lessee under a fixed long term lease in the State of Gujarat**.
>
> **67.** Following the aforesaid judgment in *Laxmidas Bapudas Darbar v. Rudravva*, (2001) 7 SCC 409. we hold that—
>
> > (i) it is only on expiry of the period of fixed term lease that the lessors can pray for eviction of the company in liquidation or its successor in interest on the grounds which may be available under the Rent Act which may be in operation at the relevant time.
> >
> > (ii) Any ground contained in the agreement of lease other than or in addition to the grounds enumerated in sub-section (1) of Section 13 of the Bombay Rent Act shall remain inoperative during subsistence of the lease and even after expiry of the lease term.
> >
> > (iii) The proceedings for eviction of a tenant under the fixed term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be enumerated in sub-section (1) of Section 13 of the Bombay Rent Act provided it is also enumerated as one of

> the grounds for forfeiture of the lease rights in the lease deed, but not otherwise.
>
> (iv) The period of fixed term lease of 199 years is ensured and remains protected except in the cases indicated in (iii) hereinabove, and during this period, the rights of the lessee under the lease deed and the Transfer of Property Act are not curtailed by the provisions of the Bombay Rent Act.
>
> *(emphasis added)*

59) Judgment of Division Bench of Gujarat High Court has been confirmed by the Apex Court in ***Jabal C. Lashkari and Ors. Versus. Official Liquidator and Ors.*** (supra) in which the Apex Court has held in paragraphs 12 and 24 as under:

> **12.** The Division Bench of the High Court took note of the fact that the non obstante clause in Section 13 of the Rent Act only gave the said Section 13 an overriding effect over the *other provisions of the Act*. Section 13 was also made subject to the provisions of Section 15 of the Bombay Act. This is in contrast to Section 21 of the Karnataka Act which had an overriding effect over any other law or contract to the contrary. Section 15 which deals with the authority of the lessee to sub-lease or assign the leased rights/property, though, gives an overriding effect over any other law has been made subject to any contract to the contrary. **Therefore, the terms of the lease and other cognate provisions of law is not obliterated**. The Division Bench, in view of the above provisions of the Bombay Rent Act, went on to hold that:
>
> > "*66.* ... the ratio of the decision of three-Judge Bench of the Apex Court in *Laxmidas Bapudas Darbar* would apply with much greater force for the benefit of the lessee under a fixed long-term lease in the State of Gujarat."
>
> It is on the aforesaid basis that the Division Bench came to the conclusion that the Rent Act did not obliterate the effect of the provisions of Section 108(*j*) of the Transfer of Property Act which would vest a right in the lessee not only to sublet but also to assign the subject-matter of the lease granted to him by the original lessor.
>
> **24. Though we have affirmed the order dated 17-10-2008 of the Gujarat High Court passed in *Jabal C. Lashkari* v. *Official Liquidator* and dismissed the civil appeals arising out of SLPs (C) Nos. 29282-84 of 2008 (*Jabal C. Lashkari* v. *Official Liquidator*), our decision to affirm the said judgment of the High Court is based on a consideration of the specific clauses in the lease deed between**

> **the parties to the case.** What would be the effect of the principles of law underlying the present order vis-à-vis the specific clauses of the lease deed between the parties in the other cases is a question that has to be considered by the High Court in each of the cases. That apart, whether the order dated 17-7-2006 passed in *State of Gujarat v. Official Liquidator* has attained finality in law and forecloses the question raised and further whether constructions have been raised on such land by the State Government for the benefit of the general public, as has been submitted to dissuade us from interfering with the order of the High Court, are questions that would require a full and complete consideration by the High Court on the materials available. To enable the said exercise to be duly performed, we set aside the orders of the High Court impugned in each of the aforesaid civil appeals and remit all the matters to the High Court for a fresh consideration in accordance with the observations and principles of law contained in the present order.

60) In ***Modern Hotel, Gudur,*** (supra) the Apex Court has dealt with a case where contractual fixed term lease was subsisting and the suit was filed for eviction on the ground of non-payment of rent. Though the main issue dealt with by the Apex Court is on facts of that case relating to the allegation of non-payment of rent, it has also made observations about absence of forfeiture clause in the lease deed and impermissibility to evict a contractual tenant during subsistence of lease. It held in paragraph 11 as under:

> **11.** The second contention advanced before us is equally weighty. The lease being for a term of 30 years is to expire in September 1999. As we have already said, the lease did not stipulate a forfeiture clause and in the absence of a forfeiture clause in the lease leading to termination by forfeiture, the contractual tenancy was subsisting under the provisions of the Transfer of Property Act and there could not be any eviction from such a tenancy.

61) Thus, the law appears to be fairly settled in a case of a fixed term contractual lease, recovery of possession of leased premises can be sought during subsistence of lease only if the grounds enumerated in state rent control legislation are also grounds for

forfeiture of lease under the Lease Deed. Thus, it is impermissible to seek possession of leased premises during currency of contractual lease, say on the ground of bonafide requirement by invoking provisions of state rent control act, if that ground is not specified as a ground for forfeiture of lease under the lease deed.

62) In the present case, there is no dispute to the position that there is a forfeiture clause in the Lease Deed providing for termination of lease in the event of breach of any condition of lease. Therefore, if the grounds of unlawful subletting or carrying out of unauthorised additions and alterations were not to be incorporated in the lease deed for forfeiture of the lease, eviction under provisions of Section 13(1)(a), (b) or (e) would have been impermissible. However, in the present case, there is a specific clause in the Deed providing for forfeiture of lease if lessee does acts contrary to the Lease Deed. Subletting contrary to Lease Deed and putting up construction of permanent nature are also stipulated as grounds for forfeiture under the lease deed. There are thus common grounds for seeking recovery of possession both under covenants of Lease as well as under Sections 13(1)(a), 13(1)(b) and 13(1)(e) of the Bombay Rent Act. In that sense, I do not see any difficulty in permissibility of eviction of contractual fixed term tenant under provisions of Section 13 of the Bombay Rent Act during subsistence of tenure of lease in the present case. Unlike ***Modern Hotel, Gudur*** (supra), there is a forfeiture clause in the Lease Deed, which recognises a right of the lessor to forfeit the Lease in the event it is found that the subletting or additions or alterations are contrary to the covenants of lease.

63) Relying in judgments in ***Laxmidas Bapudas Darbar, Jabal C. Lashkari*** and ***Modern Hotel, Gudur*** it is Mr. Kapadia's contention that since eviction of a contractual fixed term lessee is permissible during currency of lease only on grounds enumerated in the lease deed, the procedure for forfeiture must also be the one specified in the lease deed and not the one prescribed in the Rent Control Act. This is how Mr. Kapadia pitches for mandatory issuance of 60 days' prior notice for forfeiture of the lease in the present case.

64) In my view, what Mr. Kapadia does is to stretch the principle enunciated in ***Laxmidas Bapudas Darbar*** and ***Jabal C. Lashkari*** to mandatory issuance of notice as per the Lease Deed for maintaining a suit under provisions of the Bombay Rent Act. In my view, the law enunciated by the Apex Court in ***Laxmidas Bapudas Darbar*** and ***Jabal C. Lashkari*** (supra) only recognises the principle that recovery of possession governing contractual fixed term lease is permissible under the Rent Control Act only in the event of the grounds enumerated in that Act is also incorporated in the Lease Deed. Beyond this, the principle expounded in both the judgments cannot be overstretched to mean that even a notice for institution of an eviction suit would be mandatory as per the Lease Deed when seven Judges Bench in ***V. Dhanapal Chettiar*** (supra) has ruled that no such notice is necessary for institution of Suit against a tenant. The ratio of the Judgment in ***Laxmidas Bapudas Darbar*** and ***Jabal C. Lashkari*** is only about the grounds for eviction and not about the procedure to be followed for filing the eviction suit. The law relating to following of procedure before institution of eviction suit is well settled by the Apex Court in ***V. Dhanapal Chettiar*** (supra) and the Judgment in ***Laxmidas Bapudas Darbar*** and ***Jabal C. Lashkari*** cannot

be interpreted to mean that in case involving eviction of lessee on a contractual fixed term lease under the Bombay Rent Act, issuance of prior notice as per conditions of Lease Deed is mandatory. Therefore, the submission made on behalf of Revision Applicants that the eviction suit was not maintainable in absence of prior notice of 60 days as per Clause 4 (b) of the Lease Deed deserves to be rejected.

65) Even if one was to momentarily accept the contention of Revision Applicants about mandatory requirement for issuance of prior notice of 60 days under Clause 4(b) of the Lease Deed, it is the contention of the Plaintiff that such notice has indeed been given in the present case on 2 December 1995. In penultimate paragraph of letter dated 2 December 1995 addressed to Defendant No.1, Plaintiff stated as under:

> Recently the undersigned along with our Mr. Sharma also had been to the site where we were surprised to notice that in the garb of renovation or repairing you have effected massive structural changes in the premises to suit your purpose. The said structural changes not only amount to breach of the terms of the Lease Deed but also the building Rules and Regulations of the Bombay Municipal Corporation for the time being in force rendering the Lease Deed liable to be terminated.
>
> We have also noticed that under the garb of renovation and/or renovating you are erecting mezzanine floor infringing the building rules and regulations depriving us of our due FSI thereby causing irreparable loss to us.

66) Thus, specific intimation was given by Plaintiff to Defendant No.1 that massive structural changes in the premises were being carried out, which amounted to breach of terms of Lease Deed. Plaintiff further stated that such acts made the Lease Deed liable to

be terminated. The allegation of erecting mezzanine floor was also specifically incorporated in the letter dated 2 December 1995. Thus, Plaintiff specifically gave intimation to the Defendant about breach of conditions of lease in the letter dated 2 December 1995. Mr. Kapadia has contended that notice contemplated under Clause 4(b) of the Lease Deed requires not just intimation of the exact breach or omission, but permits the Lessee to remedy the same within 60 days. Here I tend to disagree with Mr. Kapadia. Once a notice is given alleging the exact breach committed by the lessee with further threat of forfeiture of the Lease, mere omission in the notice requiring the lessee to remedy the breach would not render the notice invalid. In this regard useful reference can be made to the Judgment of the Apex Court in ***Rakesh Kumar & Shri Shakti Kumar Anr. Versus. Hindustan Everest Tool Ltd.***[21] in which the issue before the Apex Court was about validity of notice demanding arrears of rent for maintaining suit for eviction on the ground of default in payment of rent. In that case, the landlord had specified period of default as well as exact amount of arrears and had called upon the tenant to vacate the suit premises. The landlord however did not specifically demand the arrears of rent. The issue before the Apex Court was whether such a notice could be construed as a valid demand notice. In paragraphs 10 and 11 the Apex Court has held as under:

> **10.** On reading the notice along with the letter dated June 1, 1982 it appears that the respondent was in arrears of rent for the months mentioned hereinbefore and was intimated that in default of payment of rent the eviction would follow in accordance with law. This is the proper way of reading the notice and in our view the appropriate logical way in which notices of such type should be read. These notices must be read in commonsense point of view bearing in mind how such notices are understood by ordinary people. That is how the appellant, it appears from the reply and the

[21] (1988) 2 SCC 165

> background of the previous letter to be mentioned hereinafter understood the notice.
>
> **11.** More or less, a similar notice was considered by the Delhi High Court in *Ram Sarup* v. *Sultan Singh* [(1977) 2 RCJ 552] where Mr Justice V.S. Deshpande, as the learned Chief Justice then was, held that the notice of the landlord stating therein about the arrears of rent and threatening to file a petition for eviction against the tenant was sufficient and the learned Judge held that the notice of demand could be expressed or implied and the conduct of the landlord showed that the demand was implied. We are in respectful agreement with the approach to such type of notices taken by the High Court in that case.

67) Thus, in ***Rakesh Kumar & Shri Shakti Kumar Anr.*** the Apex Court held the notice not specifically demanding the arrears of rent to be a valid notice since intimation of period of default together with the exact amount of arrears coupled with the threat of eviction was given to the tenant. Applying the same analogy in the present case as well, the Defendant No.1 was clearly intimated the exact breach committed in respect of Lease Deed as well as threat of termination of lease was also issued. Therefore, as held by the Apex Court in ***Rakesh Kumar & Shri Shakti Kumar Anr.***, requisition to remedy the breach is implied and was not required to be specifically expressed. In my view therefore, even if the submission of Mr. Kapadia about mandatory requirement of issuance of 60 days' notice under Clause 4(b) of the Lease Deed before institution of Suit for eviction is to be accepted, such notice has indeed been given in the present case. The contention of Mr. Kapadia about non-maintainability of Suit for want of notice under Clause 4(b) of the Lease Deed is therefore repelled.

D.3 UNAUTHORISED ADDITIONS AND ALTERATIONS

68) The allegations against Defendants are of twin nature. Firstly, Plaintiff alleged acts of waste contrary to the provisions of Clause (o) of Section 108 of the Transfer of Property Act, which is a ground for eviction under Section 13(1) (a) of the Bombay Rent Act. Secondly, Plaintiff also accused Defendants of putting up of structures of permanent nature without its consent thereby attracting a ground under Section 13(1)(b) of the Bombay Rent Act. Since both the allegations are interconnected, it would be apposite to consider both the allegations together. Before delving deeper into the grounds under Section 13(1)(a) and 13(1)(b) of the Bombay Rent Act, it must be noted that there are findings of fact recorded by the Trial and the Appellate Court after appreciating the evidence on record. The Applicants have invoked revisionary jurisdiction of this Court under Section 115 of the Code and this Court is not expected to exercise power of the Appellate Court in disguise as has been held by the Apex Court in ***Keshardeo Chamria Versus. Radha Kissen Chamria And Others***[22] and ***Masjid Kacha Tank, Nahan Versus. Tuffail Mohammed***[23]**.** In this connection reliance of Mr. Ankhad on the judgment of the Apex Court in ***Gandhe Vijay Kumar*** (supra) is also apposite. By relying on the Constitution Bench judgment in ***Hindustan Petroleum Corporation Ltd. Versus. Dilbahar Singh***[24], the Apex Court has held in ***Gandhe Vijay Kumar*** in paragraphs 2 and 3 as under:

> **2.** We are afraid, the High Court has misdirected itself and exceeded its jurisdiction. In revisional jurisdiction, the Court is expected to see only whether the findings are illegal or perverse in the sense that a reasonably informed person will not enter such a

[22] (1952) 2 SCC 329
[23] 1991 Supp (2) SCC 270
[24] (2014) 9 SCC 78

finding. For proper guidance, it would be appropriate to refer to a recent Constitution Bench judgment in *Hindustan Petroleum Corpn. Ltd.* v. *Dilbahar Singh* [*Hindustan Petroleum Corpn. Ltd.* v. *Dilbahar Singh*, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723] , at paras 30, 31 and 43: (SCC pp. 97, 98, 101 & 102)

> "*30*. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided expressly. None of these statutes confer on revisional authority the power as wide as that of the appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the trial court/Rent Controller and the appellate court/appellate authority for rehearing of the issues raised in the original proceedings.
>
> *31*. We are in full agreement with the view expressed in *Sri Raja Lakshmi Dyeing Works* [*Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar*, (1980) 4 SCC 259] that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in *Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval*, (1975) 2 SCC 246] that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the

> High Court should not enlarge the scope of revisional jurisdiction to that extent.
>
> * * *
>
> *43*. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

These principles hold good generally for exercise of revisional power.

3. There is no dispute with respect to the landlord-tenant relationship. The bona fide requirement also has been concurrently found by the Rent Controller as well as by the appellate authority. The High Court should not have ventured to look into the evidence as if in a first appeal and entered a different finding, though another finding might also be possible. Merely because another view is possible in exercise of the revisional jurisdiction, the High Court cannot upset the factual findings.

69) Keeping in mind the contours of revisional jurisdiction of High Court under Section 115 of the Code, I proceed to examine whether the Trial and Appellate Courts have committed any jurisdictional error or have exercised jurisdiction with material irregularity so as to warrant interference by this Court in revisionary jurisdiction. In the Plaint, Plaintiff alleged following acts against the Defendants:

(i) demolition of load bearing walls which were dividing the suit premises into three parts.

(ii) removal of three entry doors to the said three parts by plastering walls.

(iii) removal of flooring of the entire suit premises and lowering down the plinth by 6 to 8 inches.

(iv) construction of two bathrooms and toilet blocks.

(v) affixing iron beams alongwith existing wooden beams.

(vi) construction of mezzanine floor with iron beams.

(vii) construction of independent rooms in the suit premises.

70) In the written statement filed by Defendant No.1 few admissions relating to additions and alterations are given in paragraph 10 as under:

> 10. With reference to para 7 these defendants deny that by their letter dated 6-12-1995 they raised any false contention of carrying out essential repairs. These defendants deny that they had started any structural alterations or additions in the said premises as alleged or otherwise or at all. These defendants deny that defendants have demolished the "load-bearing walls" of the suit premises which were allegedly dividing the premises into three parts as alleged. These defendants state that when the premises

> were given to them the premises had no dividing wall at all. It was only one big unit. These defendants state that they had for their own convenience put up two one-brick dividing partitions which they have now partly removed. These defendants deny that any structural additions or alterations have bean carried out in the premises as alleged or even otherwise. These defendants deny that they have lowered down the flooring as alleged or at all. These defendants state that only new tiles have been put up on the floor, and in the existing bathrooms to give a decent look. These defendants state that iron beams alongside the existing wooden beams have been put up only in order to strengthen and support the ceiling so that it should not cave in. These defendants deny that any mazzannine floor has been constructed in the suit premises. These defendants state that the earlier loft has been strengthened which is in less than 1/3rd of the premises as per BMC regulations with the help of iron beans with wooden flooring which can be removed, within a short period and that is not a permanent structure at all. These defendants deny that the identity of the premises is at all changed as alleged or otherwise or at all. These defendants deny that any independent room of permanent nature has been constructed in the suit premises. These defendants deny that defendant No.1 has committed any act which is contrary to the provisions of Section 108 of Transfer of Property Act as alleged or otherwise or at all.

71) Thus, while denying the allegations of demolition of load bearing walls, Defendant No.1 stated that when the premises were let out, there were no dividing walls and it was only one big unit and for its convenience, Defendant No.1 had put up two 'one-brick' dividing partitions, which it later removed. Defendant No. 1 admitted putting up of new tiles but denied allegations of lowering down the flooring. It also admitted putting up of iron beams alongside the existing wooden beams to strengthen and support the ceiling so as to prevent it caving in. The Defendant No. 1 denied construction of mezzanine floor and pleaded that the earlier loft was merely strengthened, which is in less than 1/3 of the premises as per regulations of the Municipal Corporation. It further pleaded that the said loft was easily removable.

72) At the instance of the Plaintiff, Court Commissioner was appointed to inspect the suit premises. The Court Commissioner Mr. G.P. Khandelwal visited the suit premises on 15 February 1996 and submitted his report along with 52 photographs. The Court Commissioner noticed existence of loft-like structure in the suit premises and indicated its height as 7 feet, in which he could easily stand. The Court Commissioner also gave detailed account of various additions and alterations made in the suit premises.

73) Contrary to the plea raised in its the written statement that it did not carry out any additions or alterations in the suit premises after subletting the same to Defendant Nos.3 to 7, witness of Defendant No.1 admitted during the course of his cross-examination that various additions and alterations were carried out by Defendant No.2-Mid Day. Defendant's witness stated in his cross-examination that he orally enquired from Defendant Nos.2 to 7 as to why the additions and alterations were being carried out and later changed this deposition to say that such enquiry was made only with Defendant No.2. Defendant's witness further admitted that suit premises originally were in three sections and had three doors and contradicted the stand in the written statement. Defendant's witness admitted that Defendant No.1 constructed partition walls inside the suit premises, but they were removed by Defendant No.2. The witness further admitted that one wall was again constructed by his brother in 2005-2006, which remained in existence till deposition was recorded on 1 April 2015. He further admitted that Defendant No.2 removed two partition walls. This is how deposition of Defendant's witness is not only filled with inconsistencies, but also contradicts the averments in the written statement.

74) So far as allegation of construction of mezzanine floor is concerned, it appears that Municipal Corporation issued notice dated 5 July 1999 to Plaintiff and others, which contained following description of unauthorised work :

> 'construction of mezzanine floor with MS Gurder and Ladi Koba flooring admeasuring 25.25 meter x 9.75 meter'.

75) In the sketch, the height of mezzanine floor was indicated as 1.7 meters, which is equivalent to 5 ft 7 inches. According to Defendants, what is done is mere strengthening of existing loft. However, the total area of such structure is 251 sq. mtrs. equivalent to about 2700 sq.ft. There cannot be a loft admeasuring 2700.03 sq.ft. Again, the loft cannot be of height of 5 ft. 7 inches. According to Court Commissioner, the height of the mezzanine floor was 7 feet. The Court Commissioner stated that he could easily stand in the loft like structure. In my view, such structure cannot be treated as a loft. The Lease Deed does not make reference to presence of any loft of such massive size of 2700.03 sq.ft. which either 5 ft.7 inch or 7 feet in height. Thus, what is erected is a structure to be used as working space. The notice issued by MCGM on 5 July 1999 also indicates presence of a cabin at the mezzanine floor. In my view therefore, construction of mezzanine floor inside the suit premises is clearly established. It cannot be stated, by any stretch of imagination, that construction of mezzanine floor does not amount to erecting structure of permanent nature within the meaning of Section 13(1)(b) of the Bombay Rent Act. In this regard reliance of Mr. Ankhad on judgment of this Court in ***Ravindra D. Ahirkar*** (supra) is apposite. Single Judge of this Court has held in paragraph 7 as under :

> **7.** The notice dated 4-6-2001 issued by the landlord claiming water charges/revised water charges from the tenant is clearly for the period from 1-8-2000 to 31-5-2001 which is about a period of nine months. According to landlord the total amount due was Rs. 1040/- for this period against the tenant. The learned Counsel for the respondents submitted that this demand for water charges was served on the landlord on 9-12-2000 and 2-3-2001. Therefore, even if these two dates are taken into consideration to find out whether the amount of water charges are due or not, in my opinion, the same can be termed as amount due. Submission made by Advocate Shri Dhumale on this aspect therefore does not appeal to me. Now insofar as the construction of permanent structure, namely, the mezzanine floor is concerned, there is no dispute that the petitioner made the construction without the consent of the landlord. Section 16(1)(b) of the Act requires such consent in writing. It appears that the petitioner on his own made the said construction in violation of the building control rules and as a result the respondent landlord received a notice from the Corporation for violation of those rules. **The construction of a mezzanine floor is obviously a permanent structure.** Therefore, the case falls in the mischief of section 16(1)(b) of the Act. Thus, on all these counts, the Appellate Court has rightly found that the petitioner/tenant was liable to be evicted. I, therefore, do not find any merit in the writ petition. The same is, therefore, dismissed.
>
> *(emphasis added)*

76) Again, in ***Safiya Sabirbhai Wadhvanwala*** (supra) this Court has held in paragraphs 4, 5 and 6 as under:

> **4.** On the issue of unauthorised alteration to the suit premises of a permanent nature, the trial Court had held that the defendant, i.e. the petitioner herein, without the consent of the plaintiff, i.e., the respondent herein had carried out permanent construction of mezzanine floor inside the suit premises and enclosed 15 sq.ft. of common passage and thereby caused permanent damage to the suit premises. No Commissioner to inspect the alteration was appointed because it was the case of the defendant, namely the petitioner herein, that the mezzanine floor and also enclosure was already there when the tenancy agreement was entered into on 6th March 2000. It was the case of the plaintiff, i.e., respondent herein that such a mezzanine floor and enclosure was never in existence.
>
> **5.** The trial Court has correctly held that in such a situation, it was for the defendant, i.e. petitioner herein to prove that the mezzanine floor and enclosure was in existence when the petitioner was put

> into possession. The Court has also come to the conclusion that no such independent evidence was led by the defendant, i.e., the petitioner as to the existence of the said mezzanine/loft. The Court therefore, concluded that the petitioner, i.e., original defendant, had put up a loft/mezzanine floor in breach of that agreement.
>
> **6.** I have also perused the tenancy agreement in which in clause 3 (vi) it is expressly provided that no structural alterations to the said premises to be carried out and no loft whether of temporary or permanent nature in the suit premises or any part thereto could be constructed. Clause 3(vi) reads as under:—
>
> > "Not to carry out any structural alterations to the said premises and not to construct any loft whether temporary or permanent, in the said premises or any part thereof."

77) If the tests laid down by the Apex Court in ***Purushottam Das Bangur and Others Versus. Dayanand Gupta***[25] are applied, there can be no doubt to the position that construction of mezzanine floor by Defendants would attract the folly under provisions of Section 13(1)(b) of the Bombay Rent Act. The Apex Court has considered various judgments in ***Purushottam Das Bangur*** including the judgments in ***Venkatlal G. Pittie*** (supra) and ***Om Prakash*** (supra) relied upon by Mr. Godbole and has summed up the tests for determination of permanent nature of construction as under:

> **20.** To sum up, no hard-and-fast rule can be prescribed for determining what is permanent or what is not. The use of the word "permanent" in Section 108(*p*) of the Transfer of Property Act, 1882 is meant to distinguish the structure from what is temporary. The term "permanent" does not mean that the structure must last forever. A structure that lasts till the end of the tenancy can be treated as a permanent structure. The **intention of the party** putting up the structure is important for determining whether it is permanent or temporary. The **nature and extent of the structure** is similarly an important circumstance for deciding whether the structure is permanent or temporary within the meaning of Section 108(*p*) of the Act. **Removability of the structure** without causing any damage to the building is yet another test that can be applied while deciding the nature of the structure. So also the **durability of**

[25] (2012) 10 SCC 409

> the structure and the material used for erection of the same will help in deciding whether the structure is permanent or temporary. Lastly, the purpose for which the structure is intended is also an important factor that cannot be ignored.
>
> *(emphasis and underlining added)*

78) Also of relevance is the fact that construction of mezzanine floor has resulted in increase in the assessment in records of Municipal Corporation for property taxes. The inspection extract for the year 2000-2001 would clearly indicate presence of mezzanine floor for attracting additional assessment for property taxes in respect of the Unit Nos. 2 and 3, wherein the size of the mezzanine floors is indicated as 35.50 sq. mtrs and 250.92 sq. mtrs. Thus there can be no slightest of doubt that what is constructed by Defendants is a mezzanine floor and the defence adopted of so called strengthening of loft is totally fallacious.

79) Defendants did not dispute construction of bathroom and toilet inside the suit premises. However, according to Mr. Godbole, construction of toilet and WC is only for beneficial enjoyment of the suit premises and same cannot attract folly under Section 13(1)(b) of the Bombay Rent Control Act. Firstly, construction of toilet and bathroom is not included in the explanation to Section 13(1)(b) added by amendment of 1987. Secondly, for construction of toilet and bathroom, use of material such as bricks, cement, tiles, etc. is required in addition to making provision for plumbing and drainage lines. Therefore, construction of toilet and WC would definitely amount to putting up/erecting permanent structure in the premises. There is nothing on record to indicate that Defendant No. 1 was given permission in writing for construction of toilet or WC. Reference in this regard can be made letter to dated 19 August 1992 wherein

Plaintiff had clearly objected to construction of bathroom and WC inside the suit premises.

80) Another allegation against Defendants is lowering of plinth and demolition of partition walls by unifying the three units into one. This allegation is proved by notice issued by MCGM under provisions of Section 53(1) of the MRTP Act on 3 July 1999. The schedule to the notice reads thus:

> SCHEDULE
>
> (Description of the unauthorised development together with the particulars of Land) at Godown No. 63, Sitaram Mill Compound.
>
> i) Lowering of Plinth by 1'3''
> ii) Amalgamation of three units into one unit by removing the Partition walls between Units No.1&2 and unit No.2&3.
> iii) Change of user from garment designing and sampling with data processing to office purpose of Mid-Day Publication.

81) Though the plea of Plaintiff of demolition of load bearing walls is not established, it is clearly established that the Defendant has demolished at least brick partition walls which had subdivided the godown into three units. The allegation of closure of the entrance doors is also established from the photographs.

82) Mr. Godbole and Mr. Kapadia have strenuously contended that all the activities carried out by the Defendants are permissible under Clause 2(h) and 4(c) of the Lease Deed. It would therefore be apposite to reproduce Clauses 2(h) and 4(c) of the Lease Deed, which read thus:

> (h) not to make any changes alterations and additions in and to the demised premises without first obtaining consent in writing of the Lessor which shall not be unreasonably withheld and all such changes, alterations and additions when made shall become and be considered the property of the Lessor unless otherwise previously agreed to by the parties.
>
> (c) The Lessees shall be at liberty at their own costs to construct a fix erect bring in or upon or fasten to the demised premises and to remove alter and re-arrange from time to time any office furniture fixture and fittings which the lessees may require for their business such as screens, counters, lookers, strong room doors, grills, shutters, subblings, and electric fittings, lights, fan, air-conditioners, and other equipment fittings articles and things all of which the Lessees shall be at liberty to remove at or before the expiration or sooner determination of the tenancy without objection on the part of the lessor but the Lessees shall make good any damage which may be thereby caused to the demised premises to the reasonable satisfaction of the lessor.

83) Thus, under Clause 2(h), there was specific prohibition on the Lessee to make any alterations and additions in the demised premises without first obtaining consent in writing of the Lessor. True it is that Lessor was not to unreasonably withhold such consent. However, there is nothing on record to indicate that for carrying out aforestated activities, Defendants ever sought any consent in writing from the Plaintiff. Except for the work of strengthening of the ceiling, which was possibly caving in on account of load put up by UCO Bank on first floor, it appears that there was never an agreement between the parties about the other additions and alterations such as construction of mezzanine floor, construction of WC and toilet, lowering of plinth, demolition of partition walls, plastering of doors, etc.

84) To salvage the situation, reliance is placed on Clause 4(c) of the Lease Deed and according to Mr. Godbole, the activities

permissible under Clause 4(c) are of such a wide nature that the activities conducted at the suit premises are clearly permissible under the Lease Deed. He has particularly highlighted two permissible activities of putting of strong room doors and 'sub-blocks' in the premises. Mr. Godbole has justified creation and removal of partitions by relying on definition of the word 'sub block' in Merriam Webster Dictionary to mean a '*a functional subdivision of a building or part of building'*. Firstly, I do not find clear word 'subblock' in Clause 4(c). There appears to be a misspelling while typing the concerned word, which actually appears to be typed as 'subblings' and not 'subblocks'. However, even if the said controversy is kept aside, the manner in which Clause 4(c) is worded in juxtaposition to Clause 2(h) of the Lease Deed, the intention of the parties was to permit activities of putting up furniture and fixtures in the premises without seeking landlord's consent. But if any further act was to be performed resulting in alterations and additions to the demised premises, consent of the Lessor in writing was necessary. By no stretch of imagination, construction of mezzanine floor, lowering of plinth, construction of toilet /WC, etc. be covered by Clause 4(c) of the Lease Deed.

85) As observed above, there are findings of fact recorded by the Trial and Appellate Courts about unauthorised additions and alterations. In exercise of revisionary jurisdiction, this Court cannot sit in appeal by re-appreciating the evidence and arrive at a different finding than the one recorded by the Trial and Appellate Courts. However, for the purpose of finding out a case of exercise of jurisdiction with material irregularity, I have gone through the relevant material on record and I am unable to find out any perversity in the findings recorded by the Trial and Appellate Courts. The

findings recorded by both the Courts after appreciating the evidence are possible findings, not warranting any interference in revisionary jurisdiction of this Court.

E. ORDER

86) After considering the overall conspectus of the case I am of the view that the concurrent decrees passed by the Small Causes Court and its Appellate Bench are unexceptionable.

87) Civil Revision Applications are devoid of merits and are accordingly **dismissed.**

88) In view of disposal of the Civil Revision Applications, Interim Application does not survive and same also stands disposed of.

[SANDEEP V. MARNE, J.]

89) After the judgment is pronounced, the learned Counsel appearing for the Revision Applicants seeks continuation of interim order dated 5 July 2017 for a period of 4 weeks. The request is fairly not opposed by the learned counsel appearing for Respondent No.1. Accordingly, the interim order dated 5 July 2017 shall continue to operate for a period of 4 weeks.

[SANDEEP V. MARNE, J.]