IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.504 OF 2022

Ms. Genarosa A. Annes
(since deceased) through her LRs

1(a) Ms. Bertha Fabian Annes D'Mello
(daughter), Age 55 years, Professional
F-4, Nirmala Colony,
St. John Baptist Road,
Bandra (W), Mumbai – 400 050.

1(b) Mr. Francisco Annes
(son) Age 53 years, Retired,
F-4, Nirmala Colony,
St. John Baptist Road,
Bandra (W), Mumbai – 400 050.

1(c) Thelma Annes D'souza
(daugher) deceased deleted. **....Applicants**

-Versus-

Haji Esmail Haji Essa Supariwala
since deceased, through his L.Rs

1(a) Ms. Memuna Ismail Supariwala
(wife) Age 60 years,

1(b) Abdul Razaq Ismail Supariwala
(son), Age 48 years,

1(c) Mohammad Farooq I. Superiwala
(son) Age 42 years,

All having address at 53/55,
Erskina Road, Null Bazar,
Mumbai – 400 003.

2 Ms. Ricardia Annes
since deceased, L.Rs exempted unknown

3 The Court Receiver
High Court Bombay (Discharged)

4 Olinda Augustine Annes
(daughter in law) Age 65 yrs,
Housewife, Kailash Kutir,
Block C, Flat No.13,
Tatya Tope Society
Wanowrie, Pune 411 040. **....Respondents**

Ms. Abigail D'mello *with Ms. Bertha Annes for the Applicant Nos.1(a) & 1(b).*
Mr. Baban A. Singh, *for Respondents.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 04 DECEMBER 2024.

PRONOUNCED ON : 17 DECEMBER 2024.

J U D G M E N T :

THE CHALLENGE

1) Revisionary jurisdiction of this Court is invoked under provisions of Section 115 of the Code of Civil Procedure, 1908 (**the Code**) for setting up a challenge to the judgment and decree dated 30 September 2022 passed by Appellate Bench of Small Causes Court by which A1 Appeal No.335 of 2015 filed by the Applicants has been dismissed. Cross-Objection filed by the Plaintiffs is also dismissed. Small Causes Court's decree dated 14 March 2014 decreeing R.A.E. Suit

No.648/1112 of 2001 has been confirmed. The Small Causes Court, while partly decreeing the suit, has held Plaintiffs to be entitled for decree of eviction of Defendants from the suit premises.

FACTS

2) Plaintiff-Haji Esmail Haji Essa Supariwala, who claims to be the owner and landlord in respect of the building named 'Supariwala Mansion' (previously known as Sofia Manzil) situated at Dr. Babasaheb Ambedkar Road, Parel, Mumbai – 400 012. It appears that Mr. Bahman Jehangir Irani and Mr. Rustom Gustasph Irani were operating Restaurant business in the name of style as 'Cafe Yazdan' in Shop Nos.1, 2 and 3 of the building Sofia Manzil. By Indenture dated 20 June 1952, said Bahman Jahangir Irani and Gustasph Irani sold and assigned their business inclusive of stock-in-trade, furniture, fixtures, fittings, pots, pans and all other movables lying in the said shops together with the goodwill in the business in favour of Ms. Maria Paulin Annes. This is how Ms. Maria Paulin Annes started claiming tenancy rights in respect of the premises where the bakery was being operated. After death of Maria Paulin Annes, her children, son Archibald Annes (**Archibald**) and unmarried daughter-Ricardia Annes (**Ricardia**) claimed joint tenancy rights in respect of premises bearing Shop Nos.1, 2 and 3, staircase room and CI shed (**larger premises**) and the rent receipt was apparently issued in their joint names. It is claimed that Ricardia allowed one Ganekar Tailor in front portion of Shop No.1 while retaining rear portion of Shop No. 1 in her possession. According to Ricardia, after her retirement as a Teacher from St. Agnes High School, she established a Travel Agency by name Marian Travels in Shop No.3 prior to the year 1974. It appears that business of Studio was stated by Ricardia and

Archibald in Shop No. 2 and in rear portion of Shop No.1. The license in respect of Studio business was obtained in the name of Archibald. After death of Archibald, his second wife Genarosa Archibald Annes **(Genarosa)** apparently conducted the business of studio and had employed Manager-Mr. Ashok Ramprakash Anand for looking after the studio.

3) The Manager of Studio, Mr. Ashok Ramprakash Anand, filed S.C. Suit No.6411 of 1981 seeking injunctive reliefs in respect of the Studio against Genarosa, in which Genarosa filed a counterclaim seeking recovery of possession of Shop No.2 and rear portion of Shop No.1. In that suit, Court Receiver was appointed, through which Genarosa secured interim possession of Shop No. 2 and rear portion of Shop No. 1 as an agent of Court Receiver.

4) Ricardia had filed RAN Application No.47/SR of 1987 in Small Causes Court against landlord seeking fixation of standard rent in respect of the larger premises. In the said RAN Application, landlord filed Reply denying tenancy in respect of staircase room and CI shed and contended that the rent had increased up to Rs.986/- by 1 April 1993. It appears that in the said RAN Application, Ricardia was permitted to deposit rent from 1 July 1991 till 31 October 1995 at the rate of Rs.586.27/- per month. The ledger relied upon by the Revision Applicants in said RAN Application No. 47/SR of 1987 indicates deposit of rent of Rs.586.27/- in respect of larger premises upto April 1997.

5) Disputes arose between Genarosa and Ricardia in respect of the studio business and Ricardia got aggrieved by Genarosa securing

possession of Studio through Court Receiver appointed in SC Suit No. 6411/1981. Ricardia therefore filed S.C. Suit No.1156 of 1989 in City Civil Court seeking declaration of ownership of the studio business as well as decree for possession of the larger premises. In that suit, consent terms were filed on 9 January 1991 in Notice of Motion No. 1220 of 1989, under which Court Receiver appointed in SC Suit No. 6411/1981 was continued in respect of the studio business, and parties agreed that the Receiver would induct a third party offering to pay highest security deposit and monthly compensation which was to be shared in proportion of 70% for Genarosa and 30% to Ricardia. Accordingly, one Mr. K. Y. Hegde was inducted by the Court Receiver in the Studio and monthly compensation paid by him was shared in agreed proportion between Ricardia and Genarosa.

6) In S.C. Suit No.1156 of 1989, landlord Haji Esmail Haji Essa Supariwala filed Chamber Summons No.1 of 1999 on 23 December 1998 alleging that the studio premises remained closed since April 1977 and that there are several sublettings in respect of portions of larger premises. The landlord therefore objected to passing on any order in SC Suit No.1156 of 1989 in his absence and contended that the Consent Terms dated 9 January 1991 were bad in law and not binding on him. In short, the landlord objected to induction of any third party in the studio premises and sought his impleadment in the suit.

7) Landlord-Haji Esmail Haji Essa Supariwala filed R.A.E. & R. Suit No.834/1793 of 1994 against only Ricardia in respect of Shop Nos. 1, 2 and 3 on the ground floor of the building Supariwala Mansion seeking recovery of possession thereof on the ground of default in payment of rent from 1 April 1986 and *bonafide* requirement of

Plaintiff. In said R.A.E. & R. Suit No.834/1793 of 1994 Ricardia filed Written Statement objecting to non-impleadment of Genarosa as a party Defendant to the suit. She also objected to non-inclusion of staircase room and shed to attached to Shop No.2 in the description of the suit property therein.

8) SC Suit No.6411 of 1981 was dismissed for default vide Decree dated 1 April 1999, but the counterclaim was allowed granting possession of studio premises comprising of Shop No.2 and rear portion of Shop No.1 in favour of Genarosa.

9) According to Ricardia, since she was old and suffering from ailments, she finally agreed for an arrangement to let Genarosa execute the decree passed in R.A.E. Suit No.6411 of 1981 and take possession of studio premises comprising if Shop No.2 and rear portion of Shop No.1 and decided not to interfere with Genarosa's possession thereof. Ricardia claims that she agreed to get the rent receipts separated in respect of studio premises comprising of Shop No.2 and back portion of Shop No.1 in favour of Genarosa and the rest of the premises bearing Shop No.3, staircase room and back portion of Shop No.1 remained in her possession and separate tenancy. According to Ricardia, this is how Genarosa became an independent tenant in respect of premises bearing Shop No.2 and back portion of Shop No.1, which later formed '**suit premises**' for R.A.E. Suit No.648/1112 of 2001. According to Ricardia, she started paying rent separately in respect of Shop No.3, staircase room and back portion of Shop No.1 in possession of Ganekar Tailor. However, according to Ricardia, Genarosa did not take steps in pursuance of the agreement with Ricardia. Instead Genarosa took out

Contempt of Court proceedings against Ricardia alleging violation of Consent Terms on account of non-payment of rent in respect of the larger premises by Ricardia.

10) During pendency of R.A.E. & R Suit No.834/1793 of 1994, landlord served notice dated 1 November 1999 to both Ricardia as well as Genarosa claiming non-payment of rent at the rate of Rs.1,300/- per month from 1 April 1997 till 31 October 1999 as well as accusing them of subletting the suit premises to outsiders. The said notice was issued only in respect of Shop No.2 and rear portion of Shop No.1 in the building Supariwala Mansion.

11) In the aforesaid background of disputes between Ricardia and Genarosa, the landlord filed R.A.E. Suit No.648/1112 of 2001 against Ricardia (Defendant No.1), Genarosa (Defendant No. 2) and the Court Receiver seeking recovery of possession of suit premises comprising of only Shop No.2 and rear portion of Shop No.1 alleging that Ricardia and Genarosa were his tenants prior to termination of tenancy on monthly rent of Rs.1,300/-. Plaintiff alleged non-payment of rent from 1 April 1997 at the rate of Rs.1,300/- per month and further raised allegations of subletting as well as non-user of the premises for a period of six months prior to filing of the suit. Plaintiff also accused Defendant Nos. 1 and 2 of making permanent additions and alterations in the suit premises.

12) It appears that Defendant No.2- Genarosa initially did not appear in the suit and the suit was decreed *ex-parte* on 28 September 2002. Defendant No.2 filed Miscellaneous Notice No.744 of 2002 for setting aside of the *ex-parte* decree, which was allowed and

ex-parte decree was set aside. Thereafter Defendant No.2-Genarosa filed her Written Statement on 18 January 2003 objecting to exclusion of Shop No.3, front portion of Shop No.1, staircase room and CI shed from the description of the suit premises. She claimed that her husband was running a studio from Shop Nos.1, 2 and 3, staircase room and CI shed and after the year 1981, Ricardia took disadvantage of her husband's ill-health and illegally occupied Shop No.3 for starting business of Travel Agency. Genarosa further contended that Ricardia also occupied front portion of Shop No.1 and thereafter gave history of SC Suit No.1156 of 1989, filing of Consent Terms etc. Genarosa denied having received any notice of termination of tenancy. It appears that the Plaintiff amended the suit and incorporated averments relating to service of demand notice dated 1 November 1999. Genarosa accordingly filed Additional Written Statement denying receipt of demand notice dated 1 November 1999. She also pleaded details about her ill-health and inability to comprehend the events and accordingly stated that she was unable to recollect receipt of any notice from the Plaintiffs' Advocate. The amended Written Statement was filed in June 2004.

13) Defendant No. 1-Ricardia filed her own Written Statement giving the entire history of litigation between her and Genarosa and also pleaded about arrangement between the duo for separation of rent receipts. Genarosa admitted receipt of demand notice. Ricardia contended that Genarosa took possession of the suit premises towards execution of decree in S.C. Suit No.6411 of 1981 and it was her responsibility to pay rent in respect thereof.

14) As Plaintiff filed R.A.E. Suit No.648/1112 of 2001 in respect of only Shop No.2 and back portion of Shop No.1, Genarosa filed R.A.D.

Suit No. 811 of 2003 seeking declaration of tenancy as well as grant of suitable alternate accommodation in the reconstructed building in lieu of the larger tenanted premises bearing Shop Nos.1, 2 and 3 and store room under staircase on an assertion that she is the tenant in respect of the entire property covered by the said R.A.D. Suit No.811 of 2003. Ricardia was impleaded as Defendant No.2 in the said suit. Apparently the said R.A.D. Suit No.811 of 2003 is pending before the Small Causes Court.

15) Based on pleadings, Small Causes Court framed issues. Parties led evidence in support of their respective claims. Plaintiff examined Abdul Razak Haji Ismail Supariwala as PW1, Dinesh Ramgopal Shukla, Rent Collector as PW3 and Gajanan Govind Surve as PW4. On behalf of Defendant No.2-Genarosa, her daughter Bertha D'mello was examined as witness. It appears that Ricardia did not step into the witness box.

16) After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to partly decree the Plaintiffs' suit by judgment and order dated 14 March 2014. The Small Causes Court held that Defendants were in arrears of rent, that demand notice was duly served on them and that they were not ready and willing to pay rent in respect of the suit premises. The Small Causes Court however rejected the grounds of unlawful subletting, erection of permanent structure and non-user. The Small Causes Court did not answer the issue about common tenancy in respect of larger premises and illegal separation without the consent of Genarosa as not being covered by provisions of Section 16 of the Maharashtra Rent Control Act, 1999 (**MRC Act**). Similarly, the Small Causes Court also did not

answer the issue of collusion between Plaintiffs and Ricardia. The Small Causes Court accordingly declared that the Plaintiff is entitled to decree of eviction against Defendants in respect of the suit premises.

17) Genarosa, through her legal heirs, filed Appeal No.335 of 2015 in the Appellate Bench of Small Causes Court challenging the eviction decree dated 14 March 2014. During pendency of Appeal No.335 of 2015 she filed application for leading additional evidence under Order 41, Rule 27(b) of the Code to bring on record the decree passed in R.A.D. Suit No.379 of 2005 filed by Eknath Zingade Rao which was filed against Genarosa and her heirs seeking restoration of possession of front portion of Shop No.1. Apparently said Eknath Zingade Rao was claiming through Ganekar Tailor who was inducted by Ricardia in the front portion of Shop No.1. By order dated 10 August 2005, Small Causes Court had dismissed the Notice filed for interim injunction rejecting the prayer for restoration of possession of front portion of Shop No.1. The said interim order dated 10 August 2005 was apparently sought to be relied upon to show rights in respect of Genarosa even in respect of front portion of Shop No.1. The Appeal No. 335 of 2015 against the decree of the Small Causes Court is however dismissed by the Appellate Bench vide judgment and decree dated 30 September 2022.

18) Aggrieved by the decree of the Appellate Bench of Small Causes Court dated 30 September 2022 confirming the decree of the Small Causes Court dated 14 March 2014, Revision Applicants, who are heirs of Genarosa, have filed the present Revision Application.

SUBMISSIONS

19) Ms. D'mello, the learned counsel appearing for Revision Applicants would submit that the Trial Court has erred in decreeing Plaintiff's suit and the Appellate Court further erred in upholding the eviction decree in total ignorance of the legal position that the suit filed by the Plaintiff was not maintainable and was liable to be dismissed for having not included the entire tenanted premises in the description of the suit property. She would submit that Ricardia and Genarosa were joint tenants in respect of larger premises comprising of Shop Nos.1, 2 and 3, staircase room and CI shed. That though R.A.E. Suit No.648/1112 of 2001 is filed by Plaintiff against Ricardia and Genarosa, he did not include Shop No.3, front portion of Shop No.1, staircase room and CI shed in the description of the suit premises, though those excluded premises form a part of tenanted property. She would submit that previously the landlord instituted R.A.E. & R. Suit No.834/1793 of 1994 for recovery of possession of Shop Nos.1, 2 and 3 from Ricardia. Though the description of tenanted premises in R.A.E. & R. Suit No.834/1793 of 1994 was also erroneous (for having not included staircase room and CI shed) Plaintiffs still believed that Ricardia is a tenant in respect of Shop Nos. 1, 2 and 3. That Ricardia objected to the said suit of 1994 on twin grounds of non-impleadment of Genarosa being a joint tenant as well as non-inclusion of staircase room and shed attached to Shop No.2. However, in absence of any document showing division of tenancy, Plaintiff mischievously filed R.A.E. Suit No.648/1112 of 2001 in respect of only part of the tenanted premises (Shop No.2 and rear portion of Shop No.1) though the suit is filed both against Ricardia and Genarosa. She would submit that it is impermissible for landlord to seek partial decree for eviction without

inclusion of the tenanted premises in entirety. She would submit that the alleged Notice dated 1 November 1999, apart from not being served on Defendant No.2-Genarosa, was *ab initio void* as the same did not cover the entire tenanted premises and was received in respect of only Shop No.2 and back portion of Shop No.1. In support of her contention of impermissibility to file a suit for partial eviction and impermissibility to serve notice not covering entire accommodation, she would rely upon judgments of the Apex Court in ***Chimanlal Versus. Mishrilal***[1], ***Habibunnisa Begum and others Versus. G. Doraikannu Chettiar (deceased by L.Rs.) and others***[2] and ***Miss S. Sanyal Versus. Gian Chand***[3]. She would also rely upon judgment of Patna High Court in ***Keshava Prasad Singh Bahadur Versus. Mathura Kaur and Ors.***[4]

20) Ms. D'mello would further submit that demand of rent at the rate of Rs.1,300/- per month in the alleged notice dated 1 November 1999 or in the suit itself was illegal. That Ricardia was depositing rent in respect of the larger premises at Rs. 586.27/- upto April 1997 and there is absolutely nothing on record to indicate that the rent in respect of smaller premises (Shop No.2 and back portion of Shop No.1) escalated to Rs.1,300/- per month. That therefore the notice was not in respect of correct amount of rent and was accordingly invalid for the purpose of maintaining the suit for eviction under Section 15(2) of the MRC Act. In support, Ms. D'mello, would rely upon judgment of this Court in ***Ramchandra Appaji Hanjage Versus. Mahavir Gajanan Mug***[5].

1 AIR 1985 SC 136
2 1999 AIR SCW 4236
3 AIR 1968 SC 438
4 AIR 1922 Pat 608A
5 1991 (4) Bom CR 381

21) Ms. D'mello would further submit that under the consent terms dated 9 January 1991, Ricardia had undertaken to pay the rent in respect of the studio premises, which are also suit premises, and had continued to pay the rent in respect of the entire larger premises in R.A.N. Application No.47/SR of 1987 right upto 4 April 1997. That therefore composite rent of Rs.586.27/- was payable through one rent receipt in respect of larger tenanted premises and hence demand for rent of Rs.1,300/- in respect of suit premises was entirely illegal. That since demand notice itself is invalid, Defendant No.2 was not liable to meet such illegal demand nor was supposed to deposit the arrears of rent under Section 15(3) of the MRC Act. That Plaintiff's claim of arrears of rent in R.A.E. Suit No.648/1112 of 2001 is otherwise inconsistent with earlier filed R.A.E. & R. Suit No.834/1793 of 1994, in which he contended that the rent was Rs. 924/- per month in respect of entire tenanted premises upto 31 August 1993.

22) Ms. D'mello would further submit that Defendant No.1 Ricardia connived with Plaintiff-landlord and filed Written Statement favouring him. That Ricardia's contention in the Written Statement about separation of rent receipt for Shop No.3, staircase room and front portion of shop No.1 in Ricardia's name and Shop No.2 and back portion of Shop No.1 in Genarosa's name is not documented anywhere. That the said claim is otherwise falsified by landlord filing intervention application in S.C. Suit No.1156/1989 (Chamber Summons No.1 of 1999) on 23 December 1998 contending that the tenancy of Shop Nos. 1, 2 and 3 was obtained by Ricardia and at her request, rent receipt was issued in joint names of Archibald and Ricardia. That Plaintiffs also admitted joint tenancy of Ricardia and Archibald in respect of Shop Nos.1, 2 and 3 and CI shed in the Affidavit filed in support of Chamber Summons

No.1 of 1999. That if the rent receipt was really bifurcated as falsely claimed by Ricardia, Plaintiff would not have made the averments about existence of joint tenancy in said Chamber Summons filed on 23 December 1998. Ms. D'mello would therefore submit that there is absolutely nothing on record to indicate bifurcation of tenancy receipts and that therefore Genarosa remained joint tenant in respect of larger tenanted premises as on the date of institution of R.A.E. Suit No.648/1112 of 2001. She would further submit that since Ricardia was a spinster, after her death, Genarosa and her heirs became exclusive tenants in respect of the entire larger tenanted premises.

23) Ms. D'mello would further rely upon cross-examination of Plaintiff's witnesses in support of her contention that the rent was received by the Plaintiff upto August 2006, after which the rent was stopped because of the collapse of the suit building. That therefore the suit was required to be dismissed after considering specific admission of Plaintiff's witness about receipt of rent upto August 2006. She would submit that since there was single indivisible tenancy in respect of the entire tenanted premises, admission of receipt of rent upto August 2006 would cover rent in respect of illegally sub-divided suit premises as well. Ms. D'mello would submit that the Trial and the Appellate Courts have not taken into consideration this vital factual position while decreeing Plaintiff's suit. Lastly, Ms. D'mello would submit that the entire Supariwala Building has been demolished and redeveloped and on account of connivance by Ricardia in respect of balance portion of tenanted premises, (Shop No.3, front portion of Shop No.1, staircase room and CI shed), Genarosa and her heirs are deprived of alternate premises in the newly constructed building which is unauthorizedly grabbed by the landlord. She would also rely upon orders passed by this

Court in Writ Petition No.2100 of 2007 instituted by Genarosa relating to handing over possession of tenanted premises for redevelopment of the building. That the order dated 15 April 2009 passed in Writ Petition No.2100 of 2007 refers to Affidavit filed in Writ Petition No.1850 of 2006 in which the landlord had not only recognized Genarosa's tenancy in respect of larger tenanted premises but agreed to handover same area in the redeveloped building in lieu of Shop Nos.1, 2 and 3 and staircase room, subject to R.A.D. Suit No.811 of 2003 filed by Genarosa. That the possession of larger tenanted premises was handed over to the landlord for redevelopment of the building on account of above express promises. Ms. D'mello would therefore submit that the impugned decrees passed by the Trial and the Appellate Courts be set aside by dismissing Plaintiffs' suit.

24) Mr. Singh, the learned counsel appearing for Respondent No.1-Plaintiff would oppose the Revision Application submitting that concurrent findings recorded by the Trial and the Appellate Courts on the issue of default in payment of rent do not warrant interference by this Court in exercise of revisionary jurisdiction under Section 115 of the Code in absence of element of perversity or exercise of jurisdiction with material irregularity. He would submit that Plaintiff correctly instituted suit in respect of premises in possession of Genarosa as tenant. That in accordance with surrender of tenancy rights by Ricardia in respect of Shop No.3, front portion of Shop No.1, staircase room and CI shed, Genarosa no longer remained tenant in respect thereof and it was not necessary to seek decree for possession of surrendered portion by Ricardia. He would submit that law permits surrender of tenancy by one of the joint tenants and would rely upon

judgment of Karnataka High Court in ***Akkatai @ Sujata Versus. Baburao Sattappa Angol***[6]. He would submit that there is nothing on record to indicate payment of rent by Genarosa to the Plaintiff at any point of time. That therefore notice dated 1 November 1999 was perfectly valid. That issuance of notice to a joint tenant is also sufficient requirement as held by the Apex Court in ***Kanji Manji Versus. The Trustees of the Port of Bombay***[7]. He would further submit that demand notice dated 1 November 1999 has been acknowledged by Defendant No. 2 and her acknowledgment is proved before the Trial Court. That admittedly after receipt of the said notice neither the default was made good by Defendant No.2 nor she deposited the arrears of rent together with interest as required under Section 15(3) of the MRC Act. He would submit that if Defendant No.2 felt that demand of rent was excessive, she ought to have paid atleast the agreed amount of rent and would rely upon judgment of this Court in ***Fehameeda Begum Mahamood Khan Pathan Versus. Abdul Hafiz Sheikh Anwar***[8]. In support of valid service of notice, he would rely upon judgment of this Court in ***M/s. Green View Radio Service vs. Laxmibai Ramji & Anr.***[9]

25) Mr. Singh would further submit that the Trial Court has ultimately discarded the evidence of Bertha on account of failure on her part to produce and prove Power of Attorney executed by Genarosa. In support of his contention that evidence in absence of Power of Attorney deserves to be rejected, he would rely upon judgment of Karnataka High Court in ***Abdul Ali Mohammad Hussein***

6 1995(2) RCR 441
7 AIR 1963 SC 468
8 2013 (3) Bom.C.R. 877
9 1991 (1) Bom. CR 505

(since dead) by L.R's. vs. Mahadev Maruti Manginmani and another[10]. Mr. Singh would accordingly pray for dismissal of the Revision Application.

REASONS AND ANALYSIS

26) Plaintiff's suit for eviction has been decreed by the Trial Court on the solitary ground of default in payment of rent under Section 15 of the MRC Act. Rest of the grounds alleging unlawful subletting, erecting structure of permanent nature without landlord's consent and non-user of the suit premises were rejected by the Trial Court. While Defendant No.2 (through her legal heirs) filed Appeal No. 355/2015 challenging the eviction decree dated 14 March 2014, the Plaintiff filed a counterclaim before the Appellate Court seeking recovery of possession of the suit premises on additional grounds of subletting, non-user and additions and alterations. However, the Appellate Court has rejected the counterclaim filed by the Plaintiff and has confirmed the eviction decree on solitary ground of default in payment of rent.

27) In ordinary course, the ground of default in payment of rent under Section 15 of the MRC Act could be determined on parameters of valid service of demand notice, making good default within 30 days of receipt of demand notice and lastly deposit of arrears of rent together with interest and costs within 90 days of service of suit summons. However, in the present case, a twist is added by Defendant No. 2 right since filing of the Written Statement that neither the demand notice is valid nor suit is maintainable as both do not cover the tenanted premises in entirety. Right since inception, it is the case of Defendant No.2 that the tenanted premises comprise of Shop Nos.1, 2

10 2001 AIHC 3216

and 3, staircase room and C.I. shed, whereas the suit is filed in respect of the truncated portion of the tenanted premises comprising of Shop No.2 and only rear portion of Shop No.1. According to Defendant No.2, Shop No.3, front portion of Shop No.1, staircase room and C.I. shed despite forming part of tenanted premises, are excluded from the purview of both, demand notice and the eviction suit and that therefore the suit was required to be dismissed on this solitary ground.

28) Ms. D'mello has strenuously relied upon judgment of the Apex Court in ***Habibunnisa Begum*** (supra) in which the Apex Court has held in para-2 as under:

> **2.** The only question that arises in this case is as to whether it was open to the High Court to split the single tenancy by ordering partial ejectment of the tenant from the premises let out to him. In ***S. Sanyal v. Gian Chand*** [AIR 1968 SC 438 : (1968) 1 SCR 536] **it was held that where a contract of tenancy was a single indivisible contract and in the absence of any statutory provision to that effect, it is not open to the court to split the tenancy. Law, therefore, is that where there is a single indivisible contract of tenancy, it cannot be split by a court unless there is a statutory provision to that effect.** In the present case it is not disputed that the contract of tenancy is a single indivisible contract for Doors Nos. 27 and 28. It is also not disputed that there is no provision in the Tamil Nadu Buildings (Lease and Rent Control) Act empowering the court to order partial ejectment of a tenant from the premises by splitting the single indivisible tenancy. For these reasons it was not open to the High Court to split the tenancy and order for partial ejectment of the tenant from the premises.
>
> *(emphasis added)*

29) The judgment in ***Habibunnisa Begum***, in turn relies upon three judge bench decision of the Apex Court in ***S. Sanyal*** (supra) in which the Apex Court has held that if contract of tenancy is single and indivisible, relief relating to portion used for residential purposes cannot be granted to the landlord. The Apex Court held in paras-4, 5 and 6 as under:

4. The learned Judge purported to follow the decision of this Court in *Motilal* v. *Nanak Chand* [(1964) Punj LR 179] . It was held in that case that in cases governed by the Delhi and Ajmer Rent Control Act, 1952 "if the premises are in well-defined parts and have been let out for residential and commercial purposes together, the rule as to eviction regarding the portion that has been used for residence will govern the residential portion of the same and similarly the rules of eviction regarding the commercial premises will govern the commercial portion of the same as laid down in the Act". In the view of the Court even if there be a single letting for purposes residential and non-residential, if defined portions of the premises let are used for residential and commercial purposes "it must be held that the letting out was of the commercial part of the building separately for commercial purposes and of the residential part of the building for residential purposes". We find no warrant for that view either in the Delhi and Ajmer Rent Control Act or in the general law of landlord and tenant. Attention of the learned Judge in that case was invited to a judgment of this Court in *Dr Gopal Das Verma* v. *S.K. Bhardwaj* [(1962) 2 SCR 678] but the Court distinguished that judgment on the ground that "the facts of that case disclosed that they had no applicability to the facts of the case" in hand. Now in *Dr Gopal Das Verma case* [AIR 1966 Punjab 481] the premises in dispute were originally let for residential purposes, but later with the consent of the landlord a portion of the premises was used for non-residential purposes. It was held by this Court that "where premises are let for residential purposes and it is shown that they are used by the tenant incidentally for commercial, professional or other purposes with the consent of the landlord, the landlord is not entitled to eject the tenant even if he proves that he needs the premises bona fide for his personal use, because the premises have by their user ceased, to be premises let for residential purposes alone". It was, therefore, clearly ruled that if the premises originally let for residential purposes ceased, because of the consent of the landlord, to be premises let for residential purposes alone, the Court had no jurisdiction to decree ejectment on the grounds specified in Section 13(1)(*e*) of the Act. The rule evolved by the Punjab High Court in *Motilal case* [(1964) Punj LR 179] is inconsistent with the judgment of this Court in *Dr Gopal Das Verma case* [(1962) 2 SCR 678] .

5. If in respect of premises originally let for residential purposes a decree in ejectment cannot be passed on the grounds mentioned in Section 13(1)(*e*), if subsequent to the letting, with the consent of the landlord the premises are used both for residential and non-residential purposes, the bar against the jurisdiction of the Court would be more effective when the original letting was for purposes—non-residential as well as residential. It may be recalled that the condition of the applicability of Section 13(1)(*e*) of the Act is *letting* of the premises for residential purposes.

6. In this case the letting not being solely for residential purposes, in our judgment, the Court had no jurisdiction to pass the order appealed from. We may note that a Division Bench of the Punjab High Court in *Kunwar Behari* v. *Smt Vindhya Devi* [(1964) Punj LR 179] has held in construing Section 14(*i*)(3) of the Delhi Rent Control Act, 59 of 1958, material part whereof is substantially in the same terms as Section 13(1)(*e*) of the Delhi & Ajmer Rent Control Act, that "where the building let for residence is the entire premises it is not open to the Court to further sub-divide the

> premises and order eviction with respect to a part thereof". In our view that judgment of the Punjab High Court was right on the fundamental ground that in the absence of a specific provision incorporated in the statute the Court has no power to break up the unity of the contract of letting and attribute incidents and obligations to a part of the subject-matter of the contract which are not applicable to the rest.

30) In support of her contention that demand notice shall cover the entire tenanted premises, Ms. D'mello has relied upon judgment of the Apex Court in ***Chimanlal*** (supra) in which it is held in paras-8, 9 and 10 as under :

> **8.** It is urged by the appellant that an essential condition of the maintainability of the suit is non-compliance by the tenant with a valid notice demanding the rental arrears, and the notice to be valid must, inter alia, relate to the accommodation rented to the tenant and not any other accommodation. It is pointed out that in the present case the notice dated October 21, 1969 did not relate to the entire accommodation let to the appellant but only to a lesser part of it. There is substance in the contention. T**he notice dated October 21, 1969 is a notice demanding the arrears of rent in respect of accommodation which, according to the respondent consisted of a portion of a shop and a verandah. The appellant, on the other hand, pleaded that he had been let the entire shop, the verandah and also a kotha.** The subordinate courts held, on the evidence, that the appellant was right. It is apparent, therefore, that there is a substantial difference between the accommodation mentioned in the notice and the accommodation actually let to the appellant. **It must be taken that the notice relates to accommodation which cannot be effectively identified with the accommodation constituting the tenancy.** This is not a case of a mere misdescription of the accommodation where both parties knew perfectly well that the notice referred to accommodation let to the tenant. Nor is it a case where the discrepancy between the accommodation alleged by the landlord and that actually let to the tenant is marginal or insubstantial. The proceedings show that there was a serious dispute between the parties as to the material extent of the accommodation let by the one to the other. No congruency between the two versions was possible. Not at least until the respondent was compelled to seek an amendment of his plaint in the High Court at the stage of second appeal. Learned counsel for the respondent points out that there was no dispute that the rent for the accommodation was Rs 150 per month, and urges that if the amount of the arrears of rent is admitted between the parties that is all that matters. To our mind, that is not sufficient. **The notice referred to in Section 12(1)(*a*) must be a notice demanding the rental arrears in respect of**

> **accommodation actually let to the tenant. It must be a notice (*a*) demanding the arrears of rent in respect of the accommodation let to the tenant, and (*b*) the arrears of rent must be legally recoverable from the tenant.** There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. **A valid notice demanding arrears of rent relatable to the accommodation let to the tenant from which he is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit**, for unless a valid demand is made no complaint can be laid of non-compliance with it, and consequently no suit for ejectment of the tenant in respect of the accommodation will lie on that ground.
>
> **9.** It is contended by learned counsel for the respondent that the plaint in the suit was amended in order to relate to the accommodation asserted by the appellant and that the amendment relates back to the institution of the suit. The submission can be of no assistance to the respondent. We are concerned here not with the subject-matter of the suit but with the validity of the notice which is a prior condition of the maintainability of the suit. The notice of demand is an act independent of the institution of the suit. The notice and the plaint are two distinct matters, different by nature, designed for different purposes and located in two different points of time. They operate in two different planes, and are related insofar only that one is a condition for maintaining the other.
> **10.** Accordingly, we hold that the notice of demand dated October 21, 1969 served by the respondent on the appellant was invalid and therefore the suit was not maintainable. In the circumstances, we consider it unnecessary to enter upon the other points raised before us on behalf of the appellant.
>
> *(emphasis added)*

31) Thus, the law appears to be well settled that it is impermissible for the landlord to seek eviction of the tenant in respect of part of the tenanted premises where there exists singular indivisible contract of tenancy covering larger portion of tenanted premises. Thus, partial ejectment especially on the ground of default in payment of rent, is impermissible in law. Landlord cannot issue a demand notice alleging default in payment of rent in respect of part of the tenanted premises by excluding rest of the portion of the tenanted premises, both from the purview of notice and from the suit and then claim that

failure on the part of the tenant to make good default would entitle him to a decree of partial ejectment. In the light of this very well settled position of law about impermissibility for Court to order partial ejectment, especially on the basis of demand notice not covering entire tenanted premises, what needs to be examined in the present case is whether Defendant No.2, either by herself or alongwith Defendant No.1, remained tenants in respect of the larger portion of premises bearing Shop Nos.1, 2 and 3, staircase room and C.I. shed as on the date of service of demand notice as well as on the date of filing of the suit. If Defendant No.2-Revision Applicant succeeds in demonstrating before this Court that as on the date of issuance of demand notice and as on the date of filing of the suit, there was one singular indivisible tenancy in respect of the premises bearing Shop Nos.1, 2 and 3, Plaintiff's suit seeking partial ejectment on the ground of default in payment of rent in respect of the premises bearing Shop No.2 and rear portion of Shop No.1 will have to be necessarily dismissed by setting aside the eviction decree. If on the other hand, Defendant No.2-Revision Applicant fails to prove existence of such singular indivisible contract of tenancy as on the date of service of demand notice and on the date of filing of the suit, the impugned eviction decree will have to be upheld. This would be the broad contours of enquiry in the present Revision Application.

32) Ms. D'mello has placed reliance on Indenture dated 20 June 1952 executed between Bahman Jehangir Irani and Rustom Gustasph Irani as the Assignors and Mrs. Maria Paulin Annes as Assignee by which the entire business of Restaurant named 'Cafe Yazdan' together with the tenancy rights in the suit premises were apparently assigned to Mrs. Maria Paulin Annes. It appears that the said Indenture was not produced before the Trial Court though some

suggestions about the said Indenture appear to have been given to the Plaintiff's witness during the course of his cross-examination. It appears that the said Indenture was sought to be placed before the Appellate Court by filing application for additional evidence under Order 41 Rule 27(b) of the Code on 30 June 2022. The outcome of the said application is not really known. However, even if the Revision Applicant is permitted to rely upon the said Indenture, it would indicate that Cafe Yazdan was being operated in Shop Nos.1, 2 and 3 of the building and the business of the said Restaurant together with Goodwill thereof was purchased by the mother of Defendant No.1 and mother-in-law of Defendant No.2. Whether the tenancy rights also got transferred in the name of Mrs. Maria Paulin Annes is difficult to be ascertained at this juncture in the light of failure on the part of either of the parties to produce a rent receipt in her name. The rent receipts relied upon by Defendant No.2 dated 1 February 1956 and 1 February 1958 are issued in the name of Mahomed Vahed Khan Haji Zahid Khan and not in the name of Mrs. Maria Paul Annes. However, it appears that the rent receipts post 1 June 1959 are in the joint names of Miss. Ricardia Annes and Mr. Archibald Annes. Be that as it may. It is not necessary to delve deeper into the manner in which the tenancy rights got created in favour of Ricarida and Archibald as there is not much dispute about the position of them both being the joint tenants. The rent receipts issued in the name of Ricardia and Archibald do indicate in some receipts even staircase room and in some receipts only Shop Nos.1, 2 and 3 are mentioned. So far as C.I. shed is concerned, there is no reference to the same in any of the rent receipts issued in the joint names of Ricardia and Archibald. To quell any doubts about existence of joint tenancy of Ricardia and Archibald, it would be relevant to make a reference to R.A.N. Application No.47/SR

of 1987 filed by Ricardia in respect of larger tenanted premises comprising Shop Nos.1, 2 and 3 together with staircase room and C.I. shed. Plaintiff-landlord filed Reply to the said R.A.N. Application No.47/SR of 1987 denying that Ricardia was a tenant in respect of the staircase room and C.I. shed but admitted tenancies in respect of Shop Nos.1, 2 and 3. It also appears that in S. C. Suit No. 1156/1989 in which there was contest between Ricardia and Genarosa about studio business, Plaintiff filed Chamber Summons No. 1/1999 stating as under :

> "I say that the tenancy of suit premises and adjacent shop i.e. shop No.1 & 3 were obtained by the Plaintiff and at her request, rent receipt was given in the joint name.'

33) Thus, keeping aside the dispute whether staircase room and C.I. shed was a part of joint tenancy or not, there appears to be no dispute to the position that Ricardia and Archibald were joint tenants atleast in respect of Shop Nos.1, 2 and 3.

34) According to Genarosa (Defendant No.2), the position of joint tenancy continued till filing of the eviction suit. Genarosa therefore contended that since indivisible joint tenancy existed in respect of the larger tenanted premises, it was impermissible for the landlord to file suit for partial eviction in respect of only Shop No.2 and rear portion of Shop No.1.

35) It must be observed that Plaintiff has been slightly casual and careless in disclosing the entire factual background in the plaint filed in R.A.E. Suit No.648/1112 of 2001 and has straight away jumped to the conclusion that Defendant Nos.1 and 2 were tenants in respect of

the suit premises comprising of Shop No.2 and rear portion of Shop No.1. He did not plead nor lead any evidence that the joint tenancy between Ricardia and Genarosa got split up or that Ricardia remained tenant only in respect of the suit premises. On the contrary, Plaintiff has pleaded that both Ricardia and Genarosa were tenants in respect of the suit premises.

36) Though Plaintiff has been a bit casual in not bringing on record the entire factual position, Defendant Nos.1 and 2 have filed pleadings and Defendant No.2 led evidence about various litigations that ensued between them involving business disputes which included even portions of suit premises. It would be necessary to make a quick reference to the said litigation.

37) According to Ricardia, she allowed one Ganekar Tailor to occupy front portion of Shop No.1 and retained exclusive possession of rest of the premises bearing Shop Nos. 1 (rear side), 2 and 3, shed and staircase room. She further pleaded that she started her travel agency business in Shop No.3 and suggested that she remained in exclusive possession of Shop No.3 (to the exclusion of her brother, Archibald). According to Ricardia, she started studio in Shop No.2 and rear portion of Shop No.1 (which now forms part of suit premises in R.A.E. Suit No.648/1112 of 2001) and her brother Archibald used to help her in her studio business, in whose name the Studio license was procured. After Archibald's death, his second wife (Genarosa) permitted Ricardia to conduct studio business and drew various amounts for maintenance of herself and her minor children. According to Ricardia, in May 1985, Genarosa returned the keys of the studio being operated in the suit premises and the studio was handed over to one, Bharat in June 1985.

However, Mr. Bharat returned the keys of the studio in April 1986 and the studio remained closed till 1988.

38) According to Ricardia, while Genarosa was looking after the studio business, she had engaged her Manager, Mr. Ashok Anand for conducting studio business and it appears that said Mr. Ashok Anand instituted S.C. Suit No. 6411/1981 in Small Causes Court to restrain Genarosa from taking possession of the studio without following due process of law. In that suit, Genarosa filed counterclaim for recovery of possession of Shop No.2 and rear portion of Shop No.1 (suit premises in R.A.E. Suit No.648/1112 of 2001). In said S.C. Suit No.6411 of 1981 filed by Mr. Ashok Anand, Court Receiver was appointed at the instance of Genarosa, who took possession of the suit premises and appointed Genarosa as his Agent. After learning about the above developments, Ricardia filed S.C. Suit No. 1156/1989 seeking declaration of ownership of the studio business and prayed for decree for possession of the suit premises (Shop No.2 and rear portion of Shop No.1). In S.C. Suit No. 1156/1989 Ricardia and Genarosa filed Consent Terms on 9 January 1991, under which they agreed that the Court Receiver appointed in S.C. Suit No. 6411/1981 would continue as Court Receiver in S.C. Suit No. 1156/1989 as well. Both of them recorded that the Court Receiver had taken over possession of the suit premises. Both agreed that the Court Receiver shall induct a third party offering highest amount of security deposit and compensation, which shall be shared in the proportion of 70% to Genarosa and 30% to Ricardia. Ricardia agreed to continue to pay rent in respect of the suit premises. S.C. Suit No.1156/1989 continued to remain pending.

39) Later S.C. Suit No.6411 of 1981 filed by Ashok Anand came to be dismissed for default by decree dated 1 April 1999. The City Civil Court, however allowed the counterclaim in favour of Genarosa by directing handing over of possession of the suit premises (Shop No.2 and rear portion of Shop No.1 to her) together with all studio paraphernalia lying therein. This is how Genarosa secured final decree in S.C. Suit No.6411 of 1981 on 1 April 1999 for possession of the suit premises.

40) After decree of counterclaim in S.C.Suit No.6411/1981 in favour of Genarosa, Ricardia finally agreed (due to her old age and ill health) that Genarosa shall continue to possess suit premises (Shop No.2 and rear portion of Shop No.1), as well as, retain tenancy rights therein whereas rest of the tenanted premises being Shop No.3, front portion of Shop No.1 and staircase room would remain in possession and tenancy rights of Ricardia. This is pleaded in para-6 of Ricardia's Written Statement. Though, Ricardia has not stepped into the witness box and had led evidence in support of her Written Statement, there is some material on record to infer that separation of tenancies got effected between Ricardia and Genarosa. It is Plaintiff's contention that after separation of tenancies, Ricardia gave up the balance tenanted premises comprising Shop No.3, front portion of Shop No.1 and staircase room to the landlord and that the landlord inducted third parties in the said portion. Defendant No.2 appears to have admitted this position by making following admissions:

> I am not aware that defendant No.1 has surrendered front portion of shop No.1 and shop No.3 to plaintiff landlord in the year 1994. Thereafter shop No.3 and front portion of shop No.1 was let out by plaintiff to some other person i.e. shop No.3 to Mrs. S. J. Pareira and Rose Pareira and front portion of shop No.1 to Mr. Lea and Carl Fernandis.

41) Thus, Defendant No.2 admitted that Shop No.3 was subsequently let out by the landlord to Mrs. S.J. Pareira and Rose Pareira and the front portion of Shop No.1 was let out to Mr. Lea and Mr. Carl Fernandis. If there was no splitting of tenancy and the tenancy remained undivided, why Defendant No.2 tolerated Shop No.3 and front portion of Shop No.1 being let out to third parties has not been explained in any manner.

42) Another factor indicating splitting of tenancies is withdrawal of Standard Rent Fixation Application by Ricardia on 2 May 1997, which dates coincides with claim of splitting of tenancies. It appears that advocate for Ricardia applied before the Small Causes Court by making an endorsement on the RAN Application that the matter was settled between the parties and he had instructions from Ricardia to withdraw the application. Accordingly, Small Causes Court passed order dated 2 May 1997 allowing withdrawal of R.A.N. Application No.47/SR of 1987. The withdrawal appears to be done by Ricardia as the tenancy no longer remained singular or indivisible and she did not want to pay rent in respect of premises in tenancy of Genarosa.

43) Therefore, there is some material to draw an inference that the splitting of the tenancy did occur, under which Genarosa retained tenancy rights only in respect of Shop No.2 and rear portion of Shop No.1. Mere filing of Chamber Summons No. 1 of 1999 by Plaintiff in S.C. Suit No.1156 of 1989 did not mean that he admitted that the tenancy remained singular as on that date. He merely wanted to object about the private arrangement made between Ricardia and Genarosa for renting out the premises to third parties and profiteering therefrom.

44) This appears to be reason why Plaintiff-landlord thought of filing a fresh suit being R.A.E. Suit No.648/1112 of 2001 in respect of only Shop No.2 and rear portion of Shop No.1 even though the previous suit filed by him (R.A.E. Suit No.834/1793 of 1994) in respect of Shop Nos.1, 2 and 3 against Ricardia was apparently still pending. After having let out Shop No.3 and front portion of Shop No.1 to third parties, Plaintiff wanted to recover possession of only Shop No.2 and rear portion of Shop No.1 from the tenants. With a view to avoid any objection about misjoinder of parties, Plaintiff apparently joined even Ricardia also to R.A.E. Suit No.648/1112 of 2001. Therefore, mere joining of Ricardia to R.A.E. Suit No.648/1112 of 2001 would not lead to a necessary presumption that singular indivisible tenancy continued to subsist as on the date of institution of the said suit.

45) In my view, therefore the defence of Defendant No.2-Genarosa about subsistence of singular indivisible contract of tenancy in respect of larger premises comprising of Shop Nos.1, 2 and 3, staircase room and C.I. shed as on the date of filing of R.A.E. Suit No. 648/1112 of 2001 is misplaced and is accordingly rejected. True it is that Plaintiff ought have been slightly clearer in pleading and giving evidence about splitting of tenancy. However, the lacunae is filled up by the evidence of the parties on record and there is some material to infer splitting of tenancies and surrender of balance portion by Ricardia in favour of the landlord. Ms. D'mello's contention that such surrender could not have been unilaterally done by Ricardia does not cut any ice in the light of settled position of law that it is open for one of the joint tenants to surrender the tenancy. Reliance by Mr. Singh on the judgment of Single Judge of the Karnataka High Court in ***Akkatai @ Sujata*** (supra) in this regard appears to be apposite. It is held in para-19

of the judgment as under :

> **19.** Section 111(f) of Transfer of Property Act provides that a lease of immovable property determines by implied surrender. Surrender can be implied from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Implied surrender has its basis on the Doctrine of Estoppel. If a tenant abandons or relinquishes possession of the leasehold premises and the landlord acting on the basis of such conduct of the tenant either takes over possession or where the tenant who has abandoned that premises happens to be one of the joint tenants does something to his detriment there would be an implied surrender of the right of such tenant or joint tenant. There could be a surrender by one of the joint tenants by vacating the premises has been recognised by the High Court of Allahabad in *Smt. Madhubala* v. *Smt. Budhiya* [AIR 1980 All. 266.] . In that case the premises had been let out to one Kundan and after his death the landlord filed a suit for ejectment and for recovery of arrears of rent against the widow and son of deceased Kundan who had continued to occupy the property. The defendants contended that Kundan had other sons and daughters and the suit was therefore bad for non-joinder of necessary parties. The lower appellate Court had held that as the tenancy right had been inherited by the other brothers and sisters of one of the defendants the suit for ejectment against the defendants alone was not maintainable. Relying on an earlier decision of that Court wherein it had been held that there can be an implied surrender of tenancy right from unequivocal conduct of both parties and taking into consideration of the facts that only the defendants were living in the property and they had themselves stated that they were the tenants in respect of the property, that none of the other heirs were either living in the property nor had they paid any rent, it was held that was a clear case of implied surrender of tenancy by the other heirs of Kundan.

46) I am therefore of the view that neither the demand notice nor the Suit suffered from any defect. The demand notice was rightly served demanding arrears of rent in respect of the premises that remained in tenancy of Genarosa.

47) What must also be appreciated is the reason why Defendant No.2 strenuously stressed the point of defect in demand notice and the Suit not covering the entire tenanted premises. This appears to be a desperate attempt on the part of Defendant No.2 to save eviction decree on the ground of default in payment of rent which otherwise appears to be a writing on the wall. There is no dispute to

the position that Defendant No.1-Ricardia stopped depositing the rent in the Small Causes Court after April 1997. As observed above, Ricardia filed R.A.N. Application No.47/SR of 1987 for fixing of standard rent in respect of larger tenanted premises comprising of Shop Nos.1 to 3, staircase room and C.I. shed and the Small Causes Court passed order dated 19 September 1995 permitting Ricardia to deposit arrears of rent of Rs.31,556.27/- for the period from 1 July 1991 to 31 June 1995, as well as 1 July 1995 to October 1995 at the rate of Rs.586.27/- per month. Ricardia was also directed to go on depositing further rent at the rate of Rs.586.27/-per month on/or before 15th day of each month. The amount so deposited by Ricardia was permitted to be withdrawn by the landlord towards rent. The ledger relied upon by Revision Applicants in said R.A.N. Application No.47/SR of 1987 would indicate that Ricardia went on depositing amount of Rs. 586.27/- every month upto April 1997. After April 1997, Ricardia stopped depositing rent in respect of larger tenanted premises comprising of Shop Nos.1 to 3, staircase room and C.I. shed. It appears that thereafter Ricardia started paying rent only in respect of her split portion of tenancy viz. Shop No.3, front portion of Shop No.1, staircase room and C.I. shed. Plaintiff's witness admitted in the cross-examination that he received rent in respect of Shop No.3, front portion of Shop No.1 and room below staircase upto August 2006 after which collection of rent stopped because of collapse of the said building. As observed above, the Constituted Attorney of Defendant No.2 admitted in her cross-examination that Shop No.3 was let out by the landlord to Mrs. S.J. Pareira and Rosa Pareira, whereas, front portion of Shop No.1 was let out to Mr. Lea and Mr. Carl Fernandis. Thus, not only there is splitting of tenancy but either Ricardia or new tenants went on depositing rent in respect of Shop No.3 and front portion of Shop No.1 and of staircase room to the

landlord till August 2006.

48) So far as suit premises comprising of Shop No.2 and rear portion of Shop No.1 is concerned, admittedly there is no payment of rent after April 1997. After service of demand notice, admittedly the default was not made good. Despite service of suit summons, Defendant No.2 failed to appear in the suit and therefore there was no question of making deposit of arrears of rent, interests and costs of the suit within a period of 90 days of receipt of suit summons. Since non-payment of rent in respect of the suit premises comprising of Shop No.2 and rear portion of Shop No.1 is more than apparent, Defendant No.2 was left with no other option but to somehow scuttle the suit and has accordingly adopted the plea of tenancy being indivisible in respect of larger premises as on the date of service of demand notice and as on the date of filing of the suit. Otherwise, Defendant No.2 has not taken any steps either for claiming possession of the balance premises comprising of Shop No.3, front portion of Shop No.1, staircase room and C.I. shed. The entire litigation between Defendant No.2 and Ricardia since 1989 was only in respect of the suit premises being Shop No.2 and rear portion of Shop No.1. Furthermore, no proceedings were adopted by Defendant No.2 to question presence of third parties in Shop No.2 and front portion of Shop No.1, if the tenancy was indeed indivisible as on the date of filing of the suit. It is only after the Plaintiff instituted the suit for eviction (R.A.E. Suit No.648/1112 of 2001) that Defendant No.2-Genarosa thought of filing a declaratory suit being R.A.D. Suit No. 811/2003, not for declaration of her tenancy in respect of the balance premises bearing Shop No.3, front portion of Shop No.1, staircase room and C.I. shed but for a declaration that she is entitled to alternate accommodation in the reconstructed building. The

prayers in R.A.D. Suit No.811/2003 reads thus:

9. The Plaintiff, therefore, prays:-

(a) For a declaration of this Hon'ble Court that the Plaintiff is entitled for an alternate, suitable and acceptable accommodation in the reconstructed building in lieu of the suit premises, i.e. the Shops Nos. 1, 2 and 3, and a Store Room under the staircase, in the building, known as Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion), Dr. Babasaheb Ambedkar Road, Parel, Bombay-400 012, bearing C.S. No. 20/26 of Dadar Naigaon Division, Dadar, Bombay-400 012 alongwith a C.I. Shed alongside Shop No. 1 and 2 on East Compulsory Open space in the event the building is demolished and reconstructed.

(d) For a permanent or appropriate Order and Injunction of this Hon'ble Court restraining the Defendant No. 2 from dealing in any manner whatsoever with the Defendant No. 1, on her own or at the back or in the absence of the Plaintiff and without Plaintiff's consent in respect of the suit premises, i.e. the Shops Nos. 1, 2 and 3, and a Store Room under the staircase, in the building known as Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion), Dr. Babasaheb Ambedkar Road, Parel, Bombay - 400 012 bearing C.S. No. 20/26 of Dadar Naigaon Division, Dadar, Bombay-400 012 alongwith a C.I. Shed alongside Shop No. 1 and 2 on East Compulsory Open space or any part thereof or from surrendering the suit premises or any part thereof to the Defendant No.1 or causing transfer of the suit premises or any part thereof to any third person or party.

(e) For a permanent or appropriate Order and Injunction of this Hon'ble Court restraining the Defendant No. 1 from bifurcating the Rent Receipt (that stands in the joint names of Plaintiff's husband, late Mr. Archibald Annes and the Defendant No.2) of the suit premises, i.e. the Shops Nos. 1, 2 and 3, and a Store Room under the staircase, in the building, known as Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion), Dr. Babasaheb Ambedkar Road, Parel, Bombay 400 012, bearing C.S. No. 20/26 of Dadar Naigaon Division, Dadar, Bombay-400 012 alongwith a C.I. Shed alongside Shop No. 1 and 2 on East Compulsory Open space and/or issuing separate or different Rent Receipts for different parts/shops of the suit premises or either of the two names.

(f) Ad-interim and Interim reliefs in terms of prayers (a), (b), (c), (d) and (e) above granted.

(g) Cost of the suit be provided for; and

(h) Such other and further reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the present case.

49) The next issue strenuously sought to be canvassed by Ms. D'mello is about non-service of demand notice dated 1 November 1999. She claims that Defendant No.1 was never served with the said demand notice. The demand notice was sent through Registered Post A.D as well as through UPC. Plaintiff relied upon not only the postal receipt but also acknowledgment card which shows signature of Defendant No.2 on the same. The notice was contemporaneously addressed to Ricardia, who admitted in her Written Statement that she received the same. The notice sent through UCP has not been returned. Since there is a signature of Defendant No.2 on the acknowledgment card, the defence adopted by Defendant No.2 about non-receipt of the demand notice must be viewed with great caution. The Trial Court conducted in-depth enquiry into the defence of Defendant No.2 about non-receipt of demand notice. She adopted twin defences of the acknowledgment card not bearing her signature as well as the address on the envelope being defective. The Trial Court observed that though alive at that time, Defendant No.2 chose not to enter the witness box and did not deny her signature on the acknowledgment card. The Appellate Court undertook further exercise of comparison of signatures of Defendant No.2 on the acknowledgment card with her admitted signature and has recorded a finding of fact that the acknowledgment card does bear signature of Defendant No.2. The Trial Court negatived the contention about defective address by holding that the suit summons was served by Bailiff on the said address and that mere difference in describing the name of the road or the premise number of the residence of Defendant No.1 was inconsequential. Thus, the fallacious defence sought to be raised by Defendant No.2 about non-service of the demand notice has been concurrently negatived by the Trial and the Appellants Courts by

recording findings of fact. In exercise of revisionary jurisdiction, this Court cannot be called upon to reverse the said findings by once again undertaking the exercise of comparison of signatures or comparison of addresses.

50) Also of relevance is the fact that the conduct of Defendant No.2 in not responding to the demand notice dated 1 November 1999 appears to be consistent with her conduct in not appearing in the suit despite service of suit summons. The Constituted Attorney of Defendant No.2 deposed on 27 June 2013 that Genarosa was having bouts of loss of memory for the last 12/13 years. She also deposed that she discovered the suit summons in the house of Defendant No.2 and thereafter applied for setting aside of *ex-parte* decree. This position would again bolster the position that Defendant No.2 had received the demand notice but in consonance with her conduct prevailing at that time, she neither acted on the notice nor responded to the same. Therefore, the defence of non-service of notice sought to be raised by the Revision Applicants deserves outright rejection.

51) The next point sought to be urged by Ms. D'mello is about demand of excessive rent in the demand notice dated 1 November 1999. She has submitted that the rent was never Rs.1,300/- in respect of the suit premises and that therefore the demand itself being invalid, the notice would not conform to the requirements of Section 15(2) of the M.R.C. Act for maintaining a valid ejectment action on the ground of default in payment of rent. She has contended that if the rent in respect of larger tenanted premises was fixed at Rs.586.27/- in R.A.N. Application No.47/SR of 1987, there is no question of rent in respect of smaller portion becoming Rs.1,300/- as on 1 November 1999.

As observed above, in R.A.N. Application No.47/SR of 1987 for fixing of standard rent, the Small Causes Court had directed deposit of interim rent of Rs.586.27/- during pendency of the said application by order dated 19 September 1995. It appears that in pursuance of the said interim order, Ricardia went on depositing interim rent of Rs.586.27/- upto April, 1997. It appears that advocate for the Applicant applied before the Small Causes Court by making an endorsement on the application that the matter was settled between the parties and he had instructions from Ricardia to withdraw the application. Accordingly, Small Causes Court passed order dated 2 May 1997 allowing withdrawal of R.A.N. Application No.47/SR of 1987. Plaintiff as well as Defendant No.1-Ricardia came out with a case that there was splitting up of the tenancy. This appears to be the reason why the standard rent fixation application was withdrawn and Ricardia thereafter started paying rent in respect of only her portion of premises being Shop No.3, front portion of Shop No.1, staircase room and C.I. shed. Plaintiff's witness has given evidence that the rent in respect of Shop No.3 was thereafter fixed at Rs.600/- per month and rent of front portion of Shop No.1 was fixed at Rs.600/- per month. Similarly, the rent in respect of the staircase room was Rs.200/- per month. He has also sought to justify that in respect of the suit premises rent was Rs.900/- per month which got increased on account of increase in taxes by Rs.400/- to Rs.1300/- per month. True it is that there is no documentary evidence of effecting any increase in the rent in respect of the suit premises for fixing of any particular amount as rent towards the suit premises after splitting up of the tenancy. However equally true is the fact that after Ricardia stopped paying rent in respect of larger tenanted premises from April 1997 onwards, Defendant No.2 did not pay a farthing to the landlord in respect of the premises in her possession. Defendant No.2

never bothered to enquire whether she was liable to pay any rent in respect of the premises in her possession. She admittedly noticed presence of outsiders in the balance portion of the premises and was apparently in the knowledge of the fact that the tenancy was split and that she remained the tenant only in respect of the suit premises comprising of Shop No.2 and rear portion of Shop No.1. However, no attempts were made by her to enquire from the landlord as to the amount of rent that she was required to pay in respect of the premises in her possession. She received demand notice dated 1 November 1999. She did not raise any objection about demand of rent at the rate of Rs.1,300/- per month. She did not contend that either the quantum of rent demanded was excessive nor offered lesser amount of rent to the landlord. In fact, there are specific admissions given by the Constituted Attorney of Defendant No.1 about non-payment of rent by Defendant No.2. In her cross-examination, attorney of Defendant No.2 stated that she was unaware as to when was the rent lastly paid, that she did not have any document to show that any rent was paid after April 1997 and that she was unaware as to the date and the person who paid the last rent and that she did not have any evidence to prove that the rent was paid by Defendant No.2 after April 1997. Thus there are specific admissions about non-payment of rent after April 1997 by Defendant No.2.

52) The demand notice dated 1 November 1999 was issued when the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 **(Bombay Rent Act)** were in vogue. Section 12(2) of the Bombay Rent Act mandated the landlord to first issue notice of demand of rent and wait for a period of 30 days by giving an opportunity to the tenant to clear the arrears of rent. This is the first

opportunity available to the tenant to avoid filing of the suit for eviction by making good the default in within 30 days of receipt of demand notice. Defendant No.2-Genarosa failed to avail this opportunity. By the time the suit was instituted on 5 May 2000, provisions of M.R.C. Act had come into effect on 31 March 2000. Section 15 of the M.R.C. Act protects the tenant from ejectment so long as he/she continues to pay standard rent and permitted increases. Sub-section (3) of Section 15 of the M.R.C. Act provides second opportunity to the tenant to make good the default and avoid ejectment decree by frustrating Plaintiff's suit by depositing in the Court, the amount of standard rent and permitted increases, interest at the rate of 15% p.a. and costs of the suit within 90 days of service of suit summons. In the present case, even this second opportunity of depositing the arrears of rent was not availed by Defendant No.2. Even if Defendant No.2 had any grievance about charging of Rs.1,300/- towards the rent in respect of the suit premises, she could have either filed an application for fixation of standard rent and secured order for payment of interim rent after receipt of demand notice dated 1 November 1999 or without prejudice paid to the landlord or deposited in the Court the arrears of standard rent when she appeared in the suit. After all, Defendant No.2-Genarosa was occupying commercial premises and could have easily avoided decree for eviction by depositing the paltry amount at the rate of Rs.1,300/- per month in the Court within the stipulated period.

53) Thus, there is admitted default in payment of rent and the ground for eviction under Section 15 of the M.R.C. Act is clearly made out. Once twin defaults take place on the part of the tenant in not paying the arrears after receipt of demand notice and in not depositing the amount of arrears, interest and costs within 90 days of service of

suit summons, the Court is left with no other alternative but to pass a decree for eviction.

54) In the present case, if Defendant No.2 believed that the demand at the rate of Rs.1300/- was excessive, she could have atleast offered payment of the amount which she believed was the correct rent. In this regard, reliance by Mr. Singh on judgment of this Court in ***Fehameeda Begum*** (supra) is apposite in which this Court has relied upon its previous judgment in ***Lalji Lachhamdas Versus. Amiruddin Amanulla***[11] observing that a notice seeking amount at the higher rate than the admitted rent cannot be construed strictly and the tenant has to atleast send amounts as he considers due.

55) In the present case, Defendant No.2 also did not meet the requirement of regularly depositing in the Court rent in respect of the suit premises during pendency of the proceedings. Ms. D'mello would rely upon order passed by the Small Causes Court on 3 March 2008 as a reason to justify conduct of Defendant No.2 in not depositing the arrears of rent. However, the order dated 3 March 2008 as passed in Interim Notice No.19342/2006 taken out by the Plaintiff directing the Defendants therein to deposit the arrears of rent under the provisions of Order XXV-A of the Code. This was not an application filed by Defendant No.2-Genarosa to deposit rent in respect of the suit premises. Merely because the Court dismissed the application filed by the Plaintiff for deposit of arrears of rent under Order XXV-A of the Code, it cannot and does not mean that Defendant No.2 gets relieved of her obligation under Section 15(3) of the M.R.C. Act to regularly deposit the rent during the pendency of proceedings. Thus, there is

11 1998(3) Mh.L.J. 237

default on the part of Defendant No.2 in this regard as well.

56) It must be appreciated that the rent, however paltry it may be, ultimately represents return on investment made by the landlord on the land and building. On account of statutory freezing of the amount of standard rent, the rent in respect of the tenanted premises have otherwise become ludicrously low and no longer represent, even remotely, any return for the landlord on investment made on land and building. When a tenant suspends payment of rent, the liability for landlord to pay taxes, etc does not stop and a situation is created where, far from earning anything, the landlord has to pay from his pocket towards taxes, etc. In the present case, after April 1997, the landlord is not only deprived of any rent but is made to pay the monthly taxes from his own pockets till the building was ultimately demolished in 2007. Thus for 10 long years, there is no payment of rent. Though the Rent Control legislation provides for protection from rent escalation and eviction, such protection cannot be overstretched to make a mockery where the tenant continues to occupy the tenanted premises without paying a farthing to the landlord. Eviction of such tenants, who are not willing to pay even paltry amount of rent is imminent. In my view, therefore there is no error on the part of the Trial and the Appellate Courts in ordering eviction of Defendant No.2.

57) The conspectus of the above discussion is that Defendant No.2 continued to be a tenant in respect of the suit premises comprising Shop No.2 and rear portion of Shop No.1 and did not pay rent in respect thereof after April 1997. She was duly served with the demand notice dated 1 November 1999. She failed to avail twin

opportunities of making good arrears of rent and continued with her incalcitrant attitude of not paying/depositing rent even during pendency of the suit. The least that Defendant No.2 must suffer in such circumstances is a decree for eviction. The facts of the present case indicate that Defendant No.2 continued possessing the suit premises as if she was owner thereof. In the past, Ricardia and Genarosa made a private arrangements behind the back of the landlord to induct third parties in the suit premises and profiteered out of such arrangement through appointment of Court Receiver by sharing the compensation proceeds in the ratio of 30% and 70% respectively. Since both the Courts have not upheld the ground of unlawful subletting, it is not necessary to delve deeper into this aspect. The suit premises were also admittedly locked for number of years. The original purpose for which the suit premises were procured viz. for running of bakery long since evaporated. Part of the suit premises were therefore utilised for operation of studio, which again was shut. No business was admittedly conducted by Defendant No.2 herself in any portion of the suit premises which was merely used after the death of her husband for inducting the outsiders and for profiteering therefrom. The main objective behind continuing the present litigation is to ensure allotment of premises in the newly constructed building. Otherwise, the suit premises were never used by Defendant No.2 for conducting any business by herself. Time has come to put an end to the long drawn litigation by upholding eviction of Defendant No.2 from the suit premises. As observed above, Ricardia has long since given up her claims in respect of her tenancy. The children of Genarosa have however continued to fight the litigation under the hope of securing alternate premises in the newly constructed building and to further profiteer out of them at the cost of landlord.

58) In my view, the Revision Applicants have failed to make out any case of perversity in the findings recorded by the Trial or the Appellate Courts or to demonstrate exercise of jurisdiction by the Courts with material irregularity. This Court therefore cannot interfere in the concurrent decrees passed by the Trial and the Appellate Courts in exercise of jurisdiction under Section 115 of the Code.

59) The Civil Revision Application is devoid of merits and is accordingly **dismissed.**

[SANDEEP V. MARNE, J.]

60) After the judgment is pronounced, Ms. D'mello would pray for stay of the eviction decree. She would invite my attention to the order passed by the Appellate Bench on 30 September 2022, wherein the execution of the decree was st-ayed for a period of 6 weeks. Accordingly, the decree of eviction shall not be executed for a period of 8 weeks subject to the condition of Revision Applicants not creating any third party rights in respect of the suit premises.

[SANDEEP V. MARNE, J.]