IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 71 OF 2024

M/s. Bhimale and Sons
A registered Partnership Firm
Through its Partners
1. Narayan Hunsappa Bhimale
(since deceased through his legal heirs)
2. Yashwant Husnappa Bhimale ***.... Applicants***

-Versus-

Moti Dinshaw Irani and others ***....Respondents***

WITH

WRIT PETITION NO. 8788 of 2024

Moti Dinshaw Irani ***... Petitioner***

-Versus-

Samsuddin Gulam Husain Lalani and others ***... Respondents***

Mr. P. S. Dani, ***Senior Advocate*** *i/b Mr. Prasad B. Kulkarni, for the Applicant in CRA/71/2024 and for Respondent in WP/8788/2024.*

Dr. R. A. Thorat, ***Senior Advocate*** *with Ms. Pratibha Shelke i/b Mr. Suryajeet P. Chavan, for Petitioner in WP/8788/2024 and for the Respondent in CRA/71/2024.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 1 October 2024.

Pronounced On : 15 October 2024.

JUDGMENT :-

A. THE CHALLENGE

1) These are cross proceedings filed by rival parties challenging the judgment and decree dated 30 November 2023 passed by the District Judge, Pune in Regular Civil Appeal No.560/2014. The tenant is aggrieved by dismissal of Regular Civil Appeal No.560/2014 and confirmation of the eviction decree dated 9 September 2014 passed by the Small Causes Court, Pune in Civil Suit No.195/2010 by which the Defendant is directed to handover possession of the suit premises to the Plaintiffs. The Plaintiffs-landlords, on the contrary, are aggrieved by rejection of cross-objections by the Appellate Court holding that Defendant Nos. 2 and 3 are tenants of Plaintiffs and rejecting the ground of unlawful subletting. Plaintiffs desire that their case of Defendant No.1 is the tenant, who unlawfully sublet the premises in favour of Defendant Nos.2 and 3, be accepted in addition to the ground of default in payment of rent. The Trial Court and the Appellate Court have however held Defendant Nos. 2 and 3 (Revision Applicants) to be the direct tenants of Plaintiffs and have decreed the suit on the sole ground of default in payment of rent by them. Defendant Nos.2 and 3 have accordingly filed Civil Revision Application No.71/2024

challenging the eviction decree whereas the Plaintiffs have filed Writ Petition No.8788/2023 challenging rejection of their cross-objections by the Appellate Court. ***Rule*** in Writ Petition No.8788/2024. With the consent of learned counsel appearing for parties, Civil Revision Application and Writ Petition No.8788/2024 are taken up for final disposal.

B. FACTS

2) A Plot of land admeasuring 125 ft x 50 ft together with shed constructed thereon admeasuring 20 ft x 30 ft situated at Survey No.101 final Plot No.780, Town Planning Scheme No.76, Bhamburda Shivajinagar, Pune are the **suit premises.** Though original plot of land admeasuring 85 Khans was sought to be included in the description of the suit property, the plaint was apparently amended by incorporation the correct measurement of plot admeasuring 125 ft x 50 ft and shed constructed therein admeasuring 25 ft x 30 ft. It appears that the suit premises were owned by Late Rashid Khodaram Irani, who passed away on 7 November 1970. Plaintiff No. 2, Jehangir Dinshaw Kaikhashroo Moriabadi/Irani claims to be the grandson of real brother of Rashid Khodaram Irani. Plaintiff No.1 is the mother of Plaintiff No.2. It is claimed that the father of Plaintiff No. 2 and husband of Plaintiff No.1 Dinshaw Irani used to collect rent in respect of the suit premises and after his death on 5 July 1992, Plaintiffs have become owners and landlords in respect of the suit premises. It is claimed that late Gulam Husain was inducted as tenant in the suit premises, who was conducting the business of *raddi* (scrap)

depot. Defendant No.1 is the son of late Gulam Husain. Plaintiffs claimed that Defendant No.1 illegally inducted Defendant Nos.2 and 3 in the suit premises as sub-tenant without the consent of landlords and Defendant Nos. 2 and 3 were using and possessing the suit premises in the capacity as illegal sub-tenants. That Defendant Nos.2 and 3 started the business of Toddy in the suit premises, without the consent of the landlords and against the provisions of law and thereby changed the use of the suit premises. It is also claimed that Defendant Nos.2 and 3 encroached upon other portions of plots belonging to the Plaintiff apart from the suit premises, exceeding 85 Khans which was originally let out to Ghulam Husain. That Defendant No.1 had carried out illegal construction at the suit premises without the consent of the landlords. Plaintiffs also claimed that Defendant No.1 was in arrears of rent, permitted increases and taxes since 1 February 1993. Plaintiffs accordingly issued notice dated 19 January 2010 on all the three Defendants and demanded rent from Defendant No.1 and terminated his tenancy.

3) In the above factual background, Plaintiffs instituted Civil Suit No. 195/2010 in the Court of Small Causes, Pune seeking recovery of possession of the suit premises from the Defendants on the grounds of unlawful subletting, change of user, encroachment, permanent additions and alterations and default in payment of rent by Defendant No.1. Though Defendant Nos. 2 and 3 were also impleaded to the suit, the plaint proceeded on a footing that only Defendant No.1, in his capacity as son of late Gulam Husain, is the tenant in respect of the suit premises. It appears that Defendant No.1

did not appear in the suit and the same was defended only by Defendant Nos. 2 and 3, who denied ownership of the suit premises by the Plaintiffs and contended that they were inducted as direct tenants by Mr. Dara Kaikhasbroo Irani, who is the real owner in respect of the suit premises. Defendant Nos. 2 and 3 contended that prior to the year 1968, there existed a godown of scrap material at the plot, in which the erstwhile tenant Ashok Krishnappa Shinde was running toddy shop. In the year 1975-76, Ashok Krishnappa Shinde left the premises and Mr. Dara Kaikhasbroo Irani inducted the partnership firm 'M/s. Bhimale and Sons' as tenant in respect of the suit premises to run toddy business. That necessary licenses were issued by the Excise Department in favour of M/s. Bhimale & Sons and that therefore the Municipal Corporation also transferred the tax assessment in the name of the firm by deleting the name of Ashok Krishnappa Shinde. Defendant Nos. 2 and 3 claimed that they have paid rent to Mr. Dara K. Irani from time to time and after his death, the rent was paid to Marzaban Fardun Irani till 31 August 2009. After the death of Marzaban Fardun Irani in the year 2009, Defendant Nos. 2 and 3 could not have pay rent on account of lack of knowledge about real owner. Defendant Nos. 2 and 3 also pleaded abut existence of disputes relating to ownership of the suit premises and contended that in addition to disputes between the Plaintiff and Mr. Dara K. Irani, one Kishori Bhagat also claims ownership in respect of the suit premises, whose name is mutated in the revenue records. Defendant No.2 accordingly questioned the jurisdiction of the Small Causes Court to entertain the suit in absence of existence of

any landlord-tenant relationship between them and the Plaintiffs. Defendant Nos.2 and 3 accordingly prayed for dismissal of the suit.

4) Based on pleadings of parties, the Small Causes Court framed issues as under:

> [1] Do the plaintiffs prove that, they are the exclusive and sole owners of the suit property, as described in plaint para No.1 ?
>
> [2] Do the plaintiffs prove that, late Gulam Hussain was the tenant in the suit premises, at monthly rent of Rs.100/- and the tenancy was according to English Calendar ?
>
> [3] Do the plaintiffs prove that, the defendant No.1 has illegally, and unauthorizedly, inducted the defendant No.s2 and 3 in the suit premsies, as sub tenants, and transferred his interest in the suit premises illegally ?
>
> [4]Do the plaintiffs prove that, defendants have changed the user of the suit premises, as alleged ?
>
> [5]do the plaintiffs prove that, the defendant Nos.2 and 3 have illegally encroached upon major portion of their property, and carried out illegal construction, against the terms and conditions of the tenancy ?
>
> [6]Do the plaintiffs prove that, the defendants have failed to pay the rent and other charges, as alleged ?
>
> [7]Do the plaintiffs prove that, they have terminated the tenancy of the defendants, still the defendants avoided to vacated the suit premises?
> [8]Whether plaintiffs are entitled for the possession of the suit premises, as prayed ?
>
> [9]Whether plaintiffs are entitled for Rs.10,801/-, as claimed ?
>
> [10]Whether plaintiffs are entitled for future mesne profits, as claimed ?
>
> [11] What order ?

5) Plaintiff No.2-Jehangir Dinshaw Irani examined himself as P.W.1 and Plaintiffs closed their evidence. However, Defendant Nos.2 and 3 failed to adduce any evidence and their Advocate filed *purshis* stating that he had no instructions in the case even after issuing registered notice to Defendant Nos.2 and 3. Accordingly, evidence of Defendant Nos.2 and 3 was closed. As observed, Defendant No.1 did not appear in the suit and therefore there was no question of filing of written statement or leading evidence on behalf of Defendant No.1.

6) In these circumstances, the Trial Court proceeded to decide the suit on the basis of evidence of Plaintiff in absence of any arguments on behalf of the Defendants. The Small Causes Court held that Plaintiffs could not have proved their sole and exclusive ownership in respect of the suit premises. The Court however held that late Ghulam Hussain was the tenant in respect of the suit premises on the basis of entry of his name in the list of tenants as per the records of the Municipal Corporation. Though Ghulam Husain, and consequently Defendant No.1 was held to be tenant in respect of the suit premises, the Trial Court refused to accept Plaintiffs' claim of unlawful subletting by Defendant No.1 in favour of Defendant Nos.2 and 3. The Court held that after late Ghulam Husain, the suit premises were let out to Defendant Nos.2 and 3. The Trial Court relied upon admission given by P.W.1 about acceptance of rent from Shri. Narayan Husnappa Bhimale (Defendant No.2) in the year 1992 and accordingly proceeded to hold that Defendant Nos.2 and 3 were inducted by Plaintiffs as tenants. The Trial Court also rejected the grounds of change of user and unauthorised additions and

alterations. The Trial Court however, accepted the ground of default in payment of rent holding that Defendant Nos. 2 and 3 neither paid rent to the Plaintiffs nor deposited the same in the Court. The suit was thus decreed on solitary ground of default in payment of rent. By decree dated 9 September 2014, the Trial Court directed Defendants to handover possession of the suit premises to Plaintiffs with further directions for payment of Rs.4,100/- towards arrears of rent. The Trial Court also directed conduct of enquiry into mesne profits from the date of filing of the suit till recovery of possession of the suit premises.

7) Defendant Nos.2 and 3 filed Civil Appeal No.560/2014 before the District Court, Pune challenging the decree dated 9 September 2014. Plaintiffs filed cross-objections to the extent of findings of the Trial Court about Defendant Nos.2 and 3 being inducted as tenants and rejection of grounds of unlawful subletting, change of user and unauthorised additions and alterations. It appears that Defendant Nos.2 and 3 filed application for leading additional evidence under the provisions of Order 41 Rule 27 of the Code, which was rejected by order dated 27 June 2018 before the Appeal was taken up for hearing. Defendant Nos.2 and 3 therefore filed Writ Petition No. 12605 of 2018 in this Court challenging the order dated 27 June 2018. This Court set aside the order dated 27 June 2018 and directed the application under Order 41 Rule 27 of the Code to be decided alongwith the Appeal. The decree was stayed by the Appellate Court on condition of deposit of interim compensation of Rs. 25,000/- per month. The Appellate Court heard the Appeal as

well as cross-objections and dismissed the Appeal by judgment and order dated 23 January 2023. The cross-objections filed by Plaintiffs were also rejected. The Appellate Court confirmed the eviction decree on the ground of default in payment of rent.

8) Defendant Nos.2 and 3 filed Civil Revision Application No.221 of 2023 in this Court challenging the decree of the Appellate Court dated 23 January 2023. This Court disposed of Civil Revision Application No.221 of 2023 observing that the Appellate Court failed to decide the application under Order 47 Rule 27 of the Code and accordingly remanded the Appeal for compliance with order dated 5 December 2018 and for deciding the application under Order 41 Rule 27 of the Code.

9) It appears that Defendant Nos.2 and 3 filed application for transfer of the Appeal from the learned Judge who had earlier dismissed the Appeal on 23 January 2023. The Principal District Judge rejected the said application by order dated 11 October 2023. The Appellate Court thereafter proceeded to decide the Appeal afresh and by judgment and order dated 30 November 2023, the Appellate Court has dismissed the Appeal once again by confirming the decree dated 9 September 2014. The cross-objections to the decree filed by the Plaintiffs are also rejected. Similarly, the application filed by Defendant Nos.2 and 3 for adducing additional evidence under Order 41 Rule 27 of the Code is also rejected.

10) Defendant Nos.2 and 3 have filed Civil Revision Application No.71/2023 challenging the decree passed by the Appellate Court on 30 November 2023. By order dated 15 February 2024, this Court admitted the Civil Revision Application No.71 of 2024 and stayed the eviction decree on condition of deposit of interim compensation at the rate of Rs.25,000/- per month. Plaintiffs challenged order dated 15 February 2024 by filing Special Leave to Appeal (Civil) No.8079/2024, which was dismissed by order dated 10 April 2024. The Supreme Court has however requested this Court to decide the Civil Revision Application as expeditiously as possible, preferably within a period of six months. Despite direction of the Apex Court, hearing of the Civil Revision Application was required to be adjourned from time to time on account of requests made by the parties. Plaintiffs thereafter filed Writ Petition No. 8788/2024 challenging the judgment and order of the Appellate Court to the extent of rejection of cross-objections on 19 June 2024. Both the Civil Revision Application as well as Writ Petitions are taken up for hearing together.

C. SUBMISSIONS

11) Mr. Dani, the learned senior advocate appearing for the Revision Applicants-Defendant Nos.2 and 3 would raise preliminary objection to maintainability of Writ Petition No.8788/2024. He would submit that Plaintiffs did not challenge the judgment and order dated 23 January 2023 passed by the Appellate Court and remand to the Appellate Court was made only at the instance of Defendant

Nos.2 and 3. That therefore Plaintiffs acquiesced in rejection of their cross-objections. That the remand order made by this Court for deciding the application for production of additional evidence did not mean that the Plaintiffs can have another bite at the cherry and argue their cross-objections. Without prejudice to this objection, Mr. Dani would submit that filing of Writ Petition No.8788/2024 is otherwise by way of afterthought. That the petition has been filed after the Civil Revision Application was admitted and after SLP filed challenging admission of Revision Application was dismissed. That the petition has been filed after considerable delay and more particularly latches, considering the fact that Plaintiffs initially attempted to get the Civil Revision Application dismissed and only after the same was admitted and SLP against admission order was dismissed that they thought of filing the petition.

12) Mr. Dani would submit that the Trial and the Appellate Court have erred in holding Defendant Nos.2 and 3 to be the tenants of the Plaintiffs. That, Dara K. Irani is the uncle of Plaintiff No.2 who claimed ownership in respect of the suit property and inducted Defendant Nos. 2 and 3 as tenants. He would invite my attention to the rent receipts issued in the names of Defendant Nos. 2 and 3 by Dara Irani and Marzaban Fardun Irani. That the Appellate Court ought to have allowed the application under Order 41 Rule 27 of the Code by permitting Defendant Nos. 2 and 3 to lead evidence in respect of the said rent receipts, which would have completely demolished the case of the Plaintiffs about induction of Defendant Nos.2 and 3 by them as tenants. That instead of allowing the said

application, the learned Appellate Court has recorded an erroneous finding that on consideration of those documents, the observations could not undergo any change. That the Appellate Court failed to appreciate that the said additional documents were sought to be produced not for the purpose of proving payment of rent, but for establishing the case of direct induction by Dara K. Irani of Defendant Nos. 2 and 3 as tenants. That consideration of those additional documents was pivotal to the main controversy involved in the suit about existence of landlord-tenant relationship. That the Appellate Court has completely ignored this vital aspect and erroneously sought to deal with those documents in the context of allegations of default in payment of rent. That the Appellate Court failed to appreciate that rent in respect of the suit premises was accepted by Dara Irani and Marzaban Irani till 31 August 2009.

13) Mr. Dani would further submit that the Trial and the Appellate Court failed to appreciate the case pleaded by the Defendant Nos. 2 and 3 about Ashok Krishnappa Shinde being the original tenant and induction of M/s. Bhimale & Sons by Mr. Dara K. Irani as tenant. That there is continuation of toddy business from Ashok K. Shinde to M/s. Bhimale & Sons. That in the tax assessment, earlier name of Ashok Shinde appeared, which was substituted by the name of M/s. Bhimale & Sons. That this pleaded case of the Defendants completely demolishes the case of Defendant Nos. 2 and 3 being inducted as tenants by Plaintiffs after Ghulam Husain. That the Trial Court erred in relying upon solitary document in the form of list of tenants maintained by the Municipal

Corporation. That the Appellate Court was presented with voluminous evidence to dispel the case of the Plaintiff about induction of Ghulam Husain as tenant in respect of the suit premises. Mr. Dani would submit that even otherwise there appears to be title dispute between various persons in respect of the suit premises. The Trial and the Appellate Court have thus held that Plaintiffs are not the sole owners in respect of the suit premises. Plaintiffs have admitted in his evidence that Dara Irani is his uncle and Dara's name appeared in the property card extract. He has also admitted that Dara was appointed as the sole executor and trustee in the will of Rashid. Thus, there are clear admissions on record to prove ownership of suit premises by Dara Irani. This led to filing of two proceedings by plaintiffs, first against Dara Irani and second, against Kishori Bhagat, whose name also appears in the revenue records. That in the light of these serious disputes in respect of title to the suit premises, Trial and the Appellate Court have erred in upholding the capacity of Plaintiffs to induct any tenant in respect of the suit premises. That despite being aware of title dispute, Plaintiff falsely claimed in the suit that they are absolute owners. Mr. Dani would further submit that the Trial and the Appellate Court have erred in relying upon stray statement made by Plaintiff in cross-examination about receiving rent from Narayan Bhimale in the year 1992. That Plaintiff did not produce any rent receipt issued in the name of Ghulam Husain and therefore it was dangerous to rely upon singular document in the form of list of tenants maintained by the Municipal Corporation for inferring tenancy of late Ghulam Husain. Mr. Dani would further submit that the Trial Court has erred in holding that Defendants did not deposit

the rent in the Court. He would draw my attention to the receipt dated 10 August 2010, by which amount of Rs.1380/- was deposited representing rent from 1 September 2009 till August 2010 together with interest at the rate of 15% p.a. That the suit summons was received on 25 June 2010 and the rent deposit was made on 10 August 2010. He would therefore submit that the Trial Court has erred in accepting the ground of default and it ought to have rejected the suit in its entirety.

14) Mr. Dani would submit that notice under Section 15(2) of the Maharashtra Rent Control Act, 1999 **(MRC Act)** must be in accordance with law and any defect therein renders the same ineffective. He would rely upon judgment of this Court in ***Vinayak Narayan Deshpande and others. Versus. Deelip Prahlad Shisode***[1]**.** He would submit that Plaintiffs did not have authority to receive rent from Defendant Nos.2 and 3 and therefore the notice of default issued by them was inconsequential. That the suit therefore could not have been decreed on the ground of default in payment of rent. In support, he would rely upon judgment of this Court ***Chandrasekhar Narayan Tambe Versus. Dhondusa Sitaram Pawar since deceased through L.Rs Tushar Balasaheb Pawar***[2]***.*** He would submit that payment of rent over a period of time leads to necessary presumption of existence of landlord-tenant relationship. That such rent is paid over a period of time by Defendant Nos.2 and 3 to Mr. Dara K. Irani and Mr. Marzaban Irani who ought to have been held as landlords and not Plaintiffs, to whom the singular payment is allegedly made in the year

[1] 2010(3) Mh.L.J. 807
[2] 2003(1) Mh.L.J. 689

1992. In support, he would rely upon judgment of this Court in ***K.D. Dewan Versus. Harbhajan S. Parihar***[3].

15) Mr. Dani would therefore pray for setting aside the decrees passed by the Trial and the Appellate Court. He would submit that Writ Petition No. 8788/2024 otherwise need not be entertained in view of concurrent findings recorded by both the Courts relating to the grounds of unlawful subletting, unauthorised additions and alterations and change of user. He would pray for dismissal of the petition as well.

16) Dr. Thorat, the learned Senior Advocate appearing for the Petitioner would oppose Civil Revision Application No.71 of 2024 and support Writ Petition No. 8788 of 2024. According to Dr. Thorat, the Trial and the Appellate Court have completely misdirected themselves by accepting Defendant Nos.2 and 3 as direct tenants of the Plaintiffs. He would submit that the Trial and the Appellate Court have rightly held that late Ghulam Hussain, and consequently Defendant No.1, is the real tenant in respect of the suit premises. However, instead of accepting the case of unlawful subletting by Defendant No.1 in favour of Defendant Nos.2 and 3, the Trial and the Appellate Court have erred in holding that Defendant Nos.2 and 3 are direct tenants of the Plaintiffs. It is not even the case of Plaintiff Nos.2 and 3 that they are inducted by Plaintiffs as tenants. The pleaded case of Defendant Nos.2 and 3 about their induction by Dara K. Irani has not been accepted. That therefore both the Courts ought

[3] (2002) 1 SCC 119

to have accepted the case of the Plaintiffs about unlawful induction by Defendant Nos.2 and 3 by Defendant No.1. That since Defendant No.1, who is the real tenant, failed to appear in the suit, the suit ought to have decreed. Dr. Thorat would further submit that letter issued by Pune Municipal Corporation on 10 August 2015 clearly reflects the name of Ghulam Husain as tenant for the year 1969-70 whereas name of Narayan Bhimale (M/s. Bhimale & Sons) is reflected in the assessment sheet pertaining to the year 1983-84 merely as occupier and not tenant. That the stray admission given by Plaintiffs' witness about acceptance of rent by Naryan Bhimale in the year 1992 cannot be the basis for treating Defendant Nos. 2 and 3 as tenants of Plaintiffs. That Defendant Nos.2 and 3 did not produce any rent receipt issued by the Plaintiffs. That Defendant Nos.2 and 3 did not produce any rent receipt issued by Plaintiffs. That the correct way of construing the said admission given by Plaintiff's witness is that Narayan Bhimale paid rent on behalf of the original tenant-Defendant No.1. The said admission is made by Plaintiff's witness only to suggest that no rent was paid after 1 February 1993. That the pleaded case of Defendant Nos.2 and 3 was that they are in possession as tenants of Mr. Dara K. Irani since 1975-76 whereas name of Ghulam Husain appears in the list of tenants for the year 1969-70 and the same completely demolishes the pleaded case of Defendant Nos.2 and 3.

17) Dr. Thorat would further submit that there was no question of allowing Defendant Nos.2 and 3 to lead additional evidence when they did not lead any evidence in the first place. No

case was made out under Order 41 Rule 27 for permitting them to lead additional evidence.

18) Dr. Thorat would further submit that even if Defendant Nos.2 and 3 are held to be direct tenants of Plaintiffs, there is admitted delay on their part in not depositing the rent regularly and thereby violating the provisions of Section 15(3) of the Maharashtra Rent Control Act. He would rely upon judgment of Full Bench of this Court in ***Babulal Fakirchand Agrawal Versus. Suresh Kedarnath Malpani & Ors***[4]. He would submit that even if notice is not served on subtenant, the same is inconsequential and relies upon judgment of this Court in ***Shri. Sagar Bhagwat & Anr. Versus. Smt. Kiran w/o. Ishkumar Leekha & Ors.***[5] He would submit that once tenancy of Defendant No.1 is terminated, Defendant Nos.2 and 3 must vacate the suit premises. That such tenant cannot become direct tenant and in support he would rely upon judgment of the Apex Court in ***Anandram Chandanmal Munot and another Versus. Bansilal Chunilal Kabra (since deceased) through LRs. and others***[6]**.** He would submit that in the present case all ingredients of subletting are clearly established and in support he would rely upon judgment of the Apex Court in ***Ms. Celina Coelho Pereira and others Versus. Ulhas Mahabaleshwar Kholkar and Ors.***[7]

19) So far as Writ Petition No.8788/2024 is concerned, Dr. Thorat would submit that this Court had remanded the entire Appeal

4 2017(4) ALL MR 356 (F.B.)

5 2016(5) ALL MR 826

6 2000(1) Mh.L.J. 850

7 (2010) 1 SCC 217

for being decided afresh and that therefore Plaintiffs were entitled to press their cross-objections. That Cross-objections have been permitted to be pressed and have been decided in the decree dated 27 November 2023. That therefore Plaintiffs are entitled to challenge rejection of their cross-objections by filing of independent petition.

D. REASONS AND ANALYSIS

20) The case presents a rather unusual and unique debate as to who exactly is the landlord and who exactly is the tenant in respect of the suit premises. Parties are at variance in respect of identity of landlord as well as of tenant. While Plaintiffs claim that they are landlords, Defendant Nos.2 and 3 claim that Dara K. Irani was the real landlord. When it comes to identification of tenant, Plaintiffs claim that the tenancy was created in favour of Ghulam Husain, which is transmitted to his son-Defendant No.1. As against this, Defendant Nos. 2 and 3 claim that M/s. Bhimale & Sons, a partnership firm of Defendant Nos.2 and 3 was inducted as tenants in respect of the suit premises by Dara K. Irani. This is how there is contest between the parties about identity of landlord as well as tenant. Resolution of this debate actually would lead to decision of issues involved in the present Revision Application and Writ Petition.

21) Plaintiffs came up with a case that the suit premises were originally owned by Rashid Khodaram Irani. According to Plaintiffs, late Rashid had a brother, who apparently had two sons, Dinshaw

and Dara. Plaintiffs claim ownership in respect of the suit premises by Dinshaw and inheritance by Plaintiff No.1, being Dinshaw's wife and Plaintiff No.2, being Dinshaw's son. On the other hand, Defendant Nos. 2 and 3 claim that Dara was appointed as executor and trustee in the will of Rashid and that therefore Dara has inherited the ownership of the premises. Another angle is added to the debate relating to title, as name of one Kishori Bhagat also appears in the revenue records. It appears that Plaintiffs' witness admitted mutation of names of Dinshaw, as well as Dara to the revenue records. Defendant Nos. 2 and 3 have extracted some admissions from Plaintiff's witness about litigation initiated by Plaintiffs in respect of the ownership dispute. It appears that Special Civil Suit No.134/1995 is filed from Plaintiffs' side for partition of the suit premises. It appears that there is one more suit relating to ownership dispute. However, in my view, it is not really necessary to decide the issue of ownership in a suit filed for eviction of tenant under the provisions of MRC Act. By now it is well established position of law that the landlord need not be the owner in respect of the suit premises. All that needs to be established for entertaining of suit for eviction under the Rent Act is existence of landlord-tenant relationship. In this regard quick reference to the judgment of the Apex Court in ***K.D. Dewan*** (supra) relied upon by Mr. Dani in support his contention would be apposite. The Apex Court held in para-8 as under:

> 8. A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord : (1) any person for the time being entitled to receive rent in respect of any building or rented land; (2) a trustee, guardian, receiver, executor or administrator for any other person; (3) a tenant who sublets any

> building or rented land in the manner authorised under the Act and (4) every person from time to time deriving title under a landlord. Among these four categories of persons, brought within the meaning of "landlord", Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred lo therein must fall under any of the categories (1) to (3). **To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner. It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.**
>
> ***(emphasis added)***

22) Thus, a landlord need not be owner of the suit premises. Any person who receives or is entitled to receive rent in respect of the premises becomes a landlord. Therefore, payment of rent becomes an important criterion for determining existence of landlord-tenant relationship. In that sense, the Trial Court unnecessarily framed the issue relating to ownership of the suit premises and answered the same in the negative. The Trial Court ought to have framed the issue of existence of landlord-tenant relation only. Though the issue of tenancy of late Gulam Husain has been framed and answered in Plaintiffs' favour by the Trial Court, while further holding Defendant Nos.2 and 3 to be the tenants, the Trial Court did not frame any specific issue in that regard.

23) Though Defendant Nos.2 and 3 came up with a case that M/s. Bhimale & Sons were inducted as direct tenants in respect of the suit premises by Dara K. Irani, they did not lead any evidence

before the Trial Court. In absence of any evidence being led, the Trial Court could not have accepted their contention of direct tenancy with Dara K. Irani. That Defendant Nos. 2 and 3 thought of filing application under Order 41 Rule 27 of the Code to lead additional evidence. In fact, application filed under Order 41 Rule 27 of the Code for leading additional evidence resulted in two rounds of litigation before this Court. The said application was initially heard and rejected before the appeal could be taken up for hearing, which required filing of Writ Petition No.12605 of 2018, in which this Court directed decision of the said application while hearing the Appeal. While deciding the Appeal, the Appellate Court committed a serious folly in not deciding the said application by seeking specific order passed by this Court on 5 December 2018. This triggered filing of Civil Revision Application No. 221 of 2023, in which the Appeal was remanded for fresh decision by considering and deciding application under Order 41 Rule 27 of the Code. The said application has ultimately been rejected by the Appellate Court, while deciding the Appeal afresh after the order of remand.

24) I am however not convinced with the reasonings adopted by the Appellate Court while rejecting the application for production of additional evidence. The Appellate Court has recorded following reasons for rejecting the said application:

> 40] As regards the consideration of an application Exh. 40 filed by the appellants under the provisions of Order 41 Rule 27 of Code of Civil Procedure is concerned, the appellants desire to allow them to adduce the evidence on record and to prove the documents filed with list Exh. 43.

> 41] In this behalf, on perusal of the documents filed with list Exh. 43, it can be seen that there are six documents, which are proposed to be filed on record. These documents are namely certified copy of Property Card, Rent Receipt dated 21.12.008, Rent Receipt dated 21.12.2008, Rent Receipt dated 10.08.2010, Rent Receipt dated 29.04.2015 and a certified copy of Tenant Extract of PMC for the period of 1983 to 1984. However, as observed here-in-above, the appellants are defaulters of the rent at least of the period 01.09.2019 to 24.08.2022, which is beyond the said period in respect of which rent receipts are proposed to be produced on record. In that case, for the sake of convenience, even if all these documents are accepted as it is on record, the observations here-in-above will not change. In other words, the documents and evidence on record is sufficient to enable this court to deliver the judgment on merits. In these circumstance, the appellants are not entitled to allow the application Exh. 40 as prayed for. Hence, issue No. 7 is answered in the negative.

25) Additional evidence was sought to be produced by Defendant Nos. 2 and 3 not for the purpose of proving payment of rent or for defending the ground of default in payment of rent. Production of additional evidence was aimed at proving direct landlord-tenant relationship with Mr. Dara K. Irani. Along with application at Exhibit-40, following documents were sought to be produced:

> 1] Certified copy of property card 31/7/2017
> 2] Original rent receipt [1/9/2007 to 31/8/2008]
> 3] Original rent receipt [1/9/2008 to 31/8/2009]
> 4] Court deposited rent receipt [1/9/2009 to 31/8/2010]
> 5] Court deposited rent receipt [1/9/2010 to 31/8/2015]
> 6] Copy of tenant extract of PMC 1983 to 1984

26) The Appellate Court erroneously presumed that additional evidence was aimed at disproving the ground of default and accordingly proceeded to reject the same by holding that default in payment of rent for the period from 1 September 2019 to 24

August 2022 would continue to subsist even if the said additional documents were taken into consideration. The Appellate Court has thus completely misdirected itself while deciding the application at Exhibit-40.

27) Under the provisions of Rule 27 of Order 41, parties to the Appeal are ordinarily not entitled to produce additional evidence since correctness of findings recorded by the Trial Court is required to be determined with reference to the evidence produced before it. However, in three exceptional circumstances enumerated therein, production of additional evidence is permitted. Order 41 Rule 27 provides thus:

> **27. Production of additional evidence in Appellate Court.-**
> (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-
> (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
> (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
> (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,
> the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
> (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28) Thus, production of additional evidence is permissible only in three eventualities:

(i) refusal by the Trial Court to admit evidence which ought to have been admitted.

(ii) additional evidence not being in the knowledge of the parties despite exercise of due diligence.

(iii) The Appellate Court itself requires any document to be produced or any witness to be examined for pronouncing the judgment.

29) Except the above three eventualities enumerated in Order 41 Rule 27, it is impermissible to produce additional evidence before the Appellate Court. In my view, the present case is not covered by any of the three eventualities enumerated in Order 41 Rule 27 of the Code. Defendant Nos.2 and 3 did not lead any evidence despite grant of repeated opportunities. Therefore, the case does not involve refusal on the part of the Trial Court to admit in evidence which was sought to be produced. The case also does not involve the eventuality of additional evidence being not in the knowledge of Defendant Nos.2 and 3 since clear reference to the said evidence was made in their written statement. This is clear from the following :

(i) Certified copy of property card was sought to be produced in support of the contention that names of D.K. Irani as well as Kishori Bhagat appear in revenue records. These aspects were already pleaded in the Written Statement and the said

averments must have been made only after perusal of the property card extract.

(ii) Rent receipts pertaining to the years 2007 and 2008-09 were sought to be produced to prove payment of rent by Defendant Nos. 2 and 3 to Mr. D.K. Irani and Mr. Marzaban F. Irani. Written Statement of Defendant Nos. 2 and 3 clearly contains averments about payment of rent to Mr. D.K. Irani and Mr. Marzaban F. Irani. In fact, the written statement pleaded that the last rent receipt was issued in respect of the period upto 31 August 2008. Thus, Defendant Nos.2 and 3 were in possession of the said two rent receipts and could have produced the same before the Trial Court.

(iii) Receipts issued by Court for deposit of rent at serial nos.4 to 5 of the list of documents do not form evidence in any manner since the same are merely court records and in any case the same can be considered only for the purpose of compliance of provisions of Section 15(3) of the MRC Act.

(iv) Certified copy of list of tenants issued by PMC is in two parts. The first part reflects the names of 'tenants' for the year 1969-70 reflecting the name of Ghulam Husain as tenant, whereas in the list of 'occupiers' pertaining to the year 1983-83, name of Narayan H. Bhimale (M/s. Bhimale & Sons) is reflected as 'occupier'. These two documents, far

from assisting the case of Defendant Nos.2 and 3 in establishing their case of direct tenancy with Mr. D.K. Irani, actually militates against them. Again, no justification is offered as to why the said document was not produced before the Trial Court by availing the opportunity of leading evidence by Defendant Nos.2 and 3.

30) I am therefore of the view that though the reasonings adopted by the Appellate Court for rejecting the application at Exhibit-40 filed for production of additional evidence under Order 41 Rule 27 of the Code does not appeal to me, the ultimate conclusion in rejecting the application need not be disturbed for reasons recorded above. Once the additional evidence sought to be produced by Defendant Nos.2 and 3 before the Appellate Court is ignored, there is zero evidence from their side in support of their contention of direct tenancy created by Mr. D. K. Irani.

31) However even if the documents sought to be produced as additional evidence are taken into consideration, the same does not make the case of Revisions Applicants any better. Their claim about creation of direct tenancy of Mr. D.K. Irani in the year 1975-76 appears to be totally fallacious. The Trial and the Appellate Court have considered the list of tenants maintained by the Municipal Corporation during the year 1969-70, in which name of Ghulam Husain is reflected against the land admeasuring 85 Khans and for use as 'Raddi Depot'. This demolishes the case of Defendant Nos.2

and 3 that they were inducted as direct tenants by Mr. D.K. Irani in 1975-76. On the contrary, the pleaded case of Plaintiffs about Ghulam Husain being the original tenant and Defendant No.1 creating illegal subtenancy in favour of Defendant Nos. 2 and 3 after the death of Gulam Husain appears to be more probable as name of Narayan H. Bhimale (M/s. Bhimale & Sons) appears for the first time in the municipal assessment records in the column of 'occupiers' in 1983-84. No document is produced by Defendant Nos. 2 and 3, even alongwith their application for production of additional evidence, to show that they occupied the suit premises in any capacity prior to 1983-84. Rent receipts pertaining to the years 2007 and 2008-09 allegedly issued in the name of Bhimales surfaced for the first time at the stage of appeal. Though the pleaded case of Defendant Nos. 2 and 3 is that Bhimale & Sons was inducted as tenant to run toddy business by Dara K. Irani in 1975-76 after Ashok Krishnappa Shinde left the premises, not even a single document prior to the year 2007 is produced even with Application at Exh. 40. Though it was pleaded in the written statement that excise license was transferred from the name of Ashok Krishnappa Shinde to Bhimale & Sons after creation of tenancy in 1975, no such document is produced. Defendant Nos. 2 and 3 gave suggestion to Plaintiffs' witness of payment of rent by them in 1992, but maintained stoic silence about issuance of any rent receipt for such payment. The list of tenants maintained by the Municipal Corporation reflects name of Ghulam Hussain as the tenant, which demolishes the case of Defendant Nos. 2 and 3 that Ashok Krishnappa Shinde was tenant prior to the year 1975. Therefore, even if all documents sought to be produced along with

the Application at Exhibit 40 are taken into consideration, the same are not sufficient to accept their claim of direct tenancy with Dara K. Irani.

32) In my view, therefore the entire case of Defendant Nos. 2 and 3 about creation of direct tenancy in favour of D.K. Irani is totally fallacious and has rightly been rejected by the both the Courts below. The Trial Court has accepted late Gulam Husain as the real tenant in view of existence of direct evidence in the list of tenants maintained by Municipal Corporation for the year 1969-70. Defendant Nos. 2 and 3 have failed to prove that they were inducted as tenants by Dara K. Irani. In that view of the matter, the concurrent findings recorded by the Trial and the Appellate Court about Ghulam Husain being the real tenant need not be disturbed.

33) After having held that Gulam Husain was the original tenant, the Trial and the Appellate Court have proceeded to accept induction of Defendant Nos.2 and 3 by Plaintiffs as their tenants. This had been done much to the dismay of both rival parties. Both the parties are not happy with this finding of Trial and Appellate Court holding Defendant Nos.2 and 3 as direct tenants of Plaintiffs. In fact, it is not even the pleaded case of Defendant Nos.2 and 3 that they were ever inducted as direct tenants by Plaintiffs. The finding of existence of landlord-tenant relationship between Plaintiffs and Defendant Nos. 2 and 3 is recorded only on the basis of one stray statement made by P.W.1 during the course of his cross-examination,

wherein he stated that '***I had taken rent from Mr. Narayan Bhimale in the year 1992***'. On the basis of this statement, both Trial as well as Appellate Court have assumed existence of landlord-tenant relationship between Plaintiffs and Defendant Nos. 2 and 3. The relevant findings of the Trial Court reads thus :

> 27] Therefore, from the above said admissions, it is clear that, as the defendant Nos. 2 and 3 are the tenants, therefore, PW-1 Jehangir accepted rent from them. While recording the findings, to issue No.2, though I have hold that, one Gulam Husain was tenant in the suit premises, but, as already discussed, the list of tenants filed on record i.e. Exh. 40, only disclose that, Gulam Husain was tenant, during the period 1969-70 only. However, there is no evidence on record that, after 1970 also, said Gulam Husain, continued to be tenant, in the suit premises. On the contrary, from the admissions brought on record, it is clear that, after Gulam Husain, the suit premises was let out to defendant Nos. 2 and 3, and since then, they are the tenants. From the cross-examination of PW-1 Jehangir, it is also clear that, he is not personally aware about the tenants in the suit premises. From the admissions given by him, it is clear that, on the basis of the list of tenants, provided by the Corporation, vide Exh. 40, only he contended that, Gulam Husain was tenant. Therefore, it is clear that, the plaintiffs themselves, are not having personal knowledge about the subsequent events, which took place, after 1970. PW-1 Jehangir, has candidly admitted that, earlier to 1992 also, Bhimale was in occupation of the suit premises.

34) In my view, both the Courts below have palpably erred in raising inference of direct tenancy of Defendant Nos. 2 and 3 with Plaintiffs. Both the Courts have not properly appreciated the context in which the said statement is made by Plaintiff's witness. Plaintiffs are consistent in their stand that Gulam Husain and after his death, Defendant No.1 is the tenant and that Defendant Nos.2 and 3 were illegally inducted by Defendant No.1 as subtenants. Therefore, there was no reason for Plaintiffs' witness to make any statement about

acceptance of any rent from Narayan Bhimale. Plaintiffs pleaded case is that Defendant No.1 was in arrears of rent since 1 February 1993. It is in the context of the contention about Defendant No.1 being in arrears of rent from 1 February 1993 that Plaintiffs' witness made a statement of collection of rent from Narayan Bhimale in the year 1992. The statement is aimed at indicating the period upto which rent was paid and not at the person who made the payment. The said statement actually means that Narayan Bhimale was merely occupying the premises and paid the rent on behalf of the original tenant (Defendant No.1). It is an admitted position that no rent receipt was issued in the name of Narayan Bhimale. Defendant Nos. 2 and 3 have not produced any such rent receipt. Therefore, stray statement made about collection of rent in the year 1992 from Narayan Bhimale cannot be construed to mean existence of landlord-tenant relationship between Plaintiffs and Defendant Nos.2 and 3. Both the Courts have committed fundamental folly in not properly appreciating the context in which the said statement is made by Plaintiff's witness. Most importantly both the Courts failed to appreciate that Defendant Nos. 2 and 3 never claimed payment of any rent by them to Plaintiffs nor they claimed existence of landlord-tenant relationship with Plaintiffs. In such circumstances, the stray statement made by Plaintiffs' witness could not have been used for drawl of inference of existence of landlord-tenant relationship between Plaintiffs and Defendant Nos.2 and 3. There is absolutely no material on record to infer that after Gulam Husain, Defendant Nos.2 and 3 were accepted as tenants in respect of the suit premises by Plaintiff as has been erroneously held by the Trial Court. In my view,

the findings recorded by the Trial and Appellate Courts are grossly erroneous and unsupported by any evidence.

35) The conspectus of the above discussion is that Gulam Husain remained as a tenant in respect of the suit premises and after his death, his son (Defendant No.1) continued the tenancy rights. Since valid nature of possession by Defendant Nos. 2 and 3 is not demonstrated, it will have to be inferred that they have come in possession of the suit premises as unlawful sublettees of Defendant No.1. The Trial and the Appellate Court have failed to appreciate this position and have erroneously presumed Defendant Nos.2 and 3 to be the direct tenants of Plaintiffs.

36) Though Mr. Dani has raised objection about Plaintiffs challenging rejection of cross-objections by filing Writ Petition No. 8788/2024, I am not inclined to accept the said objection. True it is that Plaintiffs did not file any proceedings challenging the earlier decree of the Appellate Court dated 23 January 2023, the same was challenged by Defendant Nos.2 and 3 in Civil Revision Application No.221/2023. However, since the entire appeal was remanded by this Court vide order dated 1 September 2022, it appears that Plaintiffs did not feel it necessary to raise a separate challenge to rejection of their cross-objections in the earlier decree of the Appellate Court dated 23 January 2023. In this regard, paras-8 and 9 of the order dated 1 September 2023 passed by this Court reads thus:

> 8. In such circumstances, there is no other option, but to remand the matter to the Appellate Court with direction to comply with the order dated 5.12.2018 and to decide the application under Order 41 Rule 27.
>
> 9. The **application and the appeal** be decided as expeditiously as possible, and in any event, within a period of three months from the date of the order.
>
> ***(emphasis added)***

37) Thus, this Court remanded the entire appeal for being decided afresh. After remand of the Appeal, Plaintiffs pressed their cross objections and there is nothing on record to indicate that any objection was raised by Defendant Nos. 2 and 3 to Plaintiffs pressing their cross-objections. Having not objected before the Appellate Court in the second round for pressing of cross-objections by Plaintiffs, it is too late in a day for Defendant Nos. 2 and 3 to raise objection about maintainability of Writ Petition No.8788 of 2024. Even otherwise, cross objections of Plaintiffs were essentially aimed at erroneous finding of the Trial Court about Defendant Nos. 2 and 3 being tenants of Plaintiffs. Even Defendant Nos. 2 and 3 are not happy with this finding of Trial Court. Thus, the cross objections raised by Plaintiffs are intrinsically corelated with the appeal of Defendant Nos. 2 and 3. The Appellate Court has rightly decided the cross objections after remand by this Court and Defendant Nos. 2 and 3 themselves did not object to entertainment and decision of such cross objections. The objection raised by Mr. Dani in this regard is therefore repelled.

38) In my view therefore the decree for eviction ought to have been passed by the Trial and the Appellate Court on the grounds of unlawful subletting of suit premises in favour of Defendant Nos.2 and 3. Dr. Thorat has relied upon judgment of the Apex Court in ***Celina Coelho Pereira*** (supra) in which the Apex Court has enumerated the ingredients of subletting in para-25 as under:

> **25.** The legal position that emerges from the aforesaid decisions can be summarised thus:
>
> (*i*) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.
>
> (*ii*) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.
>
> (*iii*) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.
>
> (*iv*) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.
>
> (*v*) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

> (*vi*) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.

39) Present case does not involve element of secrecy in the arrangement of induction of Defendant Nos. 2 and 3. Therefore it is not really necessary to consider the tests of subletting laid down by the Apex Court in ***Celina Coelho Pereira***. Defendant Nos. 2 and 3 came out with a bold case that Gulam Hussain or Defendant No. 1 were never tenants in respect of the premises and that they were directly inducted as tenants by Dara K. Irani. They have failed in establishing this defence and tenancy of Gulam Hussain is proved by list of tenants maintained by the Municipal Corporation. Therefore, Plaintiff's case of induction of Defendant Nos. 2 and 3 by Defendant No. 1 as unlawful subletees needs to be accepted.

40) Coming to the ground of default in payment of rent, the decree is also sustainable on the said ground by the real tenant i.e. the Defendant No.1. Since Defendant No.1 did not appear in the suit, Defendant Nos.2 and 3 did not demonstrate that the rent in respect of the suit premises was paid to Plaintiffs after 1 February 1992. Therefore, the default in payment of rent was otherwise established. It appears that after receipt of the suit summons on 25 June 2010, Defendant Nos.2 and 3 deposited the entire arrears of rent from 1 September 2009 till August 2010 alongwith interest at the rate of 15% p.a. However, the said deposit is not from 1 February 1992. The

deposit of arrears of rent was conveniently made by Defendant Nos.2 and 3 on the basis of their assumption that the rent was paid to Marzaban Irani till August 2009. The claim of existence of landlord-tenant relationship between Defendant Nos.2 and 3 and Dara K. Irani is also rejected. Even otherwise, the payment of rent to Dara K. Irani or Marzaban Irani is not proved by proving the rent receipts. The said two persons were otherwise not entitled to receive rent. In that view of the matter, the deposit of rent made by Defendant Nos.2 and 3 from 1 September 2009 did not meet the requirement of demand notice dated 19 January 2010 issued under the provisions of Section 15(2) of the MRC Act demanding the arrears of rent from 1 February 1992. In my view, therefore the deposit of rent vide receipt dated 10 August 2000 (for the period from 1 September 2009 till August 2010) would not save operation of provisions of Section 15(3) of the MRC Act since the rent 'then due' is not deposited. Therefore, the decree is otherwise sustainable on the ground of default in payment of rent also.

41) Though, it is not really necessary to go into the issue of observance of condition of regular deposit of rent by Defendant Nos.2 and 3 during pendency of the suit, there appears to be default in that regard too on the part of Defendant Nos.2 and 3. Even if Defendant Nos. 2 and 3 are to be considered as direct tenants of Plaintiffs (as erroneously held by Trial and Appellate Court), they did not deposit the rent in respect of the suit premises regularly as required under section 15(3) of thew MRC Act. After making the first

deposit on 10 August 2001 (from September 2009 to August 2010), the next deposit is made by Defendant Nos.2 and 3 directly on 29 April 2015 i.e. after the suit was decreed on 15 April 2015. By the receipt dated 29 April 2015, rent in respect of the period from September 2010 to August 2015 was deposited at one go. Thus from September 2010 till the suit was decreed on 15 April 2015, Defendant Nos. 2 and 3 did not bother to deposit the rent regularly in the Court. The Full Bench of this Court in ***Babulal Fakirchand Agarwal*** (supra) has held that the ground under sub-section (3) of Section 15 is independent one and even if the tenant makes good the default by payment of rent to the landlord after receipt of notice under Section 15(2), the landlord can still bring in suit for eviction under Section 15(3) and in the event the Court finds that the tenant has failed to regularly deposit the rent during pendency of the suit, the decree of eviction under Section 15(3) can still be passed. Therefore, even if Defendant Nos.2 and 3 were to be accepted as direct tenants of the Plaintiffs, there appears to be a clear default under the provisions of Section 15(3) of the MRC Act in the present case.

42) Dr. Thorat has rightly relied upon judgment of the Apex Court in ***Anandram Chandanal Munot*** (supra) in which eviction of tenant and subtenant was sought on the ground of tenant being in arrears of rent. The fact situation in the present case is identical. The Apex Court has held that if tenant is in arrears of tent, eviction of subtenant becomes eminent. In ***Shri Sagar Bhagwat*** (supra), the Single Judge of this Court has held that law does not require issuance of a

separate notice to subtenant who does not answer the requirements of deemed tenancy under Section 25.

43) The judgment of the Apex Court in ***K.D. Dewan*** relied upon by Mr. Dani has already been considered above in the context of absence of existence of ownership by a landlord. Mr. Dani has relied upon judgment in ***K.D. Dewan*** in support of his contention that since payment of rent to Dara K. Irani and Marzaban Irani is over long period of time, presumption of tenancy must be accepted. However, as observed above Defendant Nos.2 and 3 have failed to prove payment of rent to Dara K. Irani or Marzaban K. Irani on account of failure on the part to lead evidence.

44) Reliance by Mr. Dani on judgment of this Court in Vinayak does not cut any ice as no infirmity is found in the notice issued by the Plaintiffs. In ***Chandrasekhar Narayan Tambe*** (supra), the Single Judge of this Court has dealt with a case of previous owner not having any authority to claim possession. The judgment therefore would have no application to the facts of the present case. In my view, there is failure on the part of Defendant Nos. 2 and 3 to prove that Dara K. Irani was entitled to receive rent or that rent was paid to him. The judgment therefore would have no application to the facts of the present case.

E. CONCLUSIONS

45) Conspectus of the above discussion is that the Trial and Appellate Courts have erred in holding Defendant Nos. 2 and 3 as tenants of Plaintiffs. It is held that Defendant No. 1 is the tenant, who has unlawfully sublet the premises to Defendant Nos. 2 and 3. The Suit therefore deserves to be decreed on the ground of unlawful subletting. So far as the ground of default in payment of rent is concerned, Plaintiffs have proved that the tenant-Defendant No. 1 did not pay the rent since 1 February 1993. The since Defendant Nos. 2 and 3 could not establish their defence of direct tenancy with Dara K. Irani, the alleged payment of rent by them to Dara K. Irani or Marzban Irani upto August 2009 is inconsequential. Even otherwise, Defendant Nos. 2 and 3 have not proved payment of rent upto August 2009. They did not make good default in payment of rent by paying the arrears to Plaintiffs after receipt of demand notice nor deposited the arrears of rent, interest and costs of suit in the Court within 90 days of receipt of suit summons. They further failed to regularly deposit the rent during pendency of the suit. Therefore even if the conclusion of Trial and Appellate Court that Defendant Nos. 2 and 3 are direct tenants of Plaintiffs was to be sustained (which is not), default in deposit of rent regularly during pendency of suit is proved.

46) In my view therefore, the findings of Trial and Appellate Court on the issue of unlawful subletting are unsustainable and deserves to be set aside. The suit ought to have been decreed on the

ground of unlawful subletting. To this extent, Writ Petition No.8788/2024 deserves to be allowed. Since Defendant Nos. 2 and 3 have failed to prove the defence of their direct tenancy with Dara K. Irani, Civil Revision Application No. 71 of 2024 deserves to be dismissed.

F. ORDER

47) Accordingly, I proceed to pass the following order:

(i) Judgment and order dated 27 October 2023 passed by the District Court in Regular Civil Appeal No.560/2014 as well as judgment and decree dated 9 September 2014 passed by the Small Causes Court in Civil Suit No.195/2010 are modified to the limited extent of holding that Defendant No.1 is the tenant in respect of the suit premises and Civil Suit No.195/2010 is decreed on the grounds of unlawful subletting and default in payment of rent.

(ii) Defendants shall accordingly handover possession of the suit premises to Plaintiffs on/or before 31 December 2024.

(iii) Plaintiffs shall be entitled to enquiry into mesne profits from the date of the decree of the Trial Court i.e. 9 September 2014.

48) Civil Revision Application No.71/2024 is accordingly dismissed. Writ Petition No.8788/2024 is allowed to the above extent. Rule is partly made absolute.

[SANDEEP V. MARNE, J.]