IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 372 OF 2019

Britannia Industries Ltd.
5/1A, Hungerford Street,
Kolkata, West Bengal 700017. } …**Applicant**

-Versus-

Maya Sunil Alagh
Residing at 12-C, II II Palazzo,
Little Gibs Road, Malabar Hill,
Mumbai – 400 006. } …**Respondent**

WITH
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Maya Sunil Alagh
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Mumbai – 400 006. } …**Respondent**

Mr. Navroz Seervai, senior advocate with Mr. Jay Zaveri and Ms. Tarleen Saini i/b Crawford Bayley & Co., *for the Applicant.*

Mr. Surel Shah, senior advocate with Ms. Pooja Tukrel i/by. Mr. Raj Baid, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 11 July 2024.

Pronounced On : 8 August 2024.

JUDGMENT:

A. INTRODUCTION

1) India's biscuit giant *Britania*[1] is piqued by fixation of standard rent of a swanky apartment in *IL Pallazo* building located at upmarket area of Malabar Hill in Mumbai City at Rs. 805, when, according to *Britania*, the apartment can easily fetch monthly market rent of at least Rs. 6,00,000/-. *Britania* is engaged in a fierce battle over fixation of rent with its tenant *Maya Alagh*[2], a television and film actress and wife of *Britania's* former Managing Director. *Britania* propounds a case, which possibly has not been put forth by any landlord in State of Maharashtra yet, that standard rent cannot be fixed by a Court in respect of premises let after 1 October 1987 and that therefore *Britania* is justified in demanding market rent in respect of the flat let to its tenant.

2) Whether standard rent can be fixed under the provisions of Maharashtra Rent Control Act, 1999 in respect of premises let after 1st October 1987 is the issue that this Court is tasked upon to decide in these two Revision Applications. It is Revision Applicant's contention that the Legislature has consciously omitted provision for fixation of standard rent in respect of premises let after 1st October 1987 considering the judgment of the Apex Court in ***Malpe Vishwanath Acharya***[3] and that therefore Small Causes Court does

[1] Britannia Industries Ltd., Revision Applicant in both Revision Petitions.

[2] *Maya Sunil Alagh, Respondent in both Revision Applications*

[3] ***Malpe Vishwanath Acharya and others Versus. State of Maharashtra and Anr*** (1998) 2 SCC 1

not have jurisdiction to entertain application for fixation of standard rent in respect of such premises. If the main issue is to be answered in the affirmative, the next issue is about manner of fixation of standard rent in respect of premises let during gap period of 1 October 1987 and 30 March 2000 i.e. the date before coming inti force of Maharashtra Rent Control Act 1999.

B. THE CHALLENGE

3) These two Revision Applications are filed invoking revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 challenging the common judgment and order of the Appellate Bench of Small Causes Court dated 21 February 2019 dismissing Revision Application No. 312 of 2017 filed by the Applicant-Landlord and partly allowing the Revision Application No. 62 of 2018 filed by the Respondent-Tenant. The Appellate Bench has set aside the direction Nos. (2) and (3) of the judgment and order of the Small Causes Court, Mumbai in R.A.N. Application No. 75/SR of 2005 dated 3 October 2017. The Small Causes Court had allowed the R.A.N. Application No.75/SR of 2005 filed by Respondent by fixing standard rent of the premises at Rs. 10,880/- per month alongwith 4% annual increase and all the leviable charges including taxes and society charge on the application premises. The Appellate Bench has instead directed that standard rent in respect of application premises would be basic rent plus society maintenance charges and lease rent as agreed between the parties, while letting out the application premises to the Respondent. In short, the Appellate Bench has fixed Rs. 805/- as the

standard rent in respect of the suit premises. Applicant is aggrieved by entertainment and decision of application for fixation of standard rent in respect of suit premises, which are let in the year 1995 on the ground that there is no provision in the Maharashtra Rent Control Act, 1999 (**MRC Act**) for fixation of standard rent in respect of premises let after 1st October 1987.

C. FACTUAL BACKGROUND

4) Revision Applicant is a well-established name in Indian households and is a leading food product company manufacturing and selling various food items including products relating to bakery, dairy, snacking, etc. Respondent is an advertising model and also a medical practitioner and wife of then then Managing Director of Applicant-Company Mr. Sunil Alagh.

5) Respondent's husband Mr. Sunil Alagh was in service of the Applicant-Company since December 1974 as a Group Product Manager. He was promoted at post of Marketing Manager and General Manager (Exports) and thereafter he was appointed as a Full Time Director of the Company. In March 1989, Respondent's husband was appointed as Managing Director of the Applicant-Company. Applicant-Company, sometime in or around April/May 1989, decided to shift its corporate head office to Bangalore. Respondent's husband being Managing Director of the Company was also required to shift to Bangalore. Respondent being leading advertising model and medical practitioner, it was necessary for her to reside in Mumbai with her two minor daughters. Mr. Sunil Alagh therefore addressed letter dated 1 June 1989 to the Chairman of

Applicant-Company pointing out his wife's need for continued residence in Mumbai and requesting allotment of suitable accommodation in Mumbai for residence of her and their two minor daughters. Said letter showed willingness on Respondent's part to pay rent in respect of accommodation and other amounts as mutually agreed between the parties. In the Board Meeting held on 16 August 1989, resolution was passed to enter into rental agreement with Respondent in regard to Flat No.11-W on the 11th Floor in the building named 'Navroze Apartments' situated at Bhulabhai Desai Road, Mumbai–400 026 **(Navroze Apartments Flat)** owned by Applicant-Company. Accordingly, after conducing survey, M/s. K. C. Gandhi, Architects, Engineers, Surveyors and Registered Valuers submitted Rent Report dated 22 April 1991 opining that minimum rent for the Navroze Apartments with garage including Society's charges, but excluding water and electricity charges, be fixed at Rs. 3400/- per month. An Agreement dated 9 May 1991 was entered between Applicant-Company and Respondent, under which Navroze Apartments Flat were let out to Respondent from 1 December 1991 at monthly rent of Rs. 3,400/- including permitted increases and society maintenance charges. By letter addressed to Respondent, Applicant-Company also confirmed that in the event of Applicant-Company deciding to sell the said flat at future date, Respondent will have the first option to purchase the same.

6) The tenancy of the Respondent in respect of Navroz Apartments Flat continued till August/September 1992. Sometime during August/September 1992, the Applicant-Company tried to unilaterally terminate tenancy by forcefully evicting the Respondent. Suits and counter-suits were filed by Applicant-Company and

Respondent in the Small Causes Court. However after obtaining legal advice, the Board of Directors of the Applicant-Company in meeting held on 7 October 1993 resolved to withdraw the suit for ejectment filed by the Applicant-Company against Respondent. The Applicant-Company decided to take back Navroze Apartments Flat from Respondent and to offer alternate accommodation at Flat No.12-C, IL Palazzo Co.Op. Housing Society Limited, Little Gibbs Road, Malabar Hill, Mumbai – 400 006 **(Suit Premises)** to her at monthly rent of Rs. 4,500/-. The Company Secretary wrote to Respondent vide letter dated 1 August 1994 for temporary change of accommodation to suit premises, confirming that this temporary arrangement will not affect the tenancy of Navroze flat and the Respondent to continue to pay the rent as tenant of Navroze flat. The Company Secretary further wrote letter dated 31 July 1995 requesting the Respondent to take on the tenancy of suit premises with effect from 1 August 1995 and rent of the Flat would be Rs. 4,500/- per month which included maintenance charges and lease rent of Rs. 3,695/- payable to the Society. Any increase in the monthly outgoings above Rs. 3,695/- was to be on Respondent's account and to that extent rent was to be automatically increased. Respondent thereafter continued to pay said rent and increases in the maintenance charges of the Society as intimated by the Applicant-Company. The Applicant-Company has also continued to accept the said rent and increases.

7) By letter dated 13 October 2003, the Applicant-Company demanded sum of Rs.3,98,195/- towards outstanding maintenance charges, special levy for repairs, municipal taxes, repair cess on garage and voluntary contribution payable to the Society from the

Respondent. By letter dated 29 October 2003, Respondent disputed liability for payment of other charges by her except maintenance and lease rent, which was mutually agreed between the parties by Agreement dated 9 May 1991 and further confirmed vide letter dated 31 July 1995. Further correspondence dated 14 November 2003, 19 November 2003, 25 November 2003, 26 November 2003, 28 November 2003, 8 October 2004 and 27 December 2004 took place between the parties determining the liability of Respondent and Respondent advancing various sums towards Rent for suit premises. Applicant-Company vide letter dated 25 November 2004 terminated the tenancy of the Respondent in respect of suit premises on the ground that Respondent's husband ceased to be employee of Applicant-Company. Respondent replied the termination notice vide Reply dated 24 December 2004. Further correspondence dated 9 February 2005, 10 February 2005, 17 February 2005 and 24 February 2005 took place between the parties wherein the Applicant-Company returned the cheque advanced by Respondent towards Rent of suit premises and demanded Rent at the rate of Rs. 2,75,000/- from January 2005 onwards. The Applicant-Company thereafter instituted R.A.E. & R. Suit No. 950/1489 of 2005 for eviction of Respondent under Section 15 of the Maharashtra Rent Control Act, 1999 in January 2005. Respondent was shocked and surprised to receive summons of the Small Causes Court in R.A.E. & R. Suit No. 950/1489 of 2005 by which Applicant-Company was claiming rent at the rate of Rs. 2,75,000/- per month. Respondent has paid the last rent at the rate of Rs. 10,880/- as demanded by Applicant-Company as per Agreement dated 9 May 1991.

8) Accordingly, the Respondent has filed R.A.N. Application No. 75/SR of 2005 in the Court of Small Causes at Bombay on 21 December 2005 under Section 8(1)(a) read with (d) and Section 8(2) read with sub-sections (4)(a) and Section 11 of the Maharashtra Rent Control Act, 1999 **(MRC Act)** for fixation of standard rent and permitted increases of the suit premises, fixation of interim rent at the rate of Rs. 10,880/- per month and deposit of arrears of rent for the period 1 January 2005 to 31 December 2005 at the rate of Rs.10,880/- per month. The Applicant-Company filed Reply to the application stating that application itself is misconceived and not maintainable and provisions of MRC Act are not applicable. That Small Causes Court has no jurisdiction to try and entertain the application. The Applicant-Company prayed for framing of preliminary issue of jurisdiction of Small Causes Court to try and entertain the application. Respondent filed application at Exhibit-6 for fixing interim standard rent the demised premises. The Small Causes Court by ad-interim Order dated 23 December 2005 fixed interim standard rent for demised premises at Rs. 10,880/- per month. By Order dated 19 January 2009 made ad-interim order dated 23 December 2005 absolute and granted liberty to Applicant-Company to withdraw the deposited amount.

9) Respondent examined herself as AW1. Respondent also examined Mr. Sam Phiroze Rao (AW2) Architect, Engineer, Valuer and Rating Consultant and Mr. Mansoor S. Shikari (AW3) Architect and Valuer. Applicant-Company led evidence of Ms. Kranti Shastri (RW1) Manager-Legal in the Applicant-Company, Mr. Harshad Sunderlal Maniar, Chartered Engineer, Surveyor and Registered Estate Valuer and Mr. Dilranjan Ratilal Bhatt, Regional Commercial

& Finance Manager. Accordingly the Small Causes Court framed issues (i) Whether Small Causes Court had jurisdiction to fix standard rent and (ii) Whether provision relating to standard rent are applicable in letting of premises to the applicant. By Judgment and Order dated 3 October 2017 Small Causes Court allowed the R.A.N. Application No.75/SR of 2005 and directed Respondent to pay standard rent of Rs.10,880/- per month alongwith 4% annual increase and all the leviable charges including taxes and society charge in respect of the suit premises. The Court further directed Respondent to deposit sum of Rs. 1,30,560/- alongwith 15% interest on the arrears of rent for the period 1 January 2005 to 31 December 2005. Applicant-Company was granted liberty to withdraw the rent amount deposited.

10) Aggrieved by the Judgment and Order dated 3 October 2017 of the Small Causes Court both Applicant-Company as well the Respondent filed Revision Applications before the Appellate Bench of the Small Causes Court. Applicant-Company filed Revision Application No. 312 of 2017 assailing the order of the Small Causes Court essentially on the ground of non-existence of jurisdiction of the Small Causes Court in deciding application for standard rent and permitted increases as the premises were let out after 1 October 1987 and thus not covered within the definition of Standard Rent in Section 7(14)(b) of the MRC Act. Respondent has filed Revision Application No. 62 of 2018 against Direction Nos. (2) and (3) in the judgment and order dated 3 October 2017. The Appellate Bench of the Small Causes Court has dismissed Applicant-Company's Revision Application No. 312 of 2017 and has partly allowed the Revision Application No. 62 of 2018 filed by the Respondent. The

Appellate Bench has set aside clauses (2) and (3) of the Judgment and Order dated 3 October 2017 passed by the Small Causes Court and instead directed that standard rent in respect of application premises would be basic rent plus society maintenance charges and lease rent as agreed between the parties, while letting out the application premises to the applicant.

11) Aggrieved by the judgment and order dated 21 February 2019 passed by the Appellate Bench of the Small Causes Court, the Applicant-Company has filed the present Civil Revision Applications.

D. SUBMISSIONS

12) Mr. Navroz Seervai, the learned senior advocate has appeared on behalf of Revision Applicant and Mr. Surel Shah, the learned senior advocate has appeared on behalf of the Respondent-tenant. Both the learned counsel have advanced extensive submissions in support of their respective cases. The same are briefly captured below:

D.1 SUBMISSIONS ON BEHALF OF REVISION APPLICANT

13) Mr. Seervai, the learned senior advocate appearing for Applicant in both the Revision Applications would submit that the definition of the term 'standard rent' under the Maharashtra Rent Control Act, 1999 specifically excludes premises which are let after 1 October 1987. He would compare definitions of the term 'standard rent' under the provisions of Section 5(10) of the Bombay Rents,

Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act)** with the definition of the term 'standard rent' under Section 7(14) of the MRC Act to submit that, in stark contrast to the provisions of Bombay Rent Act, the MRC Act does not provide for determination of standard rent in respect of premises let after the specified date. That under Section 5(10) of the Bombay Rent Act, the specified date was 1 September 1940, which is modified as 1 October 1987 under the MRC Act. That the standard rent would be fixed in relation to premises (i) let on the first day of September 1940, or (ii) let before the first day of September 1940, or (iii) let after the first day of September 1940. On the contrary, provisions of Section 7(14)(b) of the MRC Act provides for fixation of standard rent only in respect of premises (i) let on the first day of October 1987 or (ii) let before the first day of October 1987. That the third eventuality of premises let after the specified date has been consciously excluded from Section 7(14) of the MRC Act.

14) According to Mr. Seervai, the conscious exclusion of premises let after 1 October 1987 from definition of the term 'standard rent' under Section 7(14) of the MRC Act is directly a result of judgment of the Apex Court in ***Malpe Vishwanath Acharya*** read with the report of Joint Committee. He would submit that the provisions of Bombay Rent Act relating to standard rent were held to be arbitrary and unreasonable by the Apex Court in its judgment in ***Malpe Vishwanath Acharya*** (supra). However, the Apex Court did not strike down the said provisions only on account of the statements made on behalf of the State Government that it was coming out with new Rent Act. He would submit that before delivery of judgment of the Apex Court in ***Malpe Vishwanath Acharya,*** the proposed Bill for

enactment of new Rent Act proposed inclusion of premises let after 1 October 1987 in the definition of the term 'standard rent' with further provision for increase in the standard rent of premises let after 1 October 1987 after expiration of period of 40 years equivalent to the amount of net return of 15% per annum on the investment in the land and the building and on outgoings in respect of the premises. That the Joint Committee noticed the judgment of the Apex Court in ***Malpe Vishwanath Acharya*** (supra) and consciously recommended removal of 'premises let after 1 October 1987' from the definition of the term 'standard rent'. He would submit that recommendation of the Joint Committee for removal of premises let after 1 October 1987 from the ambit of fixation of standard rent was also with the objective of unlocking substantial stock of housing premises, which owners were otherwise not willing to give on rental basis for the fixation of standard rent provisions. Mr. Seervai would therefore submit that the report of the Joint Committee clearly indicates conscious exclusion of premises let after 1 October 1987 from provisions for fixation of standard rent.

15) Mr. Seervai would accordingly submit that both in view of plain meaning of provisions of Section 7(14) of the MRC Act as well as considering the report of the Joint Committee in the light of judgment in ***Malpe Vishwanath Acharya*** (supra), it is crystal clear that standard rent cannot be fixed by Court in respect of the premises let after 1 October 1987. He would therefore submit that the Small Causes Court did not have jurisdiction to entertain applications filed by Respondent for fixation of standard rent in respect of the suit premises which are let on 1 August 1995.

16) Mr. Seervai would also rely upon judgment of the Apex Court in ***Leelabai Gajanan Pansare and others Versus. Oriental Insurance Company Limited and others***[4] in which the Apex Court has held that the provisions of the MRC Act are a package evolved by the legislature to protect standard rent benefits only to vast majority of tenants of pre-1987 tenancies. That the Apex Court in ***Leelabai Gajanan Pansare*** (supra) has reconfirmed the position that the MRC Act is a sequel to the judgment of ***Malpe Vishwanath Acharya*** (supra). He would therefore submit that reading the provision for fixation of standard rent in respect of post 1987 tenancies into the MRC Act would tantamount to disturbing the economic package given by the legislature and upheld by the Apex Court in ***Leelabai Gajanan Pansare*** (supra). Mr. Seervai would also rely upon the provisions of Section 8 of the MRC Act, which according to him specifically exclude provision for fixation of standard rent in relation to premises let after the specified date, unlike the provisions of Section 11(1)(a) of the Bombay Rent Act, which specifically included provision for fixation of standard rent in respect of the premises let after the specified date. That comparative analysis and study of provisions of Section 11 of the Bombay Rent Act with Section 8 of the MRC Act would leave no scope for doubt that the legislature has consciously not conferred jurisdiction on the Court to fix standard rent in respect of premises let after 1 October 1987.

17) Mr. Seervai would further submit that the legislative history and background which culminated into enactment of the MRC Act establishes that the legislature did not intend to legislate on

[4] *(2008) 9 SCC 720*

standard rent for the period post 1 October 1987. That therefore any interpretation envisaging standard rent fixation obligation in respect of premises let after 1 October 1987 would constitute interpretation directly contrary to, and the one which militates against, the clear avowed intention of the legislature while enacting the Act. That such interpretation must therefore be avoided.

18) Mr. Seervai would further submit that Section 7(14) of the MRC Act must be read as a whole. That Section 7(14)(b) defining 'standard rent' provides that the definition is subject to provision of Section 8 and that therefore there is a direct linkage between provisions of Sections 7(14)(b) and Section 8. He would submit that therefore Section 7(14)(c) cannot be interpreted to mean that the same confers any jurisdiction on the Court to fix standard rent in respect of the premises let after 1 October 1987. That provision of Section 7(14)(c) cannot be read disjunctively or independent of Section 7(14)(b). That reading of Section 7(14)(c) as an independent standalone provision would cause violence to the entire scheme of Section 7(14) and Section 8 of the MRC Act.

19) Mr. Seervai would further submit that cases specified under Section 8 empowering the Court to fix standard rent include only those cases where standard rent cannot be ascertained with clarity under Section 7(14)(b)(i) or (ii) and that the same does not apply to tenancies post 1 October 1987. That Section 8(1) provides for fixation of standard rent '*having regard to the provisions of this Act and the circumstances of the case*'. That Section 8(1)(a) refers only to Section 7(14)(b)(i) and (ii) and that therefore Section 7(14)(b)(i) and (ii) are also governed by the cases covered by Clauses (b), (c)

and (d) of Section 8 as well. That therefore, if Section 8(1)(d) is interpreted to permit fixation of standard rent by the Court in respect of tenancy post 1 October 1987, such interpretation would disregard provisions of the Act rather than having regard to the provisions of the Act.

20) Mr. Seervai would further submit that it is well settled law that the purpose and effect of the definition clause in a statute is to define a word that will govern the entire statute wherever the word appears and that therefore wherever the term 'standard rent' appears in the MRC Act it must bear the same meaning as in the definition clause. In support of his contention, he would rely upon the judgment of the Apex Court in ***Falcon Tyres Ltd. Versus. State of Karnataka and Ors.***[5] and ***Commissioner of Sales Tax, State of Gujarat Versus. M/s. Union Medical Agency***[6].

21) Mr. Seervai, would further submit that the word 'or' appearing in paragraph (ii) of Section 7(14)(b) of the MRC Act is an obvious drafting error and that the same is required to be omitted. He would submit that erroneous use of the word 'or' in Section 7(14)(b)(ii) makes absurd reading of the provision and that omission of the said word would make meaning of the clause clearer. He would submit that in exercise of interpretative function, Courts can omit or supply word where the plain and normal reading as well as grammatical construction leads to confusion, absurdity or repugnancy with the other provisions. In support, he would rely upon judgment of the Apex Court in ***Afcons Infrastructure Limited and Another Versus. Cherian Varkey Construction Company Private***

[5] *(2006) 6 SCC 530*
[6] *(1981) 1 SCC 51*

Limited and Others[7]***.*** Mr. Seervai would go a step further and submit that in fact in a case where there is a drafting error, it is the duty of the Court to correct the same and in support he would rely upon the judgment of the Apex Court in ***Bhasker and Another Versus. Ayodhya Jewellers***[8]***.***

22) In support of his contention that external aid can be taken in the form of report of Parliamentary Committee while interpreting a statute, Mr. Seervai would rely upon judgment of the Apex Court in ***Kalpana Mehta and Others Versus. Union of India and Others***[9]***.***

23) Mr. Seervai would further submit that use of the word 'means' under Section 7(14) of the MRC Act would show that the definition is exhaustive and not inclusive. Relying on the judgment of the Apex Court in ***Feroze N. Dotivala Versus. P.M. Wadhwani and Others***[10] he would submit that when the definition of the word begins with the word 'means', it is indicative of the fact that meaning of the word has been restricted and that the same would not mean anything else but what has been indicated in the definition itself.

24) That sub-clause (c) of Section 7(14) does not use the term 'standard rent' whereas sub-clauses (a) and (b) do use the said word. That sub-clause (c) of Section 7(14) is essentially linked to sub-clause (b). That Court can fix standard rent under Section 8(1) only in cases where there is a dispute about ascertainment of the exact rent under Section 7(14)(b)(i) or (ii) and that since there can be no standard rent in respect of the premises let after 1 October 1987, there can be no

[7] *(2010) 8 SCC 24*
[8] (2023) 9 SCC 281
[9] *(2018) 7 SCC 1*
[10] *(2003) 1 SCC 433*

dispute which can be determined under Section 8(1) of the MRC Act.

25) Mr. Seervai would further submit that the Small Causes Court and its Appellate Bench have ignored the fact that the maintenance and outgoings in respect of the suit premises are increasing with passage of each day. That the fair market rent in respect of the suit premises is approximately Rs.6,00,000/- whereas the result of the impugned order passed by the Appellate Bench is such that minuscule amount of the basic rent in the year 1995 (Rs. 805/-) plus society maintenance charges and lease rent is fixed as standard rent in respect of the suit premises. Mr. Seervai would therefore pray for setting aside the impugned orders passed by the Small Causes Court and its Appellate Bench.

D. 2 SUBMISSIONS ON BEHALF OF RESPONDENT

26) Mr. Shah, the learned senior advocate would appear on behalf of the Respondent-Tenant and would submit that no interference is warranted in the well-reasoned orders passed by the Small Causes Court as modified by its Appellate Bench, in exercise of revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908. He would submit that no Court has till date held that standard rent cannot be fixed in respect of the premises let after 1 October 1987 and that proposition which is being advanced on behalf of the Applicant is unknown to law.

27) Mr. Shah would submit that it is settled principle of interpretation that if the statute is plain and unambiguous, a strict/

literal interpretation has to be resorted and external aids of interpretation such as Bill, Statutory Committee Report, etc. are not to be resorted to. In support, he would rely upon the judgment of the Apex Court in ***Commissioner of Customs (Import), Mumbai Versus. Dilip Kumar and Company and Others***[11]. He would submit that statute has to be read as a whole so as to make it functional and would rely upon judgment of the Apex Court in ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (South Co) and Another Versus. Sri Seetaram Rice Mill***[12].

28) Referring to the provisions of Section 2 of the MRC Act, he would submit that the provisions of the Act apply to the 'premises let' and the State Government has been empowered under sub-section (4) of Section 2 to issue a notification for making the provisions of the Act to not apply to a particular premises. Thus, unless application of the Act is specifically excluded in whole or part to particular premises, the provisions of the MRC Act, including provision for fixation of standard rent, applies to all premises irrespective of the date on which they are let. That there is no specific provision in the MRC Act, which makes the provisions relating to standard rent inapplicable to premises let after 1 October 1987 nor there is notification issued by the State Government excluding applicability of standard rent provisions to such premises let after 1 October 1987.

29) Mr. Shah would refer to provision of Section 6 of the MRC Act, particularly to the non-obstante clause used therein and

[11] *(2018) 9 SCC 1*
[12] *(2012) 2 SCC 108*

would submit that except premises let or given on license or premises not let for continuous period of one year, provisions of standard rent apply to all premises. That therefore in respect of every premises which are let for a tenure in excess of one year, provision of standard rent automatically apply notwithstanding any interpretation that may be put by the Applicant about provisions of Section 7(14) or Section 8 of the Act. That if legislature wanted to restrict applicability of provisions of standard rent to premises let after 1 October 1987, it would have included such premises in Section 6.

30) Mr. Shah would further submit that use of the words '*In this Act, unless there is anything repugnant to the subject or context*' used in Section 7 of the MRC Act would show that all the definitions, including definition of the term 'standard rent', has to be read in context of words used or with the subject. Relying on judgment of ***Afcons Infrastructure Limited*** (supra), Mr. Shah would submit that some words in some sections and even some sentences are required to be construed differently. That Section 7(14) of the MRC Act used the word 'means' and since the word 'means' is not accompanied with the word 'included', the definition is required to be treated as inclusive and not exhaustive.

31) Mr. Shah would further submit that Section 7(14) of the MRC Act includes all three clauses of premises viz.(i) let on 1 October 1987 (ii) let before 1 October 1987 and (iii) let after 1 October 1987. He would submit that use of the word 'or' in Section 7(14)(b)(ii) is not a typographical error and that the said word has been consciously included to include the third category of 'premises

let after 1 October 1987'. After the words '*where premises were not let on 1st day of October 1987*' a comma is used before the word '*or'*. That as per dictionary meaning of the word '*or',* the same is particle which connects the word, phrases or clauses representing alternatives. That since the word '*or'* is a conjunction normally used for joining alternative or to denote two or more disjunctive type provisions, the legislature has also included the third eventuality of premises let after 1 October 1987 by conscious use of the word 'or' under Section 7(14)(b)(ii) of the MRC Act. That use of the word 'or' in Section 7(14)(b)(ii) is not a case of *casus omissus* nor Court can supply *casus omissus* as it is a duty of the Court to read the provision as it is and not to legislate by omitting the word. Relying on judgment in ***Union of India Versus. Rajiv Kumar***[13]**,** Mr. Shah would submit that *casus omissus* cannot be created by interpretation unless there is strong necessity.

32) Mr. Shah would submit that Section 7(14) (b) of the MRC Act has fused or coalesced the three clauses (i),(ii) and (iii) of Section 5(10)(b) of the Bombay Rents Act and that therefore it cannot be inferred that there is conscious deletion of clause (iii) while defining the term 'standard rent' under Section 7(14) of the MRC Act.

33) Mr. Shah would submit that it is settled law declared by the Apex Court that while construing a provision, Court should not easily read into the words, which have not been expressly enacted and that the Court must construe a provision in a harmonious way to make it meaningful. That attempts must always be made so as to

[13] *(2003) 6 SCC 516*

reconcile the relevant provisions to advance the remedy intended by the statute. That therefore by giving purposive interpretation of Section 7(14)(b), premises let after 1 October 1987 must also be included in the definition of the term 'standard rent' appearing in Section 7(14)(b)(ii).

34) Mr. Shah would further rely on provisions of Section 8 of the MRC Act which does not specifically exclude Court's power to fix standard rent in respect of the premises let after 1 October 1987. He would submit that premises let after 1 October 1987 are excluded from Court's power to fix standard rent, the same would mean license to the landlord to demand astronomical high amount of rent and then seek eviction of the tenant under Section 15 on account of non-payment of arrears before filing of the suit or non-deposit of arrears after receipt of suit summons. The whole purpose of beneficial legislation enacted for benefit of a tenant would then be rendered otiose.

35) Mr. Shah would further rely upon Section 11 of the MRC Act in support of his contention that a balance is struck by the legislature by allowing the landlord to increase the contractual rent by 4% per annum after commencement of the MRC Act, which again is an indicator that in respect of the premises let after 1 October 1987, there is a provision for fixation of standard rent.

36) Mr. Shah would submit that in fact the suit premises are proved to have been let prior to 1 October 1987, if not to the Respondent, to another tenant. That various provisions of the MRC

Act refer to letting of premises on a particular date and not to letting of premises to a particular person. That therefore once it is proved that the premises were let to another tenant prior to 1 October 1987, the present case would be governed by Section 7(14)(b)(ii).

37) Lastly, Mr. Shah would contend that Respondent has agreed to pay contractual rent plus maintenance charges increased from time to time as well as lease rent. By letter dated 7 May 2019, Respondent has given details of amount payable from April 2000 to June 2019 and has forwarded with it her cheque for Rs.17,77,933.11/- which included basic rent plus 4% increase every year plus maintenance charges and lease rent. However, Applicant's Advocate returned the cheque and refused to accept the same. Mr. Shah would therefore pray for dismissal of both the revision applications.

E. POINTS FOR DETERMINATION

38) After having heard the learned counsel appearing for the parties, following broad issues arise for consideration:

(I) Whether standard rent can be fixed in respect of the premises let after 1 October 1987 under the provisions of the MRC Act?

(II) Whether the Court has jurisdiction to entertain application for fixation of standard rent in respect of the premises let after 1 October 1987?

(III) If the answers to Question Nos. 1 and 2 are in the affirmative, whether there is legislative fixation/ determination of standard rent under Section 7(14)(b)(ii) of the MRC Act in respect of the premises let after 1 October 1987 ?

(IV) If the answers to Question Nos. 1 and 2 are in the affirmative, would standard rent in respect of premises let during the gap period of 2 October 1987 and 30 March 2000 be governed by provisions of Section 5(10)(b)(iii) of the Bombay Rent Act, notwithstanding deletion of tenancies created after 1 October 1987 from Section 7(14)(b) of the MRC Act ?

(V) Since tenancy in respect of suit premises is created during gap period of 2 October 1987 and 30 March 2000, would the contractual rent agreed at the time of letting of premises become standard rent payable in respect thereof?

F. CONSIDERATION, REASONS AND ANALYSIS

39) Rent control legislations in India are enacted in various states with the aim of protecting the urban tenancies from rent escalation and eviction. However, what is often ignored is the equally important objective behind such legislations in making available housing stock in urban areas of the country. It was noticed that excessive control over rent escalation and eviction resulted in steady decrease of housing stock for tenancies and with passage of time, there appears to be a paradigm shift in approach to balance the rights of tenants and landlords so as to ensure that while controlling the

rent escalation and eviction, the other important objective of making available adequate housing stock is not lost sight of. But is the shift in approach so extreme that rent control provisions are totally deone away with, thereby leaving the matter of fixation of rent to market forces in respect of tenancies created after 1987 is the issue for consideration.

40) The proposition canvassed by landlord-*Britania,* which is described as 'extreme' in opening paragraph of the judgment, is that there is no provision under the MRC Act, under which standard rent can be fixed in respect of the premises let after 1 October 1987 and consequently the Small Causes Court does not have jurisdiction to entertain any application for fixation of standard rent in respect of such premises. According to Mr. Seervai, since the premises in question are let on 1 August 1995, standard rent in respect thereof cannot be fixed and therefore the Small Causes Court and its Appellate Bench have committed jurisdictional error in entertaining and deciding application filed by Respondent for fixation of standard rent. On the contrary, it is Mr. Shah's submission that MRC Act expressly provides for fixation of standard rent in respect of every premises, which are let for one year or more, including the premises which are let after 1 October 1987 and that the Small Causes Court has rightly exercised jurisdiction in entertaining and deciding Respondent's application for fixation of standard rent. In fact, Mr. Shah goes a step further and contends that there is legislative determination/fixation of standard rent under Section 7(14)(b)(ii) of the MRC Act on par with the premises let on /or before 1 October 1987 and that therefore the standard rent in respect of the premises let after 1 October 1987 will have to be decided based on the rent

contractually agreed between the parties, subject to the increase as contemplated under Section 11 of the M.R.C. Act.

41) Having broadly formulated the points for consideration, as well as, the respective pleas raised by the rival parties, it is now time to take up each point for consideration and answer the same. Before doing so, it is necessary to take quick stock of brief legislative history of rent legislation in State of Maharashtra.

F.1 LEGISLATIVE HISTORY AND OVERVIEW OF RENT LEGISLATIONS IN MAHARASHTRA

42) The Bombay Rent Act was enacted in the year 1947, which *inter-alia* provided for fixation of standard rent in respect of the premises and defined the term '*standard rent*' under Sub Section (10) of Section 5 as under:

> (10)"**standard rent**" in relation to any premises means-
>
> (a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or
>
> (b) when the Standard rent is not so fixed, subject to the provisions of section 11,-
>
> (i) the rent at which the premises were let on the first day of September 1940, or
>
> (ii)where they were not let on the first day of September 1940, the rent at which they were last let before that day, or
>
> (iii)where they were first let after the first day of September 1940, the rent at which they were first let, or
>
> (iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1-A) of section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the amount equivalent to the amount of net return of fifteen per cent, on the investment in the land and building and all the outgoings in respect of such premises; or
>
> (iv) on any of the cases specified in section 11, the rent fixed by the Court;

43) Sub-clause (a) of Section 5(10) of Bombay Rent Act provided that the rent fixed by the Court or Controller under Bombay Rent Restriction Act, 1939 or The Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1944 would be the standard rent. Sub-clause (b) of Section 5(10) dealt with a situation where the rent is not fixed in respect of any premises by Court or Controller under sub-clause (a) and specified the day of '*1 September 1940*' as the cutoff date for determining standard rent of premises let 'on', 'before' and 'after' that date. This is how Sub-clause (b) of Section 5 (10) dealt with three eventualities depending on the date of letting of premises for defining the standard rent applicable to such premises. It provided that the standard rent would be the rent at which the premises were let 'on' the first day of September 1940. If the premises were let 'before' the first day of September 1940, the rent at which they were last let before 1 September 1940, became the standard rent. To illustrate, if the premises are let in the year 1925 at monthly rent of Rs.50/-, and by 1 January 1939, the rent had risen to Rs.75/-, the standard rent in respect of the said premises became Rs.75/-. The third eventuality was where the premises were let 'after' 1 September 1940 in which case, the rent at which they are first let, became the standard rent. To illustrate, if the premises are let in the year 1951 at the monthly rent of Rs.100/-, the standard rent in respect of the said premises was statutorily fixed at Rs.100/-. The fourth eventuality dealt with in sub-clause (b) of Section 5(10) of the Bombay Rent Act was where the rent is fixed by the Court under Section 11, such rent becomes the standard rent.

44) Though the Bombay Rent Act was enacted in the year 1947, it appears that the same came into effect w.e.f. 13 February

1938 and it specified the date of '1 September 1940' for the purpose of defining the term '*standard rent*' based on the timing at which the letting occurred. Thus, the Bombay Rent Act defined the term '*standard rent*' in relation to premises let 'before' 1 September 1940, let 'on' 1 September 1940 and let 'after' 1 September 1940. The Bombay Rent Act thus virtually covered all tenancies to which the Act applied and did not leave any tenancy (based on date of letting) from its application *qua* provision for fixation of standard rent.

45) Thus, under Section 5(10)(b)(iii) of the Bombay Rent Act, the rent at which the premises were first let 'after' 1 September 1940 was frozen/fixed as standard rent. It appears that paragraph (iii-a) came to be inserted under Section 5(10)(b) of the Bombay Rent Act by the Amending Act of 1987 as under:

> (iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1-A) of section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the amount equivalent to the amount of net return of fifteen per cent, on the investment in the land and building and all the outgoings in respect of such premises; or

46) Since Section 5(10)(b)(iii-a) made reference to sub-section (1-A) of Section 4, it would be necessary to reproduce the said provision, which was also introduced by the Amending Act of 1987 :

> **4. Exemption**
>
> *(1-A)* On or from such date as the State Government may, by notification in the Official Gazette, appoint, in the areas to which the provisions of Part-II apply under Section 6 to premises let or given on license for any of the purposed referred to in that section, the provisions relating to standard rent and permitted increases shall, notwithstanding anything contained in this Act, not apply for a period of five years to any premises the construction or reconstruction of which if completed on or after such date.

47) It appears that the State Government appointed '1 October 1987' as the date for application of provisions of Section 4(1-A) of the Bombay Rent Act. Thus, the provisions of standard rent and permitted increases was withdrawn in respect of premises located in buildings constructed or reconstructed after 1 October 1987. As per paragraph (iii-a) in sub-clause (b) of Section 5(10) of the Bombay Rent Act, standard rent could be fixed in respect of such premises in buildings constructed or reconstructed after 1 October 1987 after expiry of period of 5 years which was not to exceed 15% return on investment in land and building and all the outgoings.

48) It thus appears that after 1 October 1987, the Legislature made a significant departure from its earlier policy of freezing standard rent after 1 October 1987. This is clear from following statement of objects and reason appended to the Bill for 1987 Amendment Act:

> " The freezing of standard rent prevailing on the 1st September, 1940 has deprived the landlords of getting reasonable and adequate return to undertake maintenance and repairs to the old buildings. Despite the penal provisions in the Act for charging any premium from a tenant, such freezing of rent results in charging *'pugree*" or deposit or similar illicit payment which are widely prevalent. The construction of new tenements on rental basis has considerably ceased with the result that low and middle income groups are not getting premises on rent..... "

49) Thus combined effect of introduction of Sections 4(1-A) and 5(10)(b)(iii-a) in the Bombay Rent Act was such that while no standard rent could be fixed for first five years from the date of completion certificate of the building, rent upto 15% return on

investment in land and building could be demanded and fixed by the Court as standard rent.

50) Constitutional validity of Sections 5(10)(b), 11 and 12(3) of the Bombay Rent Act came to be challenged by landlords of different premises in Mumbai by filing Writ Petitions in this Court on the ground that the said provisions were *ultra vires* Articles 14, 19 and 21 of the Constitution of India and were consequentially void. The main ground of attack in the petitions filed by the landlords was with regard to the restrictions put by the said provisions on charge of rent, which with the passage of time had become arbitrary, discriminatory and unreasonable. This Court dismissed the Writ Petitions and accordingly the challenge was carried before the Supreme Court in ***Malpe Vishwanath Acharya*** (supra). The three Judge Bench of the Apex Court went into the issue of constitutional validity of Section 5(10)(b), Section 11(1) and Section 12(3) of the Bombay Rent Act. The Apex Court held that the provisions of the Bombay Rent Act relating to determination and fixation of standard rent could no longer be considered as reasonable. The Apex Court held in paras-22, 30, 31 and 32 as under:

> 22. The aforesaid illustration, which has not been seriously disputed, clearly brings out the arbitrariness of the standard rent provisions contained in the Bombay Rent Act. It is true that the aforesaid illustration has references to the monthly rent of Rs. 100 as on 1-9-1940 and does not relate to the premises which are let out after the Act had come in force. **As far as Section 5 (10) is concerned the standard rent of the premises let out after 1-9-1940 is that rent at which the premises were first let. Even so with the rapid increase in the expenses for repair and other outgoings and the decreasing net amount of rent which remains with the landlord, clearly show that the non-provision in the Act for reasonable increase in the rent, with the passage of time, is leading to arbitrary results.** ……..

30. When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short-sighted parochial approach. Giving a greater than due emphasis to a vocal section society results not marly in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social Legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the alter of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency; giving under performance some over others.

31. **Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st march, 1998. The government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration.** The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good end compelling reasons in departing from the said Model Law. Mr. Nargolkar assured us that this Model law will be taken into consideration in the framing of the proposed new Rent Act.

32. **We, accordingly, dispose of these appeals without granting any immediate relief but we hold that the decision of the High Court upholding validity of the impugned provisions relating to standard rent was not correct. We however refrain from striking down the said provision as the existing Act elapses on 31.3.1998 and we hope that new Rent Control Act will be enacted with effect from 1st April, 1998 keeping in view the observations made in this judgment in so far as fixation of standard rent is concerned.** It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence. The respondents will pay the Costs.

(emphasis and underlining supplied)

51) Thus, in ***Malpe Vishwanath Acharya,*** the Apex Court was about to strike down the provisions of the Bombay Rent Act relating to determination and fixation of standard rent, but stopped from doing so on account of the fact that the extended period of the Bombay Rent Act was to come to end on 31 March 1998 and the State Government was mulling enactment of new Rent Act. The Apex Court, therefore left it to the wisdom of the Legislature to frame a just and fair law keeping in view the interest of all concerned. The Apex Court, therefore though did not grant any relief to the Appellants before it, did not uphold the validity of the impugned provisions of the Bombay Rent Act relating to standard rent. The Apex Court, however directed that any further extension of the then existing provisions of the Bombay Rent Act without bringing them in line with the views expressed in the judgment, would be invalid as being arbitrary and violative of the provisions of the Constitution.

52) It appears that as on the date of delivery of the judgment in ***Malpe Vishwanath Acharya,*** the Maharashtra Legislature Secretariat had already prepared and introduced a Bill for enactment of new Rent Act and had introduced the same in the Maharashtra Legislative Council on 27 July 1993. The same was also published in Maharashtra Government Gazette on 27 July 1993. By the Bill, the Maharashtra Rent Control Act was proposed to be enacted. It would be necessary to consider the definition of the term '*standard rent*' in Section 7(12) of the Bill which read thus:

(12) "standard rent', in relation to any premises means,-

(a)(i) where the standard rent is fixed by the court or, as the case may be, the Controller under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, such rent; or

(ii) where the fair rent is fixed by the Controller under the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946, such rent; or

(iii) where the fair rent is fixed by the Controller under the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, such rent; or

(b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8,-

(i) the rent at which the premises were let on the 1st day of October 1987; or

(ii) where the premises were not let on the 1st day of October 1987, the rent at which they were last let before that day, or

(iii) where the premises let after the 1st day of October 1987, the rent at which they were first let, or

(c) notwithstanding anything contained in paragraph (iii) of clause (b) the rent of the premises referred to in section 6 shall, on the expiration of the period of 40 years mentioned in that section, not exceed the amount equivalent to the amount of net return of fifteen per cent. per annum on the investment in the land and building and all the outgoings in respect of such premises, or

(d) in any of the case specified in section 8, the rent fixed by the court;

53) Thus, it appears that in the Bill, the specified date was fixed as '1 October 1987' and as was done under Section 5(10) of the Bombay Rent Act, the proposed Act provided for fixation of standard rent in respect of the premises let 'before', 'on' and 'after' 1 October 1987. Thus, there was a specific provision under paragraph (iii) of Section 7(12)(b) of the proposed Act to define '*standard rent*' in respect of the premises let after 1 October 1987 and it was proposed that the rent at which the premises were first let after 1

October 1987 was to become standard rent. Under clause (c) however it was proposed that after expiry of period of 40 years, the rent could be increased upto the cap of 15% return on investment in land and building.

54) After delivery of the judgment in ***Malpe Vishwanath Acharya,*** particularly the observations made by the Apex Court in para-32 of the judgment about provision for fixation of standard rent contrary to the views expressed by it in the judgment being declared arbitrary and violative of Article 14 of the Constitution, it appears that a Joint Committee was constituted to submit a report on the L.C. Bill No.VI of 1993. The Committee took note of the judgment of the Apex Court dated 19 December 1997 in ***Malpe Vishwanath Acharya*** and recommended in para-18 of its report as under:

> 18. In the light of observations and directions of the Supreme Court, comparative study of the existing Act and the provisions contained in the Model Rent Act, deliberations and consultations with various Associations of Tenants and Landlords all over Maharashtra, the Committee feels that the escalation of rent as structured in the Model Rent Control legislation cannot be regarded as a fair and just solution to the problem of acute shortage of accommodation especially in the cities of Mumbai, Pune, etc. The Committee further felt that the effect of these escalation would increase the burden of the protected tenants/occupiers astronomically and the rent itself would become more than 22 times. **The Committee therefore unanimously decided to retain the interim increase in the rent to the extent of 5 per cent of the current rent for a period of one year to the premises let before the first day of October, 1987 as provided by recent amendment but decided to reduce it to 4 per cent per annum on the total amount of rent, thereafter.**
>
> *(emphasis supplied)*

55) Thus, the Joint Committee suggested a via media and recommended that there should be interim increase in the rent to the

extent of 5% of the current rent for a period of one year to the premises let before 1 October 1987 but the same should be reduced to 4% p.a. on the total amount of rent thereafter.

56) So far as provisions relating to standard rent in Clause (6) of the proposed Bill, whereby an exemption was proposed from applicability of standard rent for a period of 40 years in respect of the buildings, construction or reconstruction of which was completed on/or before 1 October 1987, the Committee recommended as under:

> This denotes that after a period of 40 years from the first day of October, 1987, the provisions relating to standard rent and permitted increases shall again apply to these premises. The Committee carefully considered this clause and after deliberation, came to the conclusion that the exemption from application of the provisions relating to standard rent and permitted increases should not be temporary or for a limited period only. **Though under the existing section 4(1A) this exemption is for a period of five years from the first day of October, 1987, the tenancies created for the first time after this date should be exempted from the provisions of the standard rent and permitted increases permanently.** This will unlock a substantial stock of housing premises which the owners are not willing to give on rental basis for the fear of the standard rent provisions. The Committee therefore decided to remove the proposed forty years restriction from this Clause. The Committee also felt that the premises which are constructed or reconstructed in any housing scheme, undertaken by the Government or the Maharashtra Housing and Area Development Authority or by any of its boards established under Section 18 of the Maharashtra Housing and Area Development Act, 1976 or in any housing scheme undertaken by any person in pursuance of any exemption or sanction granted by the State Government under the provisions of Section 20 or 21 of the Urban Land (Ceiling and Regulation) Act, 1976 for sale thereof to persons belonging to economically weaker sections of the people and to whom such premises are sold should not be excluded from the application of the provisions relating to standard rent and permitted increases. This clause has, therefore, been suitably amended.
>
> *(emphasis supplied)*

57) Thus, the Committee recommended that in respect of tenancies created for the first time after 1 October 1987, they should be exempted from the provisions of standard rent and permitted increases 'permanently' for unlocking substantial stock of housing premises, where owners were not willing to give premises on rental basis for the fear of standard rent provisions.

58) The Joint Committee thus recommended that in respect of tenancies created prior to 1 October 1987, there should be an increase of 5% in the rent fixed prior to 1 October 1987 and thereafter there should be an increase at the rate of 4% p.a. in the rent after 1 October 1987. So far as the premises let after 1 October 1987 were concerned, the Committee took note of the fact that the landlords were not willing to give premises on rental basis out of fear of provisions of standard rent and therefore it recommended deletion of provision for continuation of provision for fixation of standard rent in respect of the premises let after 1 October 1987 for 40 years and recommended that such premises should be exempted from the provisions of standard rent and permitted increases 'permanently'.

59) The Joint Committee also made various other recommendations and considering the limited scope of challenge involved in the present applications, it is not necessary to deal with the said recommendations.

60) Based on the recommendations of the Joint Committee, the legislature enacted Maharashtra Rent Control Act,

1999. Section 7(14) of the MRC Act defines the term 'standard rent' as under:

> (14) "standard rent', in relation to any premises means,-
>
> (a) where the standard rent is fixed by the Court or, as the case may be, the Controller under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946, or the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, such rent *plus* an increase of 5 per cent, in the rent so fixed; or
>
> (b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8,-
>
> (i) the rent at which the premises were let on the 1st day of October 1987; or
>
> (ii) where the premises were not let on the 1st day of October 1987 or the rent at which they were last let before that day, *plus* an increase of 5 per cent in the rent of the premises let before the 1st day of October 1987, or
>
> (c) in any of the case specified in section 8, the rent fixed by the court;

61) Section 8 of the Maharashtra Rent Act provides for fixation of standard rent and permitted increases by the Court and provides thus:

> **8. Court may fix standard rent and permitted increases in certain cases.**
> (1) Subject to the provisions of section 9 in any of the following cases, the court may, upon an application made to it for the purpose, or in any suit or proceedings, fix the standard rent at such, amount as, having regard to the provisions of this Act and the circumstances of the case, the court, deems just,-
> (a) where the court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in paragraphs (i) and (ii) of sub-clause (b) of clause (14) of section 7; or

(b) where by reasons of the premises having been let at one time as a whole or in parts and at another time, in parts or as a whole, or for any other reasons; or

(c) where any premises have been or are let rent-free or, at a nominal rent; or for some consideration in addition to rent; or

(d) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

(2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increase, the court may determine such amount.

(3) If any application for fixing the standard rent or for determining the permitted increase is made by a tenant,-

(a) the court shall forthwith specify the amount of rent, or permitted increase which are to be deposited in court by the tenant, and make an order directing the tenant to deposit such amount in court or, at the option of the tenant, make an order to pay to the landlord such amount thereof as the court may specify pending the final decision of the application. A copy of the order shall be served upon the landlord;

(b) out of any amount deposited in the court under clause (a), the court may make an order for payment of such reasonable sum to the landlord towards payment of the rent or increases due to him as it thinks fit;

(c) if the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

(4) (a) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession, of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may, and in any other case, if it appears to the court that it is just and proper to make such an order, the court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonable due to the landlord, or at the option of the tenant, an order directing him to pay to the landlord such amount thereof as the court may specify.

(b) The court may further make an order directing the tenant to deposit in court periodically such amount as it considers proper as interim standard rent, or at the option of the tenant, an order to pay to the landlord, such amount thereof as the court may specify, during the pendency of the suit;

(c) The court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the court, which leave may be granted subject to such terms and conditions as the court may specify.

> (5) No appeal shall lie from any order of the court under sub-sections (3) and (4).
>
> (6) An application under this section may be made jointly by all or any of the tenants interested in respect of the premises situated in the same building.

62) Having considered the legislative history of provisions relating to standard rent fixation under the Bombay Rent Act and MRC Act, I now proceed to answer the broad questions formulated above.

F.2 DATE OF LETTING OF SUIT PREMISES: WHETHER 'BEFORE' OR 'AFTER' 1 OCTOBER 1987

63) Before proceeding further to decide the questions formulated, it would be necessary to quickly deal with Mr. Shah's submission that the application premises are required to be construed to have been let before 1 October 1987. He has raised this submission by referring to various provisions of the MRC Act which according to Mr. Shah apply to 'premises let' and not 'let to a person*'*. He has accordingly submitted that the date on which the premises are first let would be relevant for the purpose of application of sub-clause (b) of Section 7(14) of the MRC Act. I am unable to agree with these submissions. The date of letting of premises for the purpose of application of Section 7(14) will have to be necessarily with relation to a particular tenant. This is how the rent fixed at the time of letting of the premises to a tenant becomes relevant for fixation of standard rent. To illustrate, in respect of the premises let 'on' 1 October 1987, the rent payable by the tenant to the landlord on that date becomes the standard rent. In such event, if the premises were let to another

tenant before 1 October 1987, the rent payable by the previous tenant is irrelevant for the purposes of Section 7(14)(b). Similarly, in respect of the premises let before 1 October 1987, the rent fixed immediately before 1 October 1987 plus 5% increment, becomes the standard rent. Thus, if the premises are let in 1980 at the rate of Rs.500/- and by 1986, the rent had increased to Rs.600/-, the standard rent in respect of the premises would be Rs.600/- plus 5% increment. If the submission of Mr. Shah is accepted, the same would mean that if the very same premises were let to another tenant in the year 1960 at the rent of Rs.50/-, the said figure of Rs. 50 plus 5% increment will have to be then taken into consideration for the purpose of fixation of standard rent. This is why the submission of Mr. Shah deserves summary rejection. It is therefore held that the suit premises have been let to Respondent after 1 October 1987.

F. 3 POST 1987 TENANCIES INCLUDED OR EXCLUDED FROM SECTION 7(14)(b)(ii) OF MRC ACT?

64) On the basis of recommendations of the Joint Committee for 'permanent' exemption of provisions of standard rent and permitted increases to tenancies created for the first time after 1 October 1987 from the provisions of standard rent and permitted increases, Mr. Seervai has contended that no standard rent can be fixed in respect of those premises. The Bill contained provision for extension of period of 5 years provided in Section 4(1A) of BRC Act for freezing of standard rent provisions for buildings constructed after 1 October 1987 to 40 years. The Committee, after noting the judgment in ***Malpe Vishwanath Acharya*** recommend that "*Though under the existing section 4(1A) this exemption is for a period of 5*

years from the first day of October, 1987, the tenancies created for the first time after this date should be exempted from the provisions of the standard rent and permitted increases permanently". It is on the basis of this recommendation of the Committee coupled with findings in ***Malpe Vishwanath Acharya*** that Mr. Seervai contends that standard rent in respect of premises let after 1 October 1987 cannot be fixed. The submission appears attractive in first blush, but stems through myopic and skewed reading of the entire scheme of MRC Act. To my mind, upon holistic reading of all provisions of the MRC Act it does not appear that the Act has done away with provision for fixation of standard rent in respect of the premises let after 1 October 1987. This is explained in paragraphs to follow.

65) The comparative position of definitions of the term '*standard rent*' under Section 5(10) of the Bombay Rent Act and Section 7(14) of the MRC Act would indicate that paragraph (iii) of sub-clause (b) of Section 5(10) of the Bombay Rent Act is not reflected in sub-clause (b) of Section 7(14) of the M.R.C. Act. Similarly, paragraph (iv) of sub-clause (b) of Section 5(10) of the Bombay Rent Act is now incorporated as a separate sub-clause (c) under Section 7(14) of the MRC Act. Thus, sub-clause (b) of Section 7(14) of the MRC Act now contains only paragraphs (i) and (ii). For comparative purposes, sub-clauses (b) of Section 5(10) of Bombay Rent Act and of Section 7(14) of the MRC Act are reproduced in the following table:

Sub-clause (b) of Section 5(10) of the Bombay Rent Act	Sub-clause (b) of Section 7(14) of the MRC Act
(b) when the Standard rent is not so fixed, subject to the provisions of	(b) where the standard rent or fair rent is not so fixed, then subject to the

section 11,- (i) the rent at which the premises were let on the first day of September 1940, or (ii)where they were not let on the first day of September 1940, the rent at which they were last let before that day, or (iii)where they were first let after the first day of September 1940, the rent at which they were first let, or	provisions of sections 6 and 8,- (i) the rent at which the premises were let on the 1st day of October 1987; or (ii) where the premises were not let on the 1st day of October 1987 or the rent at which they were last let before that day, *plus* an increase of 5 per cent in the rent of the premises let before the 1st day of October 1987, or

66) Paragraph (i) of sub-clause (b) of clause (14) of Section 7 of MRC Act provides that standard rent in respect of the premises let 'on' 1 October 1987 would be the rent at which the premises are let. Paragraph (ii) of Section 7(14)(b) provides that when premises were not let on the first day of October 1987, the rent at which they are last let before 1 October 1987 plus increase of 5% in the rent of the premises let before first day of October 1987 becomes the standard rent.

67) Before further discussing the comparative position of definitions of the terms '*standard rent*' in both the enactments, it would be first necessary to quickly deal with the submission of Mr. Shah that the word '*means*' appearing under Section 7(14) does not make the definition of term '*standard rent*' exhaustive. He has relied upon judgment of the Apex Court in ***Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. (Southco)*** (supra) in which it has held in para-45 as under :

> 45.The expression 'means' used in the definition clause of Section 126 of the 2003 Act can have different connotations depending on the

> context in which such expression is used. In terms of Black's Law Dictionary (Eighth Edition) page 1001, 'mean' is – 'of or relating to an intermediate point between two points or extremes' and 'meaning' would be 'the sense of anything, but esp. of words; that which is conveyed'. The word ordinarily includes a mistaken but reasonable understanding of a communication. 'Means' by itself is a restrictive term and when used with the word 'includes', it is construed as exhaustive. In those circumstances, a definition using the term 'means' is a statement of literal connotation of a term and the courts have interpreted 'means and includes' as an expression defining the section exhaustively. It is to be kept in - mind that while determining whether a provision is exhaustive or merely illustrative, this will have to depend upon the language of the Section, scheme of the Act, the object of the Legislature and its intent.

68) On the contrary, Mr. Seervai has contended that whenever definition of the word begins with 'means', it is indicative of the fact that the meaning of the word has been restricted and that the word does not mean anything else but what has been indicated in the definition. He has relied upon the Apex Court judgment in ***Firoze N. Dotivala*** (supra) in which it has held in paras-13 and 14 as under:

> 13. The Legislature, while defining a word or a term, is fully competent even to assign an artificial meaning to the word *(see Kishan Lal v. State of Rajasthan*). It can also restrict the meaning of a word by defining it in that manner. Generally, when definition of a word begins with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself. There can also be extensive definitions when the definition starts with "includes". This Court, in the case reported in *P. Kasilingam and Ors. v. P.S.G. College of Technology*, observed at page 1400:
> "A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'mean and includes' are used. The use of the word 'means' indicates that definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition." (See *Gough v. Gough,* and *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court*." A reference may also be made to *Inland Revenue Commissioner v. Joiner, (1975) 3 All England Law Reports 1050 at page 1061.*
>
> 14. Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in

> a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined. No such compelling reason has been indicated to us by reason of which some more ingredients may be read in the term "paying guest", other than which simply flow from the definition as provided. In the case in hand the definition of the word 'paying guest' begins with "it means". It is to be read and understood in the manner defined. There would be no justification to expand or to further restrict it by including or super-imposing some ingredients or elements which otherwise do not admit of such inclusion and to give a different colour and meaning to the defined word. A person answering the description of 'paying guest' in accordance with Section 5(6A) of the Act is to be treated as such without requiring fulfilment of any other condition.

69) I am unable to accept the submission of Mr. Shah that use of the word 'means' in the opening portion of the definition of the term 'standard rent' under Section 7(14) of the M.R.C. Act would mean that the definition is not exhaustive or that it can encompass anything more than what is included in various clauses and paragraphs of the definition. The definition of the term 'standard rent' under Section 7(14), to my mind, appears to be exhaustive and the term 'standard rent' does not include anything except what is specifically provided for in the definition.

70) Reverting to the comparative position of definition of the term '*standard rent*' in both enactments, Mr. Seervai and Mr. Shah differ on the position whether paragraph (ii) of Section 7(14)(b) of MRC Act include post 1987 tenancies or not. According to Mr. Seervai, paragraph (ii) of Section 7(14)(b) deals with only those tenancies created prior to 1 October 1987, whereas Mr. Shah would urge that the said paragraph (ii) covers tenancies created before and after 1 October 1987. According to Mr. Shah, use of the word '*or*' in

Section 7(14)(b)(ii) would clearly indicate that paragraphs (ii) and (iii) of Section 5(10)(b) of Bombay Rent Act are fused/coalesced into paragraph (ii) of Section 7(14)(b) of the MRC Act. I am unable to agree with this submission of Mr. Shah and I find that use of the word '*or*' appearing in paragraph (ii) of sub-clause (b) of Section 7(14) of the MRC Act is a drafting error. This is because if the said paragraph (ii) is to be read alongwith the word '*or*' appearing therein between '*the date of 1 October 1987*' and the words '*the rent at which they were last let*', the same results in an absurd situation. On the contrary, if the word '*or*' appearing in paragraph (ii) is omitted, the same makes meaningful reading of the said clause. In any event, even if the word '*or*' is retained in paragraph (ii), the same does not convey the meaning which Mr. Shah wants this Court to derive out of the said paragraph (ii). Even if the word '*or*' is retained and read into paragraph (ii), the same does not mean that paragraph (ii) is applicable in respect of tenancies created before and after 1 October 1987. On the contrary, retention of the word '*or*' in paragraph (ii) makes absurd reading of the said paragraph and therefore the correct course of action to be adopted is to omit the said word 'or'. If the word *'or*' is omitted, paragraph (ii) of sub-clause (b) of Section 7(14) becomes meaningful. This is clear from following comparative chart:

Paragraph (ii) of sub-clause (b) of Section 7(14) with the word 'or'	Paragraph (ii) of sub-clause (b) of Section 7(14) if the word 'or' is omitted

(ii) where the premises were not let on the 1st day of October 1987 or the rent at which they were last let before that day, *plus* an increase of 5 per cent in the rent of the premises let before the 1st day of October 1987,	(ii) where the premises were not let on the 1st day of October 1987 the rent at which they were last let before that day, *plus* an increase of 5 per cent in the rent of the premises let before the 1st day of October 1987,

71) In my view, therefore use of the word '*or*' in paragraph (ii) of Section 7(14)(b) of MRC Act is a drafting error and therefore it is appropriate that the said word is omitted from paragraph (ii). There are numerous decisions of the Apex Court, which empower Courts to add or omit words when the plain and normal meaning of the words or grammatical construction thereof leads to confusion, absurdity or repugnancy with the other provisions. In ***Afcons Infrastructure Limited*** (supra), the Apex Court has discussed the general rule of interpretation of statutes in para-20 by observing that when the words of a statute are clear and unambiguous, the provision should be given its plain and normal meaning without adding or rejecting any words. Mr. Shah has relied upon judgments in ***Union of India V/s. Rajiv Kumar*** (supra) and ***Commissioner of Customs (Import), Mumbai*** (supra) in support of his contention about impermissibility to add or omit anything into the statutory provision or rewrite the provision which is plain and unambiguous. There cannot be any dispute to this proposition and in fact this principle is discussed by the Apex Court in ***Afcons Infrastructure Ltd.*** in para-20. It is therefore not necessary to reproduce the findings of the Apex Court in the said two judgments so as not to burden this otherwise lengthy judgment any further. However in para-21 onwards of its judgment in ***Afcons Infrastructure Ltd***, the Apex

Court has discussed the exception to the above general rule and has held as under:

> 21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the Statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the Legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance of a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.
>
> **21.1.** Maxwell on *Interpretation of Statutes* (12th Edn., page 228), under the caption `modification of the language to meet the intention' in the chapter dealing with `Exceptional Construction' states the position succinctly:
>
> > "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."
>
> This Court in *Tirath Singh v. Bachittar Singh* approved and adopted the said approach.

21.2. In *Shamrao V. Parulekar v. District Magistrate, Thana*, this Court reiterated the principle from *Maxwell*: (AIR p.372, para 12)

> "12. .... if one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

21.3. In *Molar Mal v. Kay Iron Works (P) Ltd.*, this Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the Legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. This Court observed : (SCC p.295, para 12)

"That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning."

21.4. In *Mangin v. IRC*, the Privy Council held (AC p.746 E)

> "12. .... The object of the construction of a statute, be it to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If, therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted."

21.5. A classic example of correcting an error committed by the draftsman in legislative drafting is the substitution of the words `defendant's witnesses' by this Court for the words `plaintiff's witnesses' occurring in Order VII Rule 14(4) of the Code, in *Salem Bar (II)*. We extract below the relevant portion of the said decision :

> "7. …. Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by the defendant. Under Order 8 Rule 1A(4) a document not produced by defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with

> a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order 7 Rule (4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words 'plaintiff's witnesses, would be read as 'defendant's witnesses' in Order 7 Rule 4. We, however, hope that the mistake would be expeditiously corrected by the legislature."

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the Statute, in his treatise *Principles of Statutory Interpretation* (12th Edn., 2010, Lexis Nexis, p.144) from the decision of the House of Lords in *Stock v. Frank Jones (Tipton) Ltd.* : (WLR p.237 F-G)

> ".....a court would only be justified in departing from the plain words of the statute when it is satisfied that (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly and could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such a legislative objective; and (4) the language of the statute is susceptible of the modification required to obviate the anomaly."

72) More recently, in ***Bhasker*** (supra), the Apex Court has dealt with a situation where Order 21 Rule 95 of the Civil Procedure Code, 1908 mandates filing of application for possession of auctioned property only after issuance of Sale Certificate under Order 21 Rule 94, whereas starting point for making such application under Order 21 Rule 95 in accordance with Article 134 of the Limitation Act, is the date on which the sale is made absolute as per Order 21 Rule 95. The Apex Court noted this apparent inconsistency in the provisions of the Code and the Limitation Act and held that for avoiding the inconsistency between Order 21 Rule 95 of the Code and Article 134 of the Limitation Act, the starting point for making an application for seeking possession of auctioned property under Article 134 of the Limitation Act is required to be read into Article

135 as the date on which the Certificate is issued to the purchaser. The Apex Court relied upon decision of the House of Lords in ***Inco Europe Limited Versus. First Choice Distribution***[14] and held in paras-20, 21 and 23 as under:

> **20.** As a normal rule, while interpreting the statute, the Court will not add words or omit words or substitute words. However, there is a wellrecognized exception to this rule which is found in a decision of the House of Lords in the case of *Inco Europe Limited v. First Choice Distribution*, wherein the Court held thus: (WLR, p.592)
>
> > "… ***The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words.*** Some notable instances are given in Professor Sir Rupert Cross's admirable opuscule, *Statutory Interpretation*, 3rd Edn.(1995), pp.93105. He comments at p.103:
> >
> > > "In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role."
>
> This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So, the courts exercise considerable caution before adding or omitting or substituting words. ***Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance.*** Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation."
>
> **21.** The principle laid down in the said decision was reiterated by this Court in the case of ***Surjit Singh Kalra v. Union of India***. In para 19, this Court held thus:

[14] (2000) 1 WLR 586.

> "19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (*Craies Statute Law, 7th Edn., p. 109*). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar*, SCC pp. 52425 where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: *Sirajul Haq Khan v. Sunni Central Board of Waqf,* AIR p.204, para 16 : SCR p.1299)

> **23.** Prima facie, it appears to us that the only way of avoiding inconsistency between Rule 95 of Order 21 of CPC and Article 134 of the Limitation Act is to read into Article 134 that the starting point for making an application under Rule 95 of Order 21 of CPC is the date on which a certificate recording confirmation of auction sale is actually issued to the purchaser. Such interpretation will satisfy the three tests laid down in the case of *Inco Europe Limited*. Therefore, in our considered view, the decision of the Coordinate Bench in the case of *Pattam Khader Khan* and especially, what is held in paragraph 11, requires reconsideration by the larger Bench. In our considered view, the larger Bench will have to decide the issue relating to the starting point of limitation for making an application under Rule 95 of Order 21 of CPC.
>
> *(emphasis added)*

73) Following the judgment in ***Afcons Infrastructure Limited*** and ***Bhasker*** (supra), in my view, the word '*or*' appearing in paragraphs (ii) of sub-clause (b) of Clause (14) of Section 7 of the MRC Act between the words *'on the 1st day of October 1987'* and '*rent at which they were last let*' is required to be omitted for the purpose of making meaningful reading of the said paragraph.

74) I am therefore of the view that on plain reading of definition of the term '*standard rent*', sub-clause (b) of Section 7(14) does not cover premises let 'after' 1 October 1987. If there is confusion on this aspect, the same is made crystal clear by the recommendations of the Joint Committee read with L.C. Bill No.VI of 1993. This is clear from the discussion in the paragraph to follow.

75) The definition of the term *'standard rent'* in the Bill under Section 7(12) thereof has already been reproduced above. In the said definition, sub-clause (b) contained three paragraphs (i), (ii) and (iii). Paragraph (iii) applied to premises let 'after' 1 October 1987. However, the said paragraph (iii) is found missing in definition of the term *'standard rent'* under Section 7(14)(b) of the MRC Act. This is clear from the following comparative table:

Definition of the term 'standard rent' under Section 7(12)(b) in L. C. Bill No. VI of 1993	**Definition of the term 'standard rent' under Section 7(14)(b) in the MRC Act**
(12) "standard rent', in relation to any premises means,-	(14) "standard rent', in relation to any premises means,-
(a) ….	(a) ….
(b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8,-	(b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8,-
(i) the rent at which the premises were let on the 1st day of October 1987; or	(i) the rent at which the premises were let on the 1st day of October 1987; or
(ii) where the premises were not let on the 1st day of October 1987, the rent at which they were last let before that day, or	(ii) where the premises were not let on the 1st day of October 1987 ***or*** the rent at which they were last let before that day, *plus* an increase of 5 per cent in the rent of the premises let before the 1st day of October 1987,
(iii) where the premises let after the 1st day of October 1987, the rent at which they were first let, or	(word *or* to be omitted as discussed above)

76) The omission of paragraph (iii) from sub-clause (b) of clause (14) of Section 7 is thus conscious, which is clear from the recommendations of the Joint Committee reproduced above.

77) The Joint Committee took note of the observations made by the Apex Court in ***Malpe Vishwanath Acharya*** and thereafter recommended that sub-clause (c) of the definition of the term *'standard rent'* under Section 7(12) of the Bill providing for 40-year holiday on increase in the standard rent should be deleted and the tenancies created for the first time after 1 October 1987 should be freed from the provisions of '*standard rent*' and permitted increases. This is the reason why paragraph (iii) of sub-clause (b) as well as sub-clause (c) under Section 7(12) of the Bill came to be deleted while enacting the MRC Act. Therefore, when there is conscious deletion of sub-clause (iii) of the Bill in Section 7(14)(b) of MRC Act, it is incorrect for Mr. Shah to contend that the Legislature has retained even the tenancies created 'after' 1 October 1987 by fusing or coalesced paragraphs (ii) and (iii) of the Bill into paragraph (ii) of the Act. In my view, there is a conscious deletion of paragraph (iii) of sub-clause (b) as well as sub-clause (c) from the Bill on account of specific recommendation of the Joint Committee.

78) Mr. Shah has submitted that since the words of the Statute are plain and unambiguous, it is impermissible to take external aid in the form of Bill, Statutory Committee Reports etc. Mr. Seervai has relied upon Constitution Bench Judgment in ***Kalpana Mehta*** (supra) in which the issue before the Apex Court was

whether aid of Parliamentary Standing Committee Report can be taken for the purpose of interpretation of statutory provision wherever it is so necessary. In the judgment authored by the then Chief Justice *Deepak Mishra*, it is held as under:

> **159.** In view of the aforesaid analysis, we answer the referred questions in the following manner:-
>
> **159.1. Parliamentary Standing Committee report can be taken aid of for the purpose of interpretation of a statutory provision wherever it is so necessary and also it can be taken note of as existence of a historical fact.**
>
> **159.2.** Judicial notice can be taken of the Parliamentary Standing Committee report under Section 57(4) of the Evidence Act and it is admissible under Section 74 of the said Act.

79) In the concurring judgment of His Lordship *Justice D. Y. Chandrachud,* it is held as under:

> **259.** The contents of the report of a parliamentary committee may have a bearing on diverse perspectives. It is necessary to elucidate them in order to determine whether, and if so to what extent, they can form the subject matter of consideration in the course of adjudication in a court. Some of these perspectives are enumerated below:
>
> **259.5.** The report may shed light on the purpose of a law, the social problem which the legislature had in view and the manner in which it was sought to be remedied.
>
> **260.** The use of parliamentary history as an aid to statutory construction is an area which poses the fewest problems. In understanding the true meaning of the words used by the legislature, the court may have regard to the reasons which have led to the enactment of the law, the problems which were sought to be remedied and the object and purpose of the law. For understanding this, the court may seek recourse to background parliamentary material associated with the framing of the law.
>
> **261.** In his seminal work on the *Interpretation of Statutes*, Justice G P Singh notes that the traditional rule of exclusion in English Courts has over a period of time been departed from in India as well to permit the court to have access to the historical background in which the law was enacted. Justice G P Singh notes:

> "The Supreme Court, speaking generally, to begin with, enunciated the rule of exclusion of Parliamentary history in the way it was traditionally enunciated by the English Courts, but on many an occasion, the court used this aid in resolving questions of construction. The court has now veered to the view80 that legislative history within circumspect limits may be consulted by courts in resolving ambiguities. But the courts still sometimes, like the English courts, make a distinction between use of a material for finding the mischief dealt with by the Act and its use for finding the meaning of the Act. As submitted earlier this distinction is unrealistic and has now been abandoned by the House of Lords."
>
> **262.** Reports of parliamentary committees may contain a statement of position by government on matters of policy. There is no reason in principle to exclude recourse by a court to the report of the committee at least as a reflection of the fact that such a statement was made before the committee. Similarly, that a statement was made before the committee - as a historical fact - may be taken note of by the court in a situation where the making of the statement itself is not a contentious issue.
>
> **276.** In the circumstances, the reference is answered by holding that:
>
> **276.1.** As a matter of principle, there is no reason why reliance upon the report of a Parliamentary Standing Committee cannot be placed in proceedings under Article 32 or Article 136 of the Constitution.
>
> *(emphasis added)*

80) Thus, it is permissible to take aid of report of the Joint Committee in the present case to deal with submission of Mr. Shah that paragraph (ii) and (iii) of sub-clause (b) of Section 5(10) of the Bombay Rent Act are fused/coalesced into paragraph (ii) of Section 7(14)(b) of the MRC Act.

81) It is therefore held that tenancies created after 1 October 1987 are not covered by Section 7(14)(b)(ii) of the MRC Act.

F. 4 COURT'S JURISDICTION TO FIX STANDARD RENT IN RESPECT OF PREMISES LET AFTER 1 OCTOBER 1987

82) Having held that sub-clause (b) of Section 7(14) does not apply to tenancies created 'after' 1 October 1987, the next issue for consideration is whether there is any other provision under the MRC Act which permits or enables the court to fix standard rent in respect of such premises. Mr. Seervai has canvassed an extreme proposition that after enactment of the MRC Act, standard rent in respect of the premises let 'after' 1 October 1987 cannot be fixed and that no Court has jurisdiction to entertain such application. I am unable to agree with this submission of Mr. Seervai on account of presence of sub-clause (c) in definition of the term '*standard rent*' under Section 7(14) of the MRC Act. As observed above, sub-clause (a) of Section 7(14) deals with the situation where the standard rent is already fixed by the Court or Controller under various enactments. Sub-clause (b) of Section 7(14) deals with a situation where the standard rent is fixed by the Legislature in respect of the tenancies created 'on' 1 October 1987 or tenancies created 'before' 1 October 1987. As held above, sub-clause (b) of Section 7(14) does not deal with tenancies created 'after' 1 October 1987. This would essentially mean that the Legislature has not fixed standard rent payable in respect of the premises let after 1 October 1987. However, sub-clause (c) of Section 7(14) treats the rent fixed by the Court under Section 8 to be the standard rent. Clause (c) of Section 7(14) reads thus:

> (c) in any of the case specified in section 8, the rent fixed by the court;

83) Section 8 empowers the Court to fix standard rent and permitted increases in certain cases. Clause (a) of Section 8(1) deals with a situation covered by paragraphs (i) and (ii) of sub-clause (b) of Section 7(14), i.e. in respect of tenancies created 'on' or 'before' 1 October 1987. Clause (b) of Section 8(1) deals with tenancies created over the time in parts. Clause (c) deals with premises which have been let rent free or at nominal rent or for some consideration in addition to rent. Clause (d) deals with a situation where there is a dispute between the landlord and tenant regarding the amount of standard rent.

84) In my view, on combined reading of sub-clause (c) of Section 7(14) with sub-clause (d) of Section 8(1), it will have to be held that the Court has jurisdiction to fix standard rent in every case where there is a dispute between the landlord and a tenant about standard rent even in respect of the premises which are let 'after' 1 October 1987. Though Mr. Seervai has attempted to suggest that Clause (d) of Section 8(1) must be read in conjunction with or in linkage to Clause (a) thereof, in my view, clause (d) of Section 8(1), being an independent provision not referring to any timeline for creation of tenancy, it would apply to post 1987 tenancies. Thus, in respect of tenancies created 'on' or 'before' 1 October 1987, where the rent is statutorily fixed by paragraphs (i) and (ii) of sub-clause (b), if there is any dispute between landlord and tenant and there is no sufficient evidence to ascertain the rent, the Court can exercise jurisdiction under Section 8(1)(a) and determine the standard rent. Thus, dispute between the landlord and tenant about standard rent in respect of the premises let 'on' or 'before' 1 October 1987 would be covered by Section 8(1)(a). This would clearly indicate that Section

8(1)(d) covers situations other than the one covered by Section 8(1) (a) and would include cases where there is dispute between the landlord and tenant about standard rent in respect of the tenancies created after 1 October 1987.

85) In my view, there is a reason why Court's power to fix standard rent even in respect of premises let after 1 October 1987 must be recognised. Section 15 of the MRC Act grants protection to the tenant from eviction so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. Section 15 provides thus:

> **15. 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.
>
> (2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.
>
> (3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.
>
> (4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such

amount towards the payment of rent or permitted increases due to him as the court thinks fit.

86) Therefore if Mr. Seervai's contention that standard rent cannot be fixed for post 1987 tenancies or that the Court does not have jurisdiction to entertain applications for fixation of standard rent in respect of such tenancies is accepted, the landlord would demand a fanciful or exorbitant amount of rent from tenant and thereafter serve a notice under Section 15(2) for recovery of arrears of rent. To illustrate, if the rent in respect of the premises let after 1 October 1987, say on 1 January 1990, is contractually fixed at Rs.10,000/- per month and the landlord suddenly starts demanding rent of Rs. 1,00,000/- per month from 1 January 1995 and serves a notice to the tenant on 1 October 1996 demanding arrears of rent of Rs. 12,00,000/-. Upon inability of the tenant to pay such huge amount within 90 days of receipt of notice, the landlord would become entitled to file a suit for eviction under Section 15(2). If the tenant once again fails and is unable to deposit the arrears of rent, interest @ 15% p.a. and costs of the suit within 90 days of receipt of suit summons, the decree for eviction becomes guaranteed for the landlord. Thus, if Mr. Seervai's contention about impermissibility to fix standard rent in respect of the premises let after 1 October 1987 is accepted, the same would give license to landlords to demand astronomically high amount of rent solely for the purpose of ensuring eviction of the tenant under Section 15 of the MRC Act. On the contrary, if the provision for fixation of standard rent by the Court in respect of the tenancies created after 1 October 1987 is read within the meaning of Section 7(14)(c) and 8(1)(d) of the MRC Act, the same would enable the tenant to file an application for fixation of

standard rent and to save tenancy from being lost only on account of inability to pay/deposit astronomically high amount of rent demanded by the landlord. This is clear from provisions of sub-section (4) of Section 8 of MRC Act, under which the Court can fix standard rent in a suit for recovery of arrears of rent with possession if it appears to it that the demanded rent is excessive. Section 8(4) reads thus:

> (4) (a) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession, of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may, and in any other case, if it appears to the court that it is just and proper to make such an order, the court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonable due to the landlord, or at the option of the tenant, an order directing him to pay to the landlord such amount thereof as the court may specify.

87) Furthermore, if the Legislature desired that the provisions of standard rent fixation are not to be made applicable to post 1987 tenancies, it would have specifically excluded them so by incorporating them in Section 6 of MRC Act. Section 6 has been enacted specifically for exempting the provisions of standard rent fixation to certain tenancies and it provides thus:

> **6. Provisions with regard to standard rent not to apply to certain premises.**
>
> Notwithstanding anything contained in this Act, from the commencement of this Act, the provisions relating to standard rent and permitted increases shall not apply to any premises let or given on licence in a building, whether newly constructed or otherwise where such premises were not let or give on licence for a continuous period of one year:
>
> Provided that, nothing in this section shall apply to,-
>
> (a) the premises referred to in sections 20 and 21;

> (b) the premises which are constructed or reconstructed in any housing scheme, undertaken by Government or the Maharashtra Housing and Area Development Authority or by any of its Boards established under section 18 of the Maharashtra Housing and Area Development Act, 1976.

88) Similar to Section 6 of MRC Act, there was provision for exclusion of certain tenancies from standard rent fixation in Section 4 of the Bombay Rent Act and when the Legislature intended to exclude tenancies in respect of buildings constructed or reconstructed after 1 October 1987 for 5 years, it inserted sub-section (1A) in Section 4 as under:

> **4. Exemption**
>
> *(1-A)* On or from such date as the State Government may, by notification in the Official Gazette, appoint, in the areas to which the provisions of Part-II apply under Section 6 to premises let or given on license for any of the purposed referred to in that section, the provisions relating to standard rent and permitted increases shall, notwithstanding anything contained in this Act, not apply for a period of five years to any premises the construction or reconstruction of which if completed on or after such date.

89) Thus, if there was any legislative intention to exclude tenancies created after 1 October 1987 from standard rent fixation provisions, the Legislature would have included such tenancies in Section 6 of MRC Act, which is not consciously not done.

90) I am therefore of the considered view that the provision for fixation of standard rent by Court in respect of tenancies created after 1 October 1987, will have to be recognised as having been expressly provided for under the provisions of Section 7(14)(c) and Section 8(1)(d) of the MRC Act.

91) Thus, the correct reading of definition of the term '*standard rent*' under Section 7(14) together with Court's power to fix standard rent under Section 8 of the MRC Act would therefore mean the following:

(i) The Court can fix the standard rent in respect of all premises to which the provisions of MRC Act apply, which would include premises let after 1 October 1987 as well.

(ii) In respect of the premises let 'on' or 'before' 1 October 1987, the standard rent has been statutorily determined under the provisions of Section 7(14)(b) of the M.R.C. Act and therefore while resolving any dispute relating to standard rent between landlord and tenant under Section 8(1)(a) of the Act, the Court cannot exceed statutory limit prescribed under Section 7(14)(b) of the Act.

(iii) In respect of the premises let 'after' 1 October 1987, there is no statutory fixation of standard rent under the provisions of Section 7(14) of the MRC Act. Though Court can fix standard rent in respect of the premises let 'after' 1 October 1987, there is no guidance provided by the Act under the provisions of Section 7(14)(b). This is however subject to exception of tenancies created during gap period of 2 October 1987 and 30 March 2000, which is being discussed separately in latter portion of the judgment.

F.5 LANDLORD'S ENTITLEMENT TO DEMAND MARKET RENT IN ABSENCE OF STATUTORY FIXATION OF RENT FOR TENANCIES CREATED AFTER 1 OCTOBER 1987

92) Once it is held that there is no statutory fixation of standard rent under the provisions of Section 7(14) of the MRC Act for post 1987 tenancies, the next question is about the quantum of rent that the Court can fix under Section 8(1)(d) of the MRC Act in absence of any guidance or statutory prescription under Section 7(14)(b). Mr. Seervai would contend that it has to be the one which the landlord decides, and the Court must leave it to the market forces to decide as to what the reasonable market rent should be. However, Rent Control Legislation governs two areas viz. control of rent and protection of tenant from eviction. MRC Act is no exception to this general rule and the Act does seek to extend protection to tenants from eviction as long as he/she continues to pay the rent and observes the terms and conditions of tenancy. Landlord becomes entitled to seek recovery of possession of tenanted premises only if there is default in payment of rent or one of the grounds specified under Section 16 of the MRC Act are made out. As discussed above while deciding the issue of Court's jurisdiction to fix standard rent in respect of post 1987 tenancies, leaving determination of rent exclusively with landlord will result in eviction of tenant due to his/her inability to pay/deposit exorbitantly high amount of rent. The Court, in my view, therefore will have to keep in mind various factors while fixing the standard rent in respect of post 1987 tenancies. Here a quick reference to the 'economic package' discussed by the Apex Court in ***Leelabai Gajanan Pansare*** (supra) would be relevant.

93) In ***Leelabai Gajanan Pansare,*** the issue before the Apex Court was about interpretation of Section 3(1)(b) of the M.R.C. Act and whether Government Companies are excluded from protection of the Act by including them within the wider term 'Public Sector Undertakings*'.* The Apex Court held that Government Companies were also required to be included in the wider term 'Public Sector Undertaking' and therefore would stand excluded from protection of the MRC Act. While deciding the said issue, the Apex Court has made certain observations with regard to economic package offered to the landlords while enacting MRC Act. The Apex Court took note of its observations in ***Malpe Vishwanath Acharya*** and held that MRC Act is a sequel to its judgment in ***Malpe Vishwanath Acharya***. The Apex Court held that MRC Act essentially introduced three changes for offering economic package to the landlord in the form (i) permission to charge premium, (ii) exclusion of cash-rich entities from protection of Rent Act (iii) providing for annual increase in the rent. The relevant observations of the Apex Court in paras-58 and 59 of the judgment read thus:

> 58. **Therefore, the legislature was required to keep in mind the vulnerability of fixing standard rent as on 1.9.1940. At the same time, the legislature had to keep in mind two aspects, namely, tenancy protection and rent restriction.** The problem arose on account of economic factors. However, the legislature found the solution by evolving an economic criterion. **The legislature evolved a package under which the prohibition on receiving premium under Section 18 of the 1947 Act stood deleted.** In other words, landlords were given the liberty to charge premium. **The second package was to exclude cash-rich body corporates and statutory corporations from the protection of the Rent Act.** This part of the economic package helps the landlords to enhance the rent and charge rent to the entities mentioned in Section 3(1)(b) who can afford to pay rent at the market rate. This was the second item in the economic package offered to the landlords under the present Rent Act. **The third item of the Rent Act was to give the benefit of annual increase of rent @ 5% under the present Rent Act.** All three items constituted one composite package for the landlords. **The underlying object behind the said economic package is to balance and maintain the two-fold objects of the**

> **Rent Act, namely, tenancy protection and rent protection.** The idea behind excluding cash-rich entities from the protection of the Rent Act is also to continue to give protection to tenants who cannot afford to pay rent at market rate.
>
> 59. The above discussion is relevant because we must understand the reason why Section 3(1)(b) came to be enacted. As stated above, in our view, with the offer of an economic package to the landlords, the legislature has tried to maintain a balance. **The provisions of the earlier Rent Act, as stated above, have become vulnerable, unreasonable and arbitrary with the passage of time as held by this Court in the above judgment. The legislature was aware of the said judgment. It is reflected in the report of the Joint Committee. In our view, the changes made in the present Rent Act by which landlords are permitted to charge premium, the provisions by which cashrich entities are excluded from the protection of the Rent Act and the provision providing for annual increase at a nominal rate of 5% are structural changes brought about by the present Rent Act, 1999 vis-à-vis the 1947 Act. The Rent Act of 1999 is the sequel to the judgment of this Court in the case of *Malpe Vishwanath Acharya.***
>
> *(emphasis and underlining supplied)*

94) Relying on ***Leelabai Gajanan Pansare***, Mr. Seervai has submitted that since MRC Act is held to be sequel to the judgment in ***Malpe Vishwanath Acharya***, the findings recorded by the Apex Court in ***Malpe Vishwanath Acharya*** holding the provisions in the Act relating to standard rent to be arbitrary and in violation of provisions of Section 14 of the Constitution it must be borne in mind while construing the definition of standard rent in respect of the premises let after 1 October 1987. However, it must also be borne in mind that one of the economic packages offered by MRC Act is to exclude cash-rich entities from protection under MRC Act. According to Apex Court in ***Leelabai Gajanan Pansare,*** the reason why cash-rich entities are excluded, by way of economic package to landlords, is their affordability to pay rent as enhanced by landlords. This is clear from the following observations of the Apex Court:

> This part of the economic package helps the landlords to enhance the rent and charge rent to the entities mentioned in Section 3(1)(b) who can afford to pay rent at the market rate.

95) Therefore if Mr. Seervai's contention about liberty to landlords to enhance rent as per landlord's choice in respect of every tenancy created after 1 October 1987 is accepted, the same would virtually tantamount to including all tenancies created after 1 October 1987 in Section 3(1)(b) of the Act, which obviously is not the legislative intent. Therefore, Applicant's alternative contention (without prejudice to first contention of impermissibility to fix standard rent of post 1987 tenancies) that rent as fixed by landlord must be accepted as standard rent cannot be accepted.

96) In my view therefore while fixing standard rent in respect of post 1987 tenancies, a balance needs to be struck considering the twin legislative intents of (i) not statutorily fixing the standard rent and (ii) offering protection from eviction. The 'economic package' discussed by the Apex Court in ***Leelabai Gajanan Pansare*** includes landlord's entitlement to charge premium for grant of tenancy to a tenant under Section 56 of the MRC Act, which reads thus:

> **56. Right of Tenant and Landlord to receive lawful charges.**
>
> Notwithstanding anything contained in this Act, it shall be lawful for,
>
> (i) the tenant or any person acting or purporting to act on behalf of the tenant to claim or receive any sum or any consideration, as a condition of the relinquishment, transfer or assignment of his tenancy of any premises;
>
> (ii) the landlord or any person acting or purporting to act on behalf of the landlord to receive any fine, premium or other like sum or deposit or any consideration in respect of the grant, or renewal of a lease of any premises, or for giving his consent to the transfer of a lease to any other person.

97) Thus, post enactment of MRC Act, it is now lawful for landlord to accept premium (which is more popularly referred to as '*pugree'* or '*padgi'* in cities of Mumbai and Pune) while creating tenancy in favor of a tenant. Judicial notice needs to be taken of the fact that the amount of such premium is usually equivalent to 60-70% of market value of the premises. Since premium representing 60-70% market value of the premises is accepted, the rent is then kept substantially low, mainly to ensure that the outgoings of the building are taken care of. If Applicant's contention is accepted, then landlords who created tenancies post coming into effect of MRC Act by accepting premium, will then demand market rent despite receiving substantial amount of premium. However, it is not necessary to delve deeper into the issue of landlord's entitlement to demand market rent in respect of tenancies created after coming into effect of MRC Act (31 March 2000) on account of offering of economic package to landlords under that Act. The same can be dealt with in appropriate case where the issue of fixation of standard rent in respect of tenancies created after coming into force of MRC Act props up. What instead needs to be concentrated is the issue of fixation of standard rent in respect of premises which are let after 1 October 1987 but before MRC Act came into effect as the suit premises in the present case are let during this gap period.

F.6 FIXATION OF STANDARD RENT IN RESPECT OF TENANCIES CREATED DURING GAP PERIOD BETWEEN 2 OCTOBER 1987 AND 30 MARCH 2000

98) A unique situation is created where MRC Act (offering economic package to landlords) came into effect from 31 March 2000, whereas the cutoff date for imposing statutory limit on fixation

of standard rent is specified as 1 October 1987. The issue is how would the Court then fix standard rent in respect of premises let during gap period between 2 October 1987 and 30 March 2000?

99) Before proceeding to examine the legal position on the issue at hand, it would be necessary to meander a bit on factual aspects of the case to understand the background. In the present case, the tenancy is created in favour of Respondent during the gap period between 2 October 1987 and 30 March 2000. There is some factual dispute here about the exact date of first letting as the Respondent contends that she was earlier let another flat bearing Flat No.11-W, 11th Floor, Navroze Apartments, Bhuladevi Desai Road, Mumbai-400 026 vide Agreement dated 9 May 1991 and that the suit premises being Flat No.12-C at IL-Palazzo is merely granted in exchange of Flat at Navroze Apartments. This aspect is discussed in the paragraphs to follow. However, whether Navroze Apartments Flat or IL Palazzo Flat, the tenancy created is during the gap period between 2 October 1987 and 30 March 2000.

100) The application for fixation of standard rent was filed by the Respondent after receipt of summons in R.A.E.& R. Suit No.950/1489 of 2005 filed by the Applicant seeking eviction of the Respondent and for recovery of rent at the rate of Rs.2,75,000/- per month. In her application, the Respondent contended that by letter dated 19 November 2003, the Applicant had demanded rent at the rate of Rs.10,880/- and that she continued to pay the same. This is how the Respondent prayed for fixation of stand rent not exceeding Rs.10,880/- per month.

101) The Small Causes Court passed judgment and order dated 3 October 2017 fixing the standard rent in respect of the premises at Rs.10,880/- per month alongwith 4% annual increase. It accordingly permitted the Respondent to deposit sum of Rs.1,30,560/- alongwith 15% interest on the arrears of rent for the period from 1 January 2005 to 31 December 2005.

102) It appears that cross Revisions were filed challenging the order of the Small Causes Court, both by the Applicant as well as by the Respondent. The Appellate Bench, by its judgment and order dated 21 February 2019, has repelled the objection of the Applicant about jurisdiction in respect of fixation of standard rent and has held that Small Causes Court could fix standard rent in respect of the suit premises, though they are let after 1 October 1987. The Revision Application No. 312 of 2017 filed by the Applicant is accordingly rejected. However, Revision Application No.62 of 2018 filed by the Respondent has been partly allowed. The Appellate Bench took note of valuation report before letting the premises in Navroze Apartments to the Respondent, as well as the valuation report in respect of the suit premises before letting them to the Respondent in the year 1995. It noted that the rent was fixed at Rs.4,500/- inclusive of outgoings to the Society towards maintenance charges and lease rent. It noted that the outgoing amount was fixed at Rs.3,695/- and that therefore the basic rent was only Rs. 805/- per month. The Appellate Court accordingly held that the rent of Rs. 805/- per month was agreed between both the parties from 1995 to 2004 and that the rent at the said rate was accepted by both the parties. The Appellate Bench has also taken note of the fact that there was no agreement between the parties thereafter for increase in the rent and

in absence of any specific agreement, the Appellate Bench held that the Applicant was not entitled to enhance the rent arbitrarily. By recording these findings, the Appellate Bench held that the rent in respect of the suit premises was Rs.805/-. Accordingly, the Appellate Bench has partly allowed the Revision Application filed by the Respondent and has directed that the standard rent in respect of the premises would be basic pay and society maintenance charges and lease rent as agreed between the parties at the time of letting the premises to the Respondent.

103) In short, the Appellate Bench has fixed Rs.805/- as the standard rent in respect of the suit premises. According to Mr. Seervai, the Applicant is occupying a plush apartment located at Malabar Hills in Mumbai City which is upmarket and premium location attracting extremely high real estate returns. It appears that the Flat admeasures 2078 sq.ft. According to Mr. Seervai, the present fair market rent in respect of the suit premises would be approximately Rs.6,00,000/- per month and that considering the judgment of the Apex Court in ***Malpe Vishwanath Acharya*** read with the report of the Standing Committee, the fixation of minuscule amount of Rs.805/- towards standard rent makes violation to both, judgment as well as the objective behind deletion of statutory fixation of standard rent in respect of the premises let after 1 October 1987.

104) I have already held the standard rent in respect of the premises let after 1 October 1987 can be fixed by the Court, though there is no statutory indication as to what the standard rent in respect of such premises would be. Mr. Shah has submitted that the

contractual rent agreed between the parties need to be treated as standard rent. It appears that Lease Agreement dated 9 May 1991 was executed between the parties for Navroze Apartments Flat. However later, there was exchange of flats and Respondent was granted tenancy in respect of the suit premises (IL Palazzo Flat) vide offer letter dated 14 February 1994. The offer is crystalized and confirmed between the parties with letter dated 31 July 1995, which reads thus:

July 31, 1995

Dear Mrs. Alagh
Flat No. 12-C
11-Palazzo Co-operative
Housing Society Limited
Little Gibbs Road
Malabar Hill
BOMBAY 400 006

Dear Mrs. Alagh,

Please refer to the Board Resolution dated October 7, 1993, a copy whereof is enclosed herewith for you ready reference, as well as to the tenancy agreement dated May 9, 1991 between the Company and yourself in respect of the Navroze Apartment Flat No. 11-W, Bombay.

Pursuant to the above Resolution, the Company is requesting you to take on tenancy with effect from August 1, 1995 the Il-Palazzo flat being apartment No. 12-C in exchange of the tenancy flat of Navroze Apartment, Flat No. 11-W on the same terms and conditions as contained in the Rental Agreement dated May 9, 1991.

The rent in respect of Flat No. 12-C in Il-Palazzo is Rs.4500/- per month which includes the present monthly outgoing of Rs.3695/- payable to the Society for maintenance charges and lease rent. Any increase in the monthly outgoing on these items above the present sum of Rs.3695/- will be on your account and to that extent the rent will be automatically increased.

You are requested to confirm the above.

Yours sincerely,
for BRITANNIA INDUSTRIES LIMITED
Sd/-
RAVI MANNATH
COMPANY SECRETARY

I, Maya Alagh, confirm the above and from now onwards I am the tenant in respect of apartment No. 12-C IL-Palazzo instead of Apartment No. 11-w Navroze on the terms as mentioned in this letter hereinabove and I am in possession of Flat No. 12-C Il-Palazzo as the tenant.

Sd xxx
Maya Alagh

105) Thus, letter dated 31 July 1995 has constituted the agreement between the parties. Though Mr. Shah has suggested that tenancy in respect of IL-Palazzo Flat is just an arrangement of exchange, in my view the two tenancies cannot be mixed in view of different rental arrangements in respect of the two flats. A fresh tenancy was created in respect of the suit premises (IL Palazzo Flat) on 31 July 1995 on new terms. Therefore, for the purposes of fixation of standard rent in respect of the suit premises (IL Palazzo Flat), the earlier agreement in respect of Navroze Flat is irrelevant.

106) Respondent herself indicated the figure of Rs. 10,880/- as the standard rent in her application on the basis of demand made by Applicant in letter dated 19 November 2003 for amount of Rs. 32,640/- towards rent from October to December 2003. The Small Causes Court accordingly fixed Rs. 10,880/- as standard rent in respect of the premises with 4% annual increase as provided in Section 11(1) of the MRC Act. Even in this figure of Rs. 10,880/-, the society outgoings at the relevant time were apparently Rs.

9,900/-. It thus appears that the rental component in respect of the premises in the figure of Rs. 10,880/- was only Rs. 805/-.

107) In the present case a unique conundrum is presented as the tenancy in respect of the premises is created after 1 October 1987 but before coming into effect of the MRC Act, which deleted provision for statutory fixation of standard rent in respect of post 1987 tenancies. Tenancies created after coming into force of MRC Act would be created after having regard to the provisions of MRC Act, especially noticing that the rent fixed at the time of first letting of premises does not get fixed as standard rent. However, when the tenancy in respect of the suit premises was first created on 31 July 1995, parties were obviously unaware that the provision for statutory fixation of standard rent would be deleted in respect of tenancies created after 1 October 1987. Another way of looking at the factual situation is that the tenancy was created on 31 July 1995 with full knowledge of then existing provisions of Section 5(10)(b)(iii) of the Bombay Rent Act, under which rent fixed after 1 September 1940 was to be treated as the standard rent. Applicant was well advised in respect of actions that it took during the relevant time. When Applicant sought Respondent's ejectment from Navroze Apartments Flat, it secured legal opinion recognizing tenancy rights of Respondent and thereafter withdrew the suit for her ejectment. Applicant adopted Board Resolution on 7 October 1993 deciding to offer alternate flat to Respondent on tenancy basis. This is how tenancy in respect of suit premises came to be created in favour of Respondents on 31 July 1995. Thus, Applicant knew as on 31 July 1995 that the rent it was fixing in respect of the suit premises would be treated as standard rent as per the then prevailing Section 5(10)(b)

(iii) of the Bombay Rent Act. Thus, if litigation relating to fixation of standard rent in respect of the suit premises was to be initiated and decided before coming into effect of the MRC Act, the Court would have fixed the contractual rent agreed between the parties as on 31 July 1995 as the standard rent (and that rent would have then become standard rent under Section 7(14)(a) of MRC Act). The issue is whether this position would be altered after coming into effect of the MRC Act, which retrospectively withdrew the provision for statutory fixation of standard rent in respect of post 1987 tenancies? The answer to the question, to my mind, appears to be in the negative. Here Applicant is clearly attempting to take advantage of change in position of law after enactment of MRC Act, which retrospectively withdrew statutory fixation of standard rent for post 1987 tenancies.

108) Thus, an incongruous situation is created where the standard rent in respect of tenancies created between 2 October 1987 and 30 January 2000 (date of effect of MRC Act) was already fixed under section 5(10)(b)(iii) of Bombay Rent Act as the contractual rent fixed on the date of first letting of premises. However, MRC Act later omitted the clause for fixing standard rent in respect of tenancies created after 1 October 1987 (while preserving Court's power to fix the standard rent). The issue is whether the standard rent in respect of premises let during the gap period of 2 October 1987 and 30 January 2000, which could be fixed by operation of provisions of section 5(10)(b)(iii) of Bombay Rent Act, can be disturbed on account of retrospective deletion of provision for fixing standard rent in respect of tenancies created after 1 October 1987?

109) In my view, specification of date of 1 October 1987 in the MRC Act has given rise to this incongruous situation. As observed above, the date of 1 October 1987 owes its existence to Amendment Act of 1987 to the Bombay Rent Act, under which, sub-section (1A) in Section 4 and clause (iii-a) under Section 5(10)(b) came to be inserted to free tenancies in respect of premises located in buildings constructed or reconstructed after specified date. This specified date came to be fixed by the State Government as '1 October 1987'. Thus, till MRC Act came into effect, in respect of premises located in buildings constructed/reconstructed during 1 October 1987 till 30 March 2000, standard rent provisions were frozen for five years with liberty to charge 15% return on investment in land and construction towards rent after 5 years. While defining the term 'standard rent' under Section 7(14)(b) of MRC Act, the provision in respect of buildings constructed or reconstructed after 1 October 1987 came to be omitted and this was done as per recommendations of the Joint Committee. As observed above, the LC Bill No. VI of 1993 contained provision for extending the said period of 5 years to 40 years, meaning thereby that standard rent provisions were proposed to be excluded for a period of 40 years in respect of buildings constructed or reconstructed after 1 October 1987. Taking note of judgment of the Apex Court in ***Malpe Vishwanath Acharya***, the Joint Committee recommended exclusion of standard rent fixation provisions in respect of post 1987 tenancies permanently in the new Rent Act. At the cost of repetition, Committee's relevant recommendation is reproduced once again:

> Clause 6.- This Clause provides that notwithstanding anything contained in this Act, on an from the first day of October, 1987, the provisions

> relating to standard rent and permitted increases shall not apply for a period of 40 years to,-
>
> (a) any premises let or given on licence in a building, the construction or re-construction of which is completed on or after the date aforesaid;
>
> (b)any premises let or given on licence in a building whether newly constructed or otherwise where such premises were not let or given on license for a continuous period of one year.
>
> This denotes that after a period of 40 years from the first day of October, 1987, the provisions relating to standard rent and permitted increases shall again apply to these premises. The Committee carefully considered this clause and after deliberation, came to the conclusion that the exemption from application of the provisions relating to standard rent and permitted increases should not be temporary or for a limited period only. **Though under the existing section 4(1A) this exemption is for a period of five years from the first day of October 1987, the tenancies created for the first time after this date should be exempted from the provisions of the standard rent and permitted increases permanently.** This will unlock a substantial stock of housing premises which the owners are not willing to give on rental basis for the fear of the standard rent provisions. The Committee therefore decided to remove the proposed forty years restriction from this Clause.
>
> *(emphasis supplied)*

110) Thus, the Joint Committee has recommended that instead of extending the 'exclusion period' (in respect of buildings constructed after 1 October 1987) from 5 years to 40 years, such 'exclusion' should be made permanent. This recommendation essentially meant that in respect of buildings constructed after 1 October 1987, standard rent fixation provision should be permanently omitted. However, while enacting the MRC Act, the Legislature did not make any reference to '*buildings constructed after 1 October 1987*' and instead omitted the provision for statutory fixation of standard rent in respect of all tenancies created after 1 October 1987, irrespective of the fact whether the building is constructed before or after 1 October 1987.

111) This is how the date of '1 October 1987' which originally had its existence only *qua* the date of construction of building in amended Bombay Rent Act, got carried forward in the MRC Act without making any reference to date of construction of building and uniformly seeking to omit provision for standard rent fixation for tenancies created after 1 October 1987. This is how, while omitting the provision for statutory fixation of standard rent in respect of tenancies created after 1 October 1987, such omission became applicable irrespective of fact whether the building is constructed before or after 1 October 1987. Be that as it may. Carrying forward the date of '1 October 1987' in the MRC Act, which came into effect later on 31 March 2000, has resulted in this incongruous situation where standard rent in respect of post 1987 tenancies could be fixed under Section 5(10)(b)(iii) of the Bombay Rent Act and was statutorily capped at the first contractual rent agreed, got disturbed on account of deletion of provision for fixation of standard rent under Section 7(14)(b) of the MRC Act.

112) Adopting the ratio of Apex Court judgment in ***Bhasker*** (supra), this incongruous situation will have to be resolved by construing that though section 7(14)(b) of MRC Act does not deal with fixation of standard rent in respect of tenancies created after 1 October 1987, on account of coming into effect of provisions of MRC Act from 31 March 2000, standard rent in respect of tenancies created during gap period of 2 October 1987 and 30 March 2000 will continue to be governed by Section 5(10)(b)(iii) of the Bombay Rent Act. If this is not done, two sub-classes of tenancies created post 1987 would exist *qua* standard rent viz. (i) where Court has passed

order before 31 March 2000 and fixed standard rent as per Section 5(10)(b)(iii) of the Bombay Rent Act (*which then becomes standard rent under Section 7(14)(a) of MRC Act*) and (ii) where Court did not fix the standard rent upto 31 March 2000.

113) Therefore, the contractual rent agreed between the parties in the letter dated 31 July 1995 is required to be fixed as standard rent in respect of the suit premises. There is no dispute to the position that under the mutually signed letter dated 31 July 1995 suit premises were offered to Respondent at monthly rent of Rs. 4,500/-, which included then prevailing society maintenance charges of Rs. 3,695/-, leaving the basic rent at Rs. 805/-. The Appellate Bench has not committed any error in fixing the basic rent of Rs. 805/- as the standard rent.

114) Under Section 11 of the MRC Act, landlord is entitled to make an increase of 4% per annum in the rent of the premises after commencement of the Act. Sub Section (1) of Section 11 of MRC Act provides thus:

> **11. Increase in rent annually and on account of improvement, etc. special addition etc. and special or heavy repairs.**
>
> (1) After the commencement of this Act a landlord shall be entitled to make an increase of 4 per cent per annum in the rent of the premises let for any of the purposes referred to in sub-section (1) of section 2.
>
> Explanation.-For the purposes of this sub-section, the period of one year on completion of which rent shall be so increased shall be computed from the date of commencement of this Act.

115) Accordingly, after 31 March 2000, there will be increase in the basic rent of 4% every year. R.A.N. Application No.

75/SR/2005 was filed by Respondent on 21 December 2005, the Trial Court decided the same on 3 October 2017 and the Appellate Bench modified the Trial Court's order on 21 February 2019. Therefore, the standard rent of the premises at the time of filing of R.A.N. Application No. 75/SR/2005 in December 2005 would be Rs. 980/-. The same would increase at 4% annually thereafter. Additionally, Respondent shall be liable to pay society maintenance charges, lease rent and municipal taxes in respect of the suit premises as modified from time to time.

G. ANSWERS TO QUESTIONS FORMULATED

116) Based on the above discussion, the questions formulated above are answered as under:

(I) Standard rent can be fixed in respect of the premises let after 1 October 1987 under the provisions of the MRC Act.

(II) Courts have jurisdiction under the provisions of the MRC Act to entertain and decide applications for fixation of standard rent in respect of premises let after 1 October 1987.

(III) There is no legislative fixation/determination of standard rent under Section 7(14)(b)(ii) of the MRC Act in respect of the premises let after 1 October 1987.

(IV) Standard rent in respect of premises let during the gap period of 2 October 1987 and 30 March 2000 would be governed by provisions of Section 5(10)(b)(iii) of

the Bombay Rent Act, notwithstanding deletion of tenancies created after 1 October 1987 from Section 7(14)(b) of the MRC Act.

(V) Since tenancy in respect of suit premises is created during gap period of 2 October 1987 and 30 March 2000, contractual rent agreed at the time of letting of premises on 31 July 1995 would be the standard rent.

117) In my view therefore no serious error can be traced in the Appellate Bench's Order in holding that the standard rent in respect of the suit premises would be the basic rent of Rs. 805/- as on the date of coming into effect of the MRC Act. The only modification required in the order of the Appellate Bench is to direct annual increase of 4% in the rent of previous year after 31 March 2000.

H. ORDER

118) Revision Applications are accordingly dismissed directing that the standard rent in respect of the suit premises shall be Rs. 805/- per month as on the date of coming into effect of MRC Act, which shall increase by 4% every year over rent payable during last year. Additionally, Respondent shall be liable to pay society maintenance charges, lease rent and municipal taxes in respect of the suit premises. Applicant shall accordingly intimate the amount of arrears of rent, maintenance charges, lease rent and municipal taxes in respect of the suit premises till August 2024 within four weeks and within four weeks thereafter, the Respondent shall deposit such intimated amount in the Small Causes Court, with liberty to

Applicant to withdraw the same. Considering the facts and circumstances of the case, there shall be no orders as to costs.

SANDEEP V. MARNE, J.