



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 162 OF 2023

ALONGWITH

INTERIM APPLICATION NO. 2521 OF 2023

Narhari Chandrayya Kanda

...Applicant

VERSUS

Heren Damji Gala & Anr.

...Respondents

ALONGWITH

CIVIL REVISION APPLICATION NO. 200 OF 2023

Heren Damji Gala

...Applicant

VERSUS

Umakant U.Singh & Anr.

...Respondents

Mr.Narendra V.Walawalkar, Senior Advocate a/w. Mr.Dhishan Kukreja, Mr.Mohan Salian, Ms.Harshita Kotian i/b. MGS Legal for the Applicant in CRA/162/2023 and for the Respondents in CRA/200/2023.

Mr.Pradeep Thorat a/w. Ms.Aditi Naikare for the Respondent No.1 in CRA/200/2023 and for the Respondent No.2 in CRA/162/2023.

Mr. Ankit Rajput i/b. Mr.Rutvij Bhatt for the Applicant in CRA/200/2023 and for the Respondents in CRA/162/2023.

CORAM: RAJESH S. PATIL, J.

RESERVED ON : 21 FEBRUARY, 2024

PRONOUNCED ON : 27 JUNE 2024.

ORAL JUDGMENT :-

1. These two Civil Revision Applications are filed under Section 115 of the Code of Civil Procedure, by the applicants who were original defendant no.1 (landlord) and defendant no.2 (new tenant)

in a declaratory suit, filed by legal heir of original tenant.

2. For the sake of convenience, the parties are hereinafter referred to as per their nomenclature in the trial Court.

FACTS :

3. The premises in the present proceedings is a residential room bearing no.11, admeasuring 10 ft. x 12 ft. situated at Bohori Chawl, Senapati Bapat Marg, Dadar, Mumbai – 400 028 (for short ‘the suit premises’).

4. The original tenant of the suit premises was one Mr.Udaybhan Singh. The said Mr.Udaybhan Singh died around 12 July, 1989. It is an admitted fact that the landlord of the suit building was one Mr.Damji Gala. The said Mr.Damji Gala expired in the year 2006. Defendant no.1 is the son of deceased Damji Gala.

5. The said original tenant Mr.Udaybhan Singh was survived by his wife Mrs.Pyaridevi and by son Mr.Umakant. Mrs.Pyaridevi also expired on 12 July, 2003. Mr.Umakant, son of the original tenant has claimed his tenancy rights under section 7 (15) (c) of the Maharashtra Rent Control Act, 1999 (for short MRC Act).

6. The said Mr.Umakant filed a Declaratory suit being R.A.D. Suit No. 1556 of 2009, claiming tenancy of the suit premises, before the

Small Causes Court at Bombay. In the said suit, he joined son of the original landlord, as party defendant. So also, he added the newly inducted tenant of suit premises as defendant no.2-Mr.Narhari Chandrayya Konda. In the said suit, a declaration was sought that he is the tenant of the suit premises, and the rent receipt of the suit premises be transferred in his name. So also, an order and decree was sought from the Court that the defendant no.2 (new tenant) be directed to vacate and handover peaceful possession of the suit premises to the plaintiff.

7. After the summons was served on the defendants, the defendant no.1 filed his written statement to the plaint. So also, the defendant no.2 filed his separate written statement.

8. On behalf of the plaintiff, evidence was led by the plaintiff himself. The said witness was cross-examined by advocate appearing for the defendant no.1, and by advocate appearing for the defendant no.2. On behalf of the defendant no.1, evidence was led by the defendant no.1 by stepping into the witness box. The defendant no.1 was cross examined by the advocate appearing for the plaintiff. So also, the defendant no.2 entered the witness box, and he was cross-examined by an advocate appearing for the plaintiff. The defendant

no.2 also examined a person named as Mr.Anil Shankar Ambokar, who was staying near the suit premises. The said witness was also cross-examined by the advocate appearing for the plaintiff.

9. After the evidence was closed, the parties made their submissions before the Trial Court and the Trial Court by its judgment and decree dated 28 September, 2018, dismissed the suit of the plaintiff.

10. Being aggrieved by the judgment and decree passed by the Trial Court, the plaintiff preferred an appeal before the Appellate Bench of the Small Causes Court being Appeal No. 39 of 2019 under section 34 of the MRC Act.

11. The Appellate Bench of the Small Causes Court after hearing all the parties, by its judgment and decree dated 14 February, 2023, held that the the Court of Small Causes had jurisdiction to entertain and try the suit. It was further held that the plaintiff had proved that his father Mr.Udaybhan was tenant of the suit premises and that the plaintiff became tenant of the suit premises after the death of his mother Mrs.Prayidevi.

12. The Appellate Court set aside the judgment and decree passed by the Trial Court and the R.A.D.Suit No. 1556 of 2009 was decreed

on the terms that the plaintiff was declared as a tenant of the suit premises and the defendants were directed to put the plaintiff into the vacant and peaceful possession of the suit premises on or before 1 April, 2023, failing which the plaintiff would be entitled to get the same through the process of the Court. The defendant no.1 was directed to issue rent receipts of the suit premises in the name of the plaintiff. And a further enquiry of mesne profit was granted.

13. Being dissatisfied with the judgment and decree dated 14 February, 2023 passed by the Appellate Bench of the Court of Small Causes, the original defendant no.1 (landlord) preferred Civil Revision Application No. 200 of 2023 before this Court, so also the original defendant no.2 (new tenant) preferred Civil Revision Application No. 162 of 2023 before this Court, challenging the judgment and decree dated 14 February 2023 passed by Appellate Bench of Small Causes Court.

SUBMISSIONS :-

14. Learned senior counsel Mr. Narendra V. Walawalkar appeared on behalf of the new tenant (applicant in C.R.A.No.162 of 2023) and made his submissions :-

(i) Mr.Walawalkar fairly submitted that as regards prayer clauses

(a) and (b) of the plaint are concerned, the Small Causes Court at Bombay had jurisdiction. He submitted that however, the Court of Small Causes did not have jurisdiction to try and entertain the prayer clause (c).

(ii) Mr.Walawalkar took me through section 33(1)(c) of the MRC Act. He submitted that if one reads this section, it can be seen that the Small Causes Court, Mumbai, has jurisdiction to entertain and try a suit only between the landlord and tenant. For recovery of rent or possession, the Small Causes Court will have jurisdiction. Therefore, according to him, the parties have to be the landlord and the tenant to fall squarely under section 33.

(iii) Mr.Walawalkar thereafter referred to the definition of the 'landlord' and the 'tenant' as defined under section 7 of the MRC Act.

(iv) Mr.Walawalkar submitted that it would have been a totally different case if the prayer clause (c) of the plaint would have stated that the possession be handed over by the landlord to the plaintiff.

(v) Mr.Walawalkar submitted that since his client was inducted as a tenant by the landlord, an eviction suit against his client can be filed only by the landlord.

(vi) Mr.Walawalkar submitted that his client is a lawful tenant of the

suit premises.

(vii) Mr.Walawalkar submitted that his client came into possession of the suit premises in the year 1998, however, at a relevant time, there was one Mr.Dinesh Patel who was occupying the suit premises as a licensee. He submitted that Mr.Dinesh Patel was a licensee of the original tenant (father of the present plaintiff).

(viii) Mr.Walawalkar submitted that even though his client became the tenant in the year 1998, his client came in actual possession of the suit premises in the year 2002.

(ix) Mr.Walawalkar submitted that the word 'trespasser' though is not mentioned in the plaint, what is important to see is the ingredients, whether it falls within the definition of the trespasser.

(x) Mr.Walawalkar further submitted that in the notice issued before filing of the plaint, the word 'trespasser' was clearly mentioned.

(xi) Mr.Walawalkar further submitted that the plaintiff has changed his stand as regards the break open of the lock of the suit premises. He submitted that in the notice, it is submitted that the defendant no.1 has broke open the lock and in the plaint it has been stated that the defendant no.2 (new tenant) has broke open the lock of the suit

premises.

(xii) Mr.Walawalkar also submitted that the inconsistent stand of the plaintiff has been recorded in the impugned judgment.

(xiii) Mr.Walawalkar submitted that the premises was surrendered by mother of plaintiff i.e. wife of original tenant.

(xiv) Mr.Walawalkar submitted that the original tenant had created licence in favour of one Mr.Dinesh Patel.

(xv) Mr.Walawalkar to buttress his submissions, referred to the following judgments :-

(a) The judgment of Supreme Court in case of ***Laxmidas Morarji (Dead) By LRs. vs. Behrose Darab Madan, (2009) 10 SCC 425.***

(b) The judgment of this Court in case of ***Rafiuddin Nuruddin Musalman vs. Abduyl Karim Abdul Reheman and others, 2005 (4) Mh.L.J. 646.***

(c) The judgment of Supreme Court in case of ***Hiralal Vallabhram vs. Kastorbhai Lalbhai & Others, AIR 1967 SC 1853.***

(d) The judgment of Supreme Court in case of ***Natraj Studios (P) Ltd. vs. Navrang Studios & Anr. (1981) 1 SCC 523.***

(e) The judgment of Supreme Court in case of ***A.V.G.P. Chettiar & Sons & Ors. vs. T. Palanisamy Gounder, 2002(4) SC 134.***

15. Mr. Ankit Rajput, learned counsel made his submissions on behalf of the original landlord :-

(i) Mr. Rajput submitted that his client has not recognized the plaintiff as his tenant.

(ii) Mr.Rajput submitted that the Small Causes Court has no jurisdiction to try and entertain this suit, as rightly held by the Trial Court.

(iii) Mr.Rajput submitted that the rent receipts are issued in the name of the new tenant/defendant no.2 from the year 2002, even though the tenancy was created in the year 1998.

(iv) Mr.Rajput fairly submitted that however there is no tenancy agreement brought on record of his client, creating the tenancy in favour of the defendant no.2. So also, there is no document on record to prove that the original tenant had surrendered the suit premises.

(v) Mr.Rajput submitted that the original tenant had left the suit premises along with his family long back and the original tenant died in Uttar Pradesh.

(vi) Mr.Rajput submitted that the mother of the present plaintiff had surrendered the suit premises in favour of the defendant no.2.

(vii) Mr.Rajput submitted that the principles of Order 7 Rule 11 of

the Code of Civil Procedure should not be applied in the present proceedings.

(viii) Mr.Rajput submitted that the Appellate Court has committed an error by passing a decree of possession and declaration.

(ix) Mr.Rajput submitted that the suit itself was barred by law of limitation as the original tenant (father of the present plaintiff) had died on 12 July, 1989 and the present suit for declaration of tenancy is filed only in the month of September, 2009.

(x) He further submitted that even if it is considered for the sake of argument that after the death of the father of the present plaintiff, the tenancy was transferred in the name of the mother of the present plaintiff. The mother of the present plaintiff died on 12 July, 2003. Even then, the suit filed in the year September 2009 is clearly barred by law of limitation.

(xi) Mr.Rajput submitted that the present plaintiff did not pay any rent of the suit premises post the year 1998.

(xii) He further submitted that post 1998, the plaintiff has not produced any document to show that he is in possession of the suit premises.

(xiii) Mr.Rajput further submitted that the electricity bills of the suit

premises, shows that the consumption of the electricity is as if the premises is used for commercial purpose. He submitted that this shows that the plaintiff had created a licence (sub-tenancy) in favour of one Mr.Dinesh Patel who was using the suit premises for commercial purposes.

(xiv) Mr.Rajput submitted that the evidence of the DW No.3 Mr.Anil Shankar Ambokar has been ignored in the impugned judgment.

16. Mr.Pradeep Thorat, learned counsel made his submissions on behalf of the original plaintiff :-

(i) Mr. Thorat submitted that a tenancy of any suit premises comes to an end only two ways, either the tenancy comes to an end by way of eviction decree passed by the Court of law, or by a deed of surrender by the tenant in favour of the landlord.

(ii) Mr.Thorat submitted that none of these two conditions have taken place in the present proceedings.

(iii) Mr.Thorat submitted that even though there was a theory of surrender of tenancy by the old tenant, however, no document was brought on record to prove that there was surrender of tenancy of the suit premises by the original tenant.

(iv) Mr.Thorat submitted that admittedly, no eviction proceedings

have been filed against the plaintiff, who is the legal heir of the original tenant.

(v) Mr.Thorat also submitted that the plaintiff has not studied much and has studied in the vernacular medium which also can be seen from the Vakalatnama signed by the plaintiff which has been part of the proceedings.

(vi) Mr.Thorat referred to the pleadings made by him in the plaint which according to him shows that R.A.D. suit for declaration of the tenancy and for receiving back the possession can be filed only in the Court of Small Causes at Bombay under the MRC Act.

(vii) Mr.Thorat also took me through the rent receipts which are produced on record. He submits that even though the rent receipts show that the rent is collected from 1 April, 2002. The said two receipts are dated 22 March, 2004 which covers the period from 1 April, 2002 to 31 March, 2003 and further period from 1 April, 2003 to 31 March, 2004.

(viii) Mr. Thorat further referred to the four rent receipts dated 10 February 2008 which covers the period from 1 April, 2004 to 31 March, 2008.

(ix) Mr.Thorat submits that hence, it can be seen that the two rent

receipts are of the year 2004 which covers the period from 1 April, 2002 to 31 March, 2004 and rest of the four rent receipts are all dated 10 February, 2008, which covers the period from 1 April, 2004 to 31 March, 2008.

(x) Mr.Thorat submitted that the landlord admittedly has not filed any eviction proceedings against the Original Tenant (father of the plaintiff) or even against the present plaintiff.

(xi) Mr.Thorat also referred to the documents on record before the Trial Court i.e. the ration card which includes the name of the father of the plaintiff and thereafter the mother of the plaintiff and the name of the plaintiff.

(xii) Mr. Thorat also referred to the electricity bill lastly by 1998. The said bills were in the name of the plaintiff's father (original tenant).

(xiii) Mr. Thorat submitted that the defendant no.1 is admittedly a landlord of the suit premises. Therefore, the suit against the landlord by a tenant can be filed in the Court of Small Causes at Bombay under the MRC Act.

(xiv) He further submitted that the defendant no.2 is admittedly a new tenant of the suit premises. He, therefore, submitted that as the defendant no.2 is the new tenant and he being in possession of the

suit premises, the plaintiff could file the suit for a declaration before the Small Causes Court and also for possession of the suit premises only in the Small Causes Court and since the defendant no.2 is in possession of the suit premises, the defendant no.2 was added as a party defendant and the relief for possession can be sought only against him since the defendant no.2 was in possession of the suit premises.

(xv) Mr. Thorat also submitted that if a tenant is dispossessed, the only option for the tenant is that he has to go before the Court of Small Causes for seeking possession.

(xvi) Mr. Thorat submitted that none of the defendants have produced any document to show that the plaintiff or his father had surrendered the suit premises. Moreover, neither a rent agreement in favour of the new tenant/defendant no.2 has been produced on record.

(xvii) He further submitted that even though, the theory is put up by the defendants that the tenancy is created in favour of the new tenant in the year 1998, the rent receipt is of the year 2004 which goes back to the year 2002. And surprisingly, the said rent receipts are not signed by the landlord but are signed by the defendant no.2 as a son of the original landlord when the original landlord was alive. The

original landlord expired in the year 2006.

(xviii) Mr.Thorat submitted that section 33 of the MRC Act uses the word suit relating to the recovery of the possession. Therefore, the suit filed before the Small Causes Court has rightly been entertained and tried by the Court of Small Causes.

(xix) Mr.Thorat submitted that section 33(1)(c) further mentions that no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

(xx) Mr.Thorat further submitted that in the entire plaint, the plaintiff has not used the word 'trespasser'. Therefore, the defendant no.2 being a new tenant, the suit was rightly filed before the Court of Small Causes.

(xxi) Mr.Thorat referred to the following judgments :-

(a) The judgment of this Court in case of ***Dattatraya Krishna vs. Jairam Ganesh Gore***, reported in ***1964 Mh.L.J. 750***,

(b) The judgment of Supreme Court in case of ***Mansukhlal Dhanraj Jain & Others vs. Eknath Vithal Ogale***, reported in ***(1995) 2 SCC 665***,

(c) The judgment of this Court in case of ***Sutar Pukraj Somtiji vs. Yellubai Mallappa Wagle & Another***, reported in ***(2002) 3 Mh.L.J. 787***.

(d) The judgment of Supreme Court in case of ***V. Dhanapal Chettiar***

vs. Yesodai Ammal, reported in *(1979) 4 SCC 214*,

(e) The judgment of this Court in case of *Pius Bona Venture Fernandes vs. Manu Narang (Deceased) Sanjay Narang & Others*, reported in *(2012) 2 Mh.L.J. 68*.

ANALYSIS AND CONCLUSION :-

17. I have heard both the sides and I have gone through the documents on record.

18. In my opinion tenancy of a suit premises comes to an end only by two ways.

“(i) By way of an eviction decree passed by the Court; or

(ii) By a Deed of Surrender of tenancy by the tenant in favour of the landlord.”

19. In the present proceedings, admittedly the landlord has not filed any eviction suit against the original tenant or against the legal heirs of the original tenant. Therefore, there is no question of a decree of eviction being passed by the Court. Hence, the only way the tenancy of the suit premises would have come to an end was by a Deed of Surrender by the tenant in favour of the landlord. Though, the plaintiff has come with a theory that there was surrender of tenancy by the wife of the original tenant, however, no document has been

brought on record to prove that there was surrender of the tenancy of the suit premises by the wife of the original tenant. Neither the landlord nor the new tenant has brought on record any document of creation of a fresh tenancy in favour of the new tenant. Hence, the case of the landlord that there was a surrender of tenancy, has not been proved by the landlord, and the fact that though a new tenancy was created, according to the landlords and new tenants' case no such tenancy agreement has been brought on record. Hence, even the case of fresh tenancy in favour of original defendant no.2 is in my view in doubt. The rent receipt produced on record by the new tenant are dated 22 March 2004, covering a period from 1 April 2002 to 31 March 2004. Hence for a period of two years two rent receipts are produced dated 22 March 2004. Thereafter, four rent receipts are produced which are dated 10 February 2008 covering a period from 1 April 2004 to 31 March 2008. Though there is no bar for issuing a rent receipt for a year together, however, the manner in which these receipts mentions about the rent creates a doubt in the mind.

20. The legal heirs of the original tenants have filed RAD Suit for declaration of tenancy in the year 2009 with an averment that only in April 2009 he got the knowledge about premises being handed over to

defendant no.2 by breaking open the lock.

21. Though on behalf of the landlord and new tenant the issue about who broke open the lock has been raised as according to them the notice prior to the filing of the suit issued by the plaintiff mentioned that landlord broke open the lock and in the plaint, it is averred that the new tenant broke open the lock of the suit premises. The fact remains that by breaking open the lock of the suit premises the possession of the suit premises was taken over and the possession is now with defendant no.2 (new tenant). The said new tenant even does not have any written document of tenancy agreement in his favour.

22. In my view, by breaking open the lock of the suit premises, the landlord has not followed the due process of law and has taken the law in his own hand by breaking open the suit premises and handing over possession to defendant no.2.

23. The case of the plaintiff is that he is squarely falling within the definition of 'tenant' as defined in Section 7(15) (d)(i) of the Maharashtra Rent Control Act. Section 7(15) defines the term 'tenant' as under:-

7(15) "tenant" means any person by whom or on whose account rent is

payable for any premises and includes, ----

(a)

(b)

(c)

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who, -

(i) where they are let for residence, is residing, or

(ii)

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court."

24. Therefore, the plain meaning of 'tenant' includes after the death of the tenant of a residential premises, (a) any member of the deceased tenant's family who at the time of the death of tenant was resided with him, or (b) in the absence of such member of the family any heir of the deceased tenant as may be decided amongst the legal heirs, or (c) if there is no member of tenant's family living with the tenant at the time of his death, and there is no agreement between the heirs of the deceased tenant as to who should be treated as a tenant, then the same may be decided by the Court.

25. In the present case, it is the case of the landlord that the original tenant- Udaybhan Singh was not residing in the suit premises. After the death of the original tenant his wife - Pyaridevi and his son- Umakant were the only legal heirs. And after the death of Pyaridevi,

Umakant alone remained the legal heir of original tenant-Udaybhan Singh. Therefore, Udaybhan Singh, could always claim tenancy of the suit premises by filing declaratory suit.

26. On behalf of the landlord Senior Counsel Mr. Walawalkar admitted that the suit as it stood with regard to prayer clauses (a) and (b) was maintainable.

27. The plaintiff had claimed that the suit as it stood with regard to the new tenant was also maintainable. Mr. Throat on behalf of the plaintiff has harped on the provisions of the Section 33 of the Maharashtra Rent Control Act. Section 33 reads as under:-

“33. Jurisdiction of courts

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, -

(a) In Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) ...

(c) elsewhere, the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.”

(Emphasis supplied)

28. The Small Causes Court in the city of Mumbai has jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant, relating to the recovery of rent or possession of any premises and to decide any application made under the Act. Hence, any application made under the Maharashtra Rent Control Act is maintainable before the Small Causes Court.

29. Prayer clauses (a), (b) and (c) of the plaint read as under :-

(a) That it be declared by this Honourable Court that the Plaintiff being a heir and legal representative of deceased tenant Shri. Udaybhan Jamadar Singh is entitled to the tenancy rights in the suit premises i.e. a residential room admeasuring 10' x 12' on ground floor of Bohori Chawl at 294, Senapati Bapat Marg, Dadar, Mumbai-400 028.

(b) That the Defendant No.1 by a mandatory order and directions of this Honourable Court be directed to transfer the rent receipt of the suit premises i.e. a residential room admeasuring 10' x 12' on ground floor of Bohori Chawi at 294, Senapati Bapat Marg, Dadar, Mumbai 400 028 from the name of deceased Shri. Udaybhan Jamadar Singh to the name of Plaintiff.

(c) That by Order and decree of this Honourable Court, the Defendant No.2 be directed to vacate and handover vacant and peaceful possession of the suit premises i.e. a residential room admeasuring 10' x 12' on ground floor of Bohori Chawl at 294, Senapati Bapat Marg, Dadar, Mumbai - 400 028 to the Plaintiff.

30. I have already held that tenancy of any suit premises comes to an end in two ways, either on an eviction decree being passed by the

Court or by a Deed of Surrender of tenancy. In the present proceedings, there is no dispute that as regards prayer clause (a) of the plaint which is regarding declaration of the tenancy right the suit was maintainable. So also, there is no dispute that as regard prayer clause (b)-the transfer of the rent receipt, the suit was maintainable before the Small Causes Court. In the present case, without a document of surrender of tenancy being brought on record and by breaking open the lock of the suit premises, the suit premises is taken in possession by the defendant no.2 on the purported case of him being the new tenant. However, a tenancy agreement in favour of new tenant is not brought on record. Once it is held and agreed that a suit for declaration of tenancy can be filed in the Small Causes Court and as regards the transfer of the rent receipt, the same can also be filed in the Small Causes Court, I have no doubt that even the prayer clause (c) which seeks a direction of handing over back the possession of the suit premises, the suit would be maintainable in the Small Causes Court.

31. It is highly unbelievable that in the city of Mumbai where the suit premises is situated the landlord has accepted the surrender of tenancy and has not executed an agreement of surrender of tennacy.

32. Landlord has also stated that one Mr. Dinesh Patel was in the possession of the suit premises when the wife of original tenant handed over possession. However, nothing has been brought on record as regards the occupancy of one Mr. Dinesh Patel.

33. Full Bench of this Court in the Judgment *Dattatraya Krishna* (supra) held that where there is an allegation about the relationship of landlord and tenant and the relief claimed regarding the recovery of rent for possession the Court of Small Causes alone will have jurisdiction to try the suit. Paragraph nos.5, 6, 7, 10 and 12 read as under:-

“(5) The position therefore is that in order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. Whatever may be the form of relief claimed, if on a fair reading of the plaint it becomes apparent that the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and the relief claimed in substance relates to recovery of rent or possession or raises a claim or question arising out of the Rent Act or any of its provisions, then it is the special Court alone that will have jurisdiction to decide the suit. If a dispute is subsequently raised by the defendant about the existence of relationship of landlord and tenant, the continuance of the suit in the Special court will depend on the decision of the Court on that issue. Similarly if the plaint does not allege the relationship of landlord and tenant and no claim or question arises out of the Act or any of its provisions, then it will be the ordinary civil Court and not the special Court that will have jurisdiction to entertain the suit.

(6) One of the matters in respect of which exclusive jurisdiction is conferred on the special court is any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part II of the Act apply. Three conditions must be satisfied before a suit or proceeding can be said to be of this nature. It must be a suit or proceeding between a landlord and a tenant.

The suit or proceeding may be instituted either by a landlord or by a tenant, but it must be in his capacity as the landlord or the tenant as the case may be. It must also be against the tenant or landlord, though persons deriving title through or under him may also be made parties to the suit. The suit or proceeding must also be in respect of premises to which any of the provisions of Part VI of the Act apply. The third condition which is to be satisfied is that the suit or proceeding must relate to recovery of rent or possession of such premises.

(7) The words used are "relating to recovery of rent or possession" and not "for recovery of rent or possession". The words "relating to" are very wide and would include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises. Even if, therefore, the suit is not for possession, if the relief claimed in the suit is in regard to or in respect of recovery of possession, it will come within the ambit of this section. Thus a suit, in which the plaintiff seeks to get rid of an order of his eviction by an injunction restraining the defendant from interfering with his possession, will also be covered by this section.

(10) A suit in regard to possession on the basis of contract may, however, be brought by a tenant. This will generally be the case when the tenant has lost in an application made against him under section 41 of the Presidency Small Cause Courts Act. The case of the applicant in such an application being that the occupant was his licensee and not his tenant, it is not likely that he would have terminated the alleged tenancy. It has been contended that in a suit on contract the tenant claims his rights under the Act. No claim or question therefore arises under the Act or any of its provisions. The suit is under the general law and will consequently be outside the purview of Section 28. We have given our anxious consideration to these arguments, but we do not think that we can uphold them. Section 28 refers to any suit or proceeding between a landlord and a tenant relating to recovery of possession of any premises to which any of the provisions of part II apply. These words are wide enough to include every suit between a landlord and a tenant, whether the tenancy is contractual or is continued by reason of the provisions of the Act, provided the relief asked for relates to possession. There is nothing in this section or in any other section of the Rent Act which would justify cutting down the scope of section 28 or holding that suits on contract were intended to be excluded from the purview of this section. The arguments advanced virtually amount to that a tenant holding the premises on a contract as contra distinguished from a tenant holding the premises by reason of the provisions of the Act would be entitled to the benefits under the Act, but would enforce his rights not in a Court of exclusive jurisdiction provided by the Act but in the ordinary Court. There is no reasonable ground for giving such an interpretation to the section. It is not in dispute that in cases of contractual tenancies a landlord will not be able to recover rent in a Court other than the special Court. there is no reason to hold that even though that may be the case, suits relating to recovery of premises alleged to be held on contractual tenancies would lie in Courts other than

special Courts. A suit on a contract will therefore also attract the provisions of S.28. Being a suit under section 28 it will be a suit under the Act and will have to be disposed of in conformity with the provisions of the Act.

(12) The facts in [Madhavprasad Kalkaprasad's](#) case were that the plaintiff alleged that he was a sub-tenant of the defendant. The defendant had filed a suit in the Small Cause Court against one Patil alleging that Patil was his sub-tenant. An order was made by the Small Cause Court ordering Patil to vacate the premises. The defendant obtained a warrant of possession and the plaintiff offered obstruction. The defendant took out an obstructionist notice and the plaintiff was ordered to hand over possession to the defendant. the plaintiff thereupon filed a suit for a declaration that he was a tenant of the defendant and as such tenant entitled to remain in possession of the premises. During the pendency of the suit he was dispossessed. The plaintiff therefore amended the plaint and prayed that possession should be restored to him. It was held that [section 28](#) did not apply to this suit and that the suit could be tried by the High Court. The judgment shows that the primary reason why the learned Judges came to this conclusion was that they regarded the suit as a suit substantially on title and not as a suit for possession. At p. 29 (of Bom LR) : (at page 193 of AIR) it is specifically stated that it was not a suit for possession. This case was distinguished by Chagla C.J. himself in [Harswarup Khannamal v. Nandram](#) . he has pointed out that that it was a suit under O. 21 R. 103 Civil Procedure Code under which a party not being a judgment-debtor may institute a suit to establish the right which he claims to the present possession of the property of which the possession is sought to be taken. In the opinion of the learned Judges, such a suit could only be filed in a civil Court and not in Special Court set up under [section 28](#). We are inclined to take a different view on this point. It seems to us that if the plaintiff alleges a relationship of tenant and landlord between him and the defendant and if he seeks relief relating to the recovery of possession, then the suit must be filed in the Special Court under [section 28](#).”

(Emphasis supplied)

I am of the view that The ratio laid down by the Full Bench of this Court is squarely applied to the facts of the present proceedings.

34. The Supreme Court in the case of ***Mansukhlal Dhanraj Jain*** (supra) has explained the meanings of words “relating to” as mentioned in Section 28 of the Bombay Rent Act. Paragraph nos.12,

14, 16, 18 and 20 read as under:-

“12. A mere look at the aforesaid provision makes it clear that because of the non-obstante clause contained in the section, even if a suit may otherwise lie before any other court, if such a suit falls within the sweep of Section 41(1) it can be entertained only by the Court of Small Causes. In the present proceedings we are not concerned with the provisions of sub-section (2) of Section 41(1) and hence we do not refer to them. For applicability of Section 41(1) of the Small Causes Courts Act, the following conditions must be satisfied before taking view that jurisdiction of regular competent civil court like City Civil Court is ousted.

- (i) it must be a suit or proceeding between the licensee and licensor; or
- (ii) between a landlord and a tenant;
- (iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or
- (iv) relating to the recovery of the licence fee or charges or rent thereof.

14. So far as the first condition is concerned, a comprehensive reading of the relevant averments in the plaints in both these cases leaves no room for doubt that the plaintiffs claim relief on the basis that they are licensees on monetary consideration and the defendants are the licensor. The first condition is clearly satisfied. Then remains the question whether the third condition, namely that the suits must relate to the recovery of possession of immovable property situated in Greater Bombay is satisfied or not, It is not in dispute that the suit properties are immovable properties situated in Greater Bombay but the controversy is around the question whether these suits relate to recovery of possession of such immovable properties. The appellants contended that these are suits for injunction simpliciter for protecting their possession from the illegal threatened acts of respondents-defendants. Relying on a series of decision of this Court and the Bombay High Court, Guttal, J., Pendse, J. and Daud, J. had taken the view that such injunction suits can be said to be relating to the possession of the immovable property. Sawant, J. has taken a contrary view. We shall deal with these relevant decisions at a later stage of this judgment. However, on the clear language of the section in our view it cannot be said that these suits are not relating to the possession of the immovable property. It is pertinent to note that Section 41(1) does not employ words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover

such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1). In this connection, we may refer to Blacks' Law Dictionary Super Deluxe 5th Edition. At page 1158 of the said Dictionary, the term "relate" is defined as under:

"to stand in some relation, to have bearing or concern, to pertain, refer, to bring into association with or connection with; 'with to'."

It cannot be seriously disputed that when a plaintiff- licensee seeks permanent injunction against the defendant- licensor restraining the defendant from recovering the possession of the suit property by forcible means from the plaintiff, such a suit does have a bearing on or a concern with the recovery of possession of such property. In the case of [Renusagar Power Company Ltd. v. General Electric Company & Anr.](#), [1985] 1 S.C.R. 432, a Division Bench of this Court had to consider the connotation of the term "relating to", Tulzapukar, J. at Page 471 of the report has culled out propositions emerging from the consideration of the relevant authorities. At page 471 proposition No. 2 has been mentioned as under ;

"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

16. It is, therefore, obvious that the phrase 'relating to recovery of possession' as found in Section 41(1) of the Small Causes Court Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee plaintiff would squarely be covered by the wide sweep of the said phrase. Consequently in the light of the averments in the plaints under consideration and the prayers sought for therein, on the clear language of Section 41(1), the conclusion is inevitable that these suits could lie within the exclusive jurisdiction of Small Causes Court, Bombay and the City Civil Court would have no jurisdiction to entertain such suits.

18. When Section 41(1) of the Small Causes Courts Act is read in juxtaposition with the aforesaid Section 28 of the Bombay Rent Act, it becomes clear that *pan materia* words are used about nature of suits, in both these provision for conferring exclusive jurisdiction on Small Causes Court, namely, they alone can entertain such suits or proceedings relating to

recovery of possession of premises. It is of course true that Section 41 of the Small Causes Courts Act deals with such suits between the licensee and licensor while Section 28 of the Bombay Rent Act deals with suits between landlord and tenant. But the nature of such suits as contemplated by both these sections is the same, namely, it should be the suit relating to the recovery of possession of premises. Interpreting the phrase 'relating to recovery of possession' as found in Section 28 of the Bombay Rent Act, a Bench of three learned Judges of this Court in the case of Babulal Bhummal and Anr. v. Nandram Shivram and Ors., [1959] S.C.R. 367, held that a suit for declaration that one of the plaintiffs was the tenant of the defendant landlord and the other plaintiffs were his sub-tenants and they were entitled to be protected from evidence squarely falls within the exclusive jurisdiction of the Small Causes Court, Bombay, under Section 28 of the Bombay Rent Act and jurisdiction of the City Civil Court for entertaining such a suit is excluded. Imam, J. Speaking for the three-Judge Bench in that case observed at page 374 of the report as under :

"The present suit filed in the City Civil Court raised in substance a claim to the effect that the plaintiffs were the tenants of the premises within the meaning of the Act. Such a claim was one which arose out of the Act or any of its provisions. The suit related to possession of the premises and the right of the landlord to evict any of the plaintiffs was denied on the ground that the first plaintiff was a tenant within the meaning of the Act and the premises had been lawfully sublet by him to the second and third plaintiffs. The City Civil Court was thus called upon to decide whether the first plaintiff was a tenant of the premises within the meaning of the Act and whether he had lawfully sublet the same to the second and third plaintiffs. The City Civil Court, therefore, had to determine whether the plaintiffs had established their claim to be in possession of the premises in accordance with the provisions of the Act."

20. The same phraseology employed by section 28 of the Bombay Rent Act, namely, suits relating to recovery of possession' also came up for consideration before a three-Judge Bench of this Court in the case of [Natraj Studios v. Navrang Studios](#), [1981] 2 S.C.R. 466. In that case the facts were that there was a leave and licence agreement between the parties. By virtue of section 15A of the Bombay Rent Act, a licensee in occupation on 1.2.1973 became a deemed tenant. The appellant-licensee filed a declaratory suit praying for a declaration that the plaintiff-appellant was a monthly tenant of the two studios and all other structures and open land covered by the agreement. It was submitted by counsel for the appellant that the essence of the dispute between the parties was the right to possession of the two studios. This Court, speaking through Chinnappa Reddy, J., held at page 477 as follows :

"We may now proceed to consider the submission that the Court of Small Causes alone has exclusive jurisdiction to resolve the dispute between the parties. S.28(1) of the Bombay Rent Act, positively confers jurisdiction on the Court of Small Causes to entertain and try any suit or proceeding between landlord and tenant relating to the recovery of rent or possession of any premises or between a licensor and a licensee relating to the recovery of license fee or charge and to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its proceedings, and negatively it excludes the jurisdiction of any other Court from entertaining any such suit, proceeding or application or dealing with such claim or question:

After analysing the previous decisions of this Court in Babulal Bhuramal, Raizada Topandas etc., this Court held at page 483B as follows :

"The relationship between the parties being that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed-demised premises, there is no help from the conclusion that the Court of Small Causes alone has the jurisdiction and the Arbitrator has none to adjudicate upon the dispute between the parties."

(Emphasis supplied)

35. The Single Judge of this Court in the case of *Sutar Pukraj Somtiji* (supra) held that suit filed by the plaintiff claiming to be a tenant for possession of tenanted premises in Brihanmumbai, the Court of Small Causes Mumbai, will have jurisdiction in the matter and not the City Civil Court. Paragraph nos.2, 3, 9 read as under:-

"2. The appellant challenges the order dated 13-3-2002 passed by the City Court, Mumbai answering the preliminary issue regarding the lack of jurisdiction to the City Civil Court to entertain the suit, in affirmative and, therefore, directing return of the plaint for presentation to the proper Court.

3. Upon hearing the learned Advocates and perusal of the record, it is seen that the appellant has filed the suit for recovery of possession of the suit

premises on the ground that the original tenant in relation to the suit premises had surrendered his tenancy in relation to the suit premises on 20th July 1998 and on the very day the premises were leased out to the appellant by the landlord-respondent No. 2 herein; however the suit premises were occupied by the respondent No. 1 from 22nd September 2000 onwards and when the appellant enquired about the same with the respondents and particularly with the respondent No. 2 - the landlord, it was informed to the appellant that respondent No. 1 has rightly obtained the possession of the suit premises and if the appellant wants to take it back, then he should make arrangement for premium of Rs. 7 lacs within a week's time failing which the transaction with the third party would be completed. The suit is apparently filed for recovery of possession of the suit premises based on claim of tenancy. The trial Court, therefore, referring to [Section 33](#) of the Maharashtra Rent Control Act, 1999 held that the City Civil Court has no jurisdiction to entertain such suit and ordered the return of the plaint by the impugned order.

9. As already seen above, the suits relating to issue of possession between the landlord and the tenant are to be entertained and tried by the Court of Small Causes when the suit premises are situated within the territory of Brihanmumbai in terms of Section 33 of the Maharashtra Rent Control Act, 1999. The pleadings of the appellant in the plaint ex facie disclose that it is the case of the appellant himself that the respondent No. 1 is in possession of the suit premises with the consent of the respondent No. 2-landlord. Besides, in order to obtain the possession of the suit premises, the respondent No. 2-landlord has made it clear to the appellant that the latter has to arrange for payment of premium of Rs. 7 lacs failing which the transaction with the third party would be completed. The pleadings, therefore, apparently disclose the possession of the respondent No. 1 in relation to the suit premises with the consent and at the instance of the respondent No. 2-the landlord and the possession of the suit premises is sought to be obtained from both the respondents. It is also apparent that possession of the suit premises is sought to be obtained on the basis of the claim that the appellant is the tenant in respect of the suit premises and the tenancy is said to have been created by the respondent No. 2-landlord. The suit, therefore, on all counts, is for possession of the suit premises from the respondent-landlord as well as from another person in physical possession of the suit premises on behalf of the landlord. The suit is therefore basically between the landlord and a person claiming to be the tenant and for possession of the tenanted premises. Therefore, considering the provisions contained in Section 33 of the Maharashtra Rent Control Act, 1999, the jurisdiction to entertain such a suit squarely vests in the Court of Small Causes. Being so, no fault can be found with the impugned order for answering the preliminary issue regarding lack of the jurisdiction to entertain the suit by the City Civil Court in affirmative and returning the plaint for presentation thereof in the Court of competent jurisdiction.”

The facts in this case are identical to the present proceedings, hence the ratio is squarely applicable to the present case.

36. A larger bench of the supreme court consisting of seven judges in the case of *V. Dhanapal Chettiar* (supra) while deciding the issue whether a notice under Section 106 of the Transfer of property Act was necessary seeking an eviction of a tenant under the Rent Act, held that such a notice for eviction on the ground of bonafide requirement is not necessary. It further held that determination of a lease in accordance with the Transfer of property Act is unnecessary and a mere surplusage because a landlord cannot get eviction of the tenant even after such determination. In continuous to be so even thereafter that being so making out the case under the Rent Act for eviction of the tenant by itself is sufficient, and it is not obligatory to find the proceedings on the basis of the determination of the lease by issuance of notice in accordance of Section 106 of the Transfer of property Act.

Paragraphs 9 and 18 of the said Judgment reads as under:

9. Adverting to the provisions of the Bombay Rents, Hotels and Lodging House Rents Control Act, 1947 it would be found from the definition [section 5](#) that any person remaining in the building after the determination of the lease is a tenant within the meaning of clause (11). [Section 12](#) of the Bombay Act says that the landlord shall not be entitled to the recovery of possession of any premises so long as the conditions mentioned in sub-section (1) are fulfilled nor any suit for recovery of possession shall be instituted by a landlord against a tenant on the happening of the events mentioned in sub-section (2) until the

expiration of one month next after the notice is served on the tenant in the manner provided in [section 106](#) of the Transfer of Property Act, as required by the said sub-section. [Section 13](#) provides that a landlord may recover possession on certain grounds. Is it not plain then that on the happening of the events or on the fulfillment of the conditions mentioned in [sections 12 and 13](#) etc. the landlord becomes entitled to recover possession from the tenant, otherwise not. It will bear repetition to say that under the [Transfer of Property Act](#) in order to entitle the landlord to recover possession determination of the lease is necessary as during its continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfillment of the rigour of law provided therein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. Under the State Rent Control Acts the concept of the contractual tenancy has lost much of its significance and force. Identical is the position under the Bihar Act. The definition section permits the tenant to continue as a tenant even after the determination of the contractual tenancy. [Section 11](#) gives him protection against eviction by starting with a non- obstante clause and providing further that he shall not be liable to eviction from any building except in execution of a decree passed by the Court for one or more grounds mentioned in [section 11](#). Does it not stand to reason to say that a decree can be passed if one or more of the grounds exist and such a decree can be passed against an existing tenant within the meaning of the State Rent Act? Similar is the position under the [Kerala Lease and Rent Control Act, 1965](#) and the East Punjab Urban Rent Restriction Act, 1949. We shall refer to the provisions of the Madhya Pradesh and Andhra Pradesh State Rent Acts when we come to review the decisions of this Court in relation to those Acts.

18. Lastly our attention was drawn to the decision of this Court in [Firm Sardarilal Vishwanath and Ors v. Pritam Singh](#). The lease in that case had come to an end by efflux of time. A tenant continued in possession and became a so-called statutory tenant. The argument put forward before this Court that a fresh notice under [section 106](#) of the Transfer of Property Act was necessary was rejected on the ground:-

"Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under [s. 106](#) of the Transfer of Property Act. But it is equally clear as provided by [s. 111](#) of the Transfer of Property Act that the lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes prescribed under [s. 111](#) the contract of lease comes to an end, and the landlord can exercise his right of re-entry. This right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of

lease had expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed under [s. 111](#). There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease, i.e. after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice."

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

(Emphasis supplied)

37. Single Judge of this Court in the case of *Pius Bona Venture Fernandes* (supra) held that, when part of the building in which Plaintiff was occupying a tenanted premises, collapses and thereafter the building was demolished by the planning authority. The landlord was estopped from claiming that tenancy in question extinguishes after the tenanted premises has been demolished. Paragraph 19 of the said Judgement reads as under :

"19. Insofar as the question of limitation is concerned, in my opinion, the Trial Court and the Appellate Court have clearly overlooked the real

substance of the reliefs claimed in the Suit. By amending plaint in the Suit, prayer (a-1) was added which I have quoted hereinabove: That was the main prayer in the Suit. In my opinion, even with prayer clause (a) which was a prayer for declaration, prayer (b) which was a prayer for possession was clearly governed by Article 64 of the Schedule to the Indian Limitation Act, 1963. Prayer (a) was really in the nature of surplusage. Even if it is assumed that it was necessary to seek declaration, still the Suit was not barred by limitation. It is an admitted position that the relationship between the Petitioner tenant and Respondent landlord was governed by the provisions of Bombay Rent Act, 1947. Once such relationship was governed by the Bombay Rent Act, 1947 there can only be two modes of extinguishment of tenancy rights. The first is by an express surrender of tenancy by a tenant which is not the case in hand. The second mode of extinguishment of tenancy is by a decree of competent Court. In *V. Dhanpal Chettiar v. Yesodal Ammal*, 1979 Mah LJ 775 (SC): (1979) 4 SCC 214 AIR 1979 SC 1745 the Constitution Bench of the Supreme Court has clearly held that in respect of the premises governed by the Bombay Rent Act, 1947, the tenancy does not get terminated even by issuance of a notice of termination of tenancy and can come to an end only by a decree of a competent Court. This legal position is well established. Therefore even in respect of relief of declaration the time will begin to run only from express denial of tenancy rights of the Plaintiff by the Defendant. In the present case, in fact, even after filing of the Suit, the Defendant did not deny the tenancy rights of the Plaintiff as is evident from the order dated 21-9-1999 passed in the present Suit which is quoted hereinabove. In view of this, it was not open for the Defendant to contend that the Suit was barred by limitation. I have therefore no hesitation to hold that the findings on the question of limitation as recorded by the Trial Court and the Appellate Court are perverse and the same are liable to be quashed and set aside and are accordingly quashed and set aside.”

(Emphasis supplied)

The ratio laid down by all the above Judgement is squarely apply to the present proceedings.

38. Mr. Walawalkar had referred to certain citations, the said Judgements are as follows :

(i) Supreme Court in the Judgement of *Laxmidas Morarji* (supra) was dealing with the case where the tenant had died, so also the sister

of the tenant who was residing with the tenant had died and the sister of the original tenant was accepted as a tenant by the landlord and she had created her last Will appointing trustees and executors of her Will. She died on 17 December 1963. After her death, the claim of tenancy was made by her niece i.e. daughter of her sister. The landlord filed a suit for eviction after giving notice to the trustees and executors of the Will. So also the landlord made the niece of the deceased tenant as a party Respondent and in the Plaint claimed that they are not accepting niece as a tenant. However, as a matter of caution and to avoid any technical objection in future she is made as a party Defendant No.5. In the written statement a specific ground was raised by Defendant No.5 (niece) that the Court of the Small Causes has no jurisdiction to entertain the petition, since the landlord have not accepted her as a tenant of the suit premises. She had also claimed that she was adopted as a daughter by the deceased tenant and she being the daughter of the sister of the deceased tenant and was residing with the deceased tenant at the time of her death. Therefore, she fit into the definition of tenant as envisaged under Section 5(11)(c)(i) of the Bombay Rent Act and therefore, was entitled to an eviction notice. The Small Causes Court dismissed the

suit on the ground that the niece had proved the fact that she was residing with the deceased tenant as a member of her family and as such she is entitled to claim tenancy right under the provisions of Section 5(11)(c)(i) of the Bombay Rent Act. The Supreme Court confirmed the findings of the trial court and held that the Small Causes Court at Bombay has no jurisdiction to entertain the suit. The facts in the case of ***Laxmidas Morarji*** (supra) were quite different than the facts in the present proceedings. Therefore, the ratio laid down by the Supreme Court in the ***Laxmidas Morarji*** (supra) will not be applicable to the present proceedings.

(ii) In ***Rafiuddin Nuruddin Musalman*** (supra), a Single Judge of this Court was dealing with the facts where the claim of the Plaintiff was that he had purchased the suit premises from Defendant No.1 by a Registered Sale Deed dated 1 May 1975. The Plaintiff further claimed that thereafter Defendant No.1 was put in possession as a tenant in presence of Panchas on a monthly rent of Rs.20/- and the Defendant after three months was supposed to give back the possession to the Plaintiff. Since the Defendant did not give back the possession neither paid the rent therefore, plaintiff filed a suit under the Rent Act against the Defendant No.1 and also against Defendant

No.2, who according to the Plaintiff was given possession of the suit premises by Defendant No.1. The plaintiff claimed that Defendant No.2 was a trespasser. The trial court framed the issue “whether Plaintiff proves that after purchase of the suit premises from Defendant No.1, whether the Plaintiff let out to Defendant No.2 the suit premises”, the said issue was answered in the negative. The Defendant had claimed in their written statement that they are the owners of the suit premises and Defendant No.1 was aged 95 years and due to his old age and he being insane, the Plaintiff took advantage and obtained a sale deed in collusion with one Sharafuddin, who is the son of Defendant No.1. Therefore, the Defendant did not accept the title of the Plaintiff. Further they denied that the Defendant No.2 is the trespasser of the property. The High Court while dealing with the case held that consolidated suit for recovery of possession from a tenant on the ground available under the Act, and against the trespasser is not maintainable. The facts in the present case and in the Judgment of *Rafiuddin Nuruddin Musalman* (supra) are quite different. In the present proceedings, the Plaintiff had not claimed that Defendant No.2 is a trespasser. No such averment is found in the Plaint.

(iii) Supreme Court in the Judgment of Hiralal Vallabhram (supra) while dealing with the case, where suit for eviction was filed under Section 28 of the Bombay Rent Control Act. The Defendant Nos.1 to 3 were tenant in chief of the premises while Defendant No.4 was added as a party on the ground that he was a sub-tenant. The suit was filed on the ground of non-payment of rent and on the ground of sub-letting. The suit was defended on the ground that three defendants were tenants in chief and subsequently, Defendant No.1 was no longer remained partner of the firm and in his place Defendant No.4 had become a partner. Defendant Nos.2 and 3 have denied sub-letting. The trial Court held that the grounds of arrears of rent were not proved. The trial Court held that Defendant Nos.1 to 3 had sub-let the premises to the Defendant No.4. But on the basis of amendment to the Act in the year 1959, there could be no eviction, it therefore dismissed the suit of the landlord. However, the Appellate Court reversed the finding of the trial Court. It held that Defendant No.4 was not a sub-tenant but he was a trespasser as he failed to prove the assignment. The High Court also approved the finding of the sub-letting and held that Defendant No.4 was entitled to contain that he was protected under Section 15(2) of the Rent Act. However,

the High Court went further to consider the question whether there was arrears of rent. The High Court held that the ground of arrears was proved and Defendant Nos.1 to 3 were liable to be rejected under the Act and hence, even Defendant No.4 who was a sub-tenant would have to go with them. The High Court held that Defendant No.4 was not protected under Section 14 of the Act. Hence, the High Court upheld the order of the Appellate Court on different grounds. However, Supreme Court while dealing with the case of Defendant No.4 held that they did not agree with findings of High Court and Appellate Court and set aside Judgement of High Court and restored the Judgment of the trial Court.

39. The findings recorded by the Supreme Court in *Hiralal Vallabhram (supra)* are on the basis of the facts of that case. The facts in the present case are quite different than the facts of *Hiralal Vallabhram (supra)*. Hence, the findings recorded in *Hiralal Vallabhram (supra)* are not applicable to the present proceedings.

40. In the Judgment of the Supreme Court *Nataraj Studios (supra)*, wherein the facts in the said case was that the landlord claimed that the Defendant was a trespasser. Supreme Court held that if a landlord claims to be the owner of the building and alleges that the Defendant

is a trespasser, such a suit has to be instituted before the Civil Court. In a suit filed by the landlord before the tenancy court where the Defendant claims that he is not a tenant and the suit should be filed before the ordinary civil court. If ultimately the court finds that the Defendant was not a tenant then the suit will fail for that reason.

41. In the present proceedings, the tenant has admittedly filed a suit for declaration of tenancy and for return of the possession of the suit premises. I have already held that such a suit is maintainable before the Small Causes Court which the Rent Court. Therefore, the findings recorded by the Court in Nataraj Studios (supra) are on the basis of the facts in the said case. In the said case, the leave and licence was entered into between the parties as regards to two studios and other premises as mentioned in the Agreement of Leave and License dated 28th March 1970. The Agreement was initially for 11 months but it was extended from time to time and on 1st February 1973, when Section 15(A) was inserted in the Bombay Rent Act, the Leave and Licence Agreement was in force. Hence, the licensee got protection under the Act. On 20.04.1979, landlord purported to terminate Leave and Licence Agreement and called upon the Defendant to handover possession of studios. Immediately thereafter

on 08.05.1979 the Defendant filed a declaratory of suit in the Court of Small Causes praying for declaration that he is a monthly tenant. The Defendant also filed an application under Section 33 of the Arbitration Act in the High Court for declaration that there is arbitration clause in the leave and license agreement and the same was invalid and inoperative. The said application was dismissed by the High Court on the ground that it had no jurisdiction to determine the alleged right if any of the tenant. Thereafter, an application was filed by the landlord under Section 8 of the Arbitration Act for appointment of sole arbitrator to decide the dispute between the parties. The High Court allowed the said Application and appointed sole arbitrator. The matter was then challenged to Supreme Court against the order passed by the High Court. Hence, the ratio of the Judgments preferred by the learned Counsel on behalf of the landlord is not applicable to the facts of the present proceeding.

42. In the present proceedings, The Appellate Court held that the cause of action against Defendant No.1 is not independent as against Defendant No.2, because inherently it is the case of the Plaintiff that Defendant No.1 dispossess Plaintiff and in his absence forcibly took possession of the suit room and inducted Defendant No.2 to whom he

now claiming to be the tenant. Further the prayer of the Plaintiff to recover the possession of suit premises is consequential to the main prayer of declaration of tenancy rights in respect of the suit premises. Once he succeeds to establish the tenancy rights he is very much entitled to recover the actual possession of tenanted premises, in absence of which declaration of tenancy rights would become a mere formality. Therefore, it cannot be said the cause of action for the Plaintiff accrued independently against Defendant Nos.1 and 2 independently. I agree with the findings recorded by the Appellate Court.

43. I do not find any infirmity in the Judgment of the Appellate Court. Hence, both the Civil Revision Applications fail. Civil Revision Applications No.162 of 2023 and 200 of 2023 are dismissed. No costs.

44. Interim Application is also disposed of.

[RAJESH S. PATIL, J.]