
(2014) 08 BOM CK 0159
In the Bombay High Court
Case No : Second Appeal No. 58 of 2004

Anil Dhondu Shinde

APPELLANT

Vs

Govind Jagannath Samant

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 24
Bombay General Clauses Act, 1904 — Section 7
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 13, 28, 28(1)(b), 3
Civil Procedure Code, 1908 (CPC) — Section 9
General Clauses Act, 1897 — Section 3, 6, 6(c)
Maharashtra Rent Control Act, 1999 — Section 1, 14(1)(b), 2, 58
Transfer of Property Act, 1882 — Section 106, 111(f)

Citation : (2014) 6 ABR 375 : (2014) 6 ALLMR 575 : (2015) 4 BomCR 296 : (2015) 1 MhLj 370 : (2015) 2 RCR(Rent) 98

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : S.M. Gorwadkar, Advocate i/b D.B. Mistry, Advocate for the Appellant; R.S. Apte, Senior Advocate i/b A.R. Gole, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—Regular Civil Suit No. 657 of 1991 was filed by two brothers, namely, Anil Dhondu Shinde and Kishore Dhondu Shinde against the original owner of the suit property, namely, Govind Jagannath Samant, joined as the defendant No. 1. The lessee of the suit property, Laxman Vishnu Parulekar, was joined as the defendant No. 2 along with his wife Chhaya Laxman Parulkar as the defendant No. 3. It is was for declaration that the defendant No. 1 has no right to obstruct the entry of vehicles and disturb the possession of the plaintiff and also for a decree of injunction permanently restraining the defendants from disconnecting the electric supply and using the 10 feet road from the suit property.

2. Regular Civil suit No. 814 of 1991 was filed by the owner of the suit property-

Govind Jagannath Samant against Laxman Vishnu Parulekar and Chhaya Laxman Parulekar, joined as the defendant No. 1 and the defendant No. 2 respectively in the capacity as lessees of the suit property. Anil Dhondu Shinde and Kishore Dhondu Shinde were joined as the defendant Nos. 3 and 4 and a decree for possession of the suit property was claimed against all the defendants on the ground that the defendant Nos. 1 and 2 have sub-let the suit property to the defendant Nos. 3 and 4 without prior written consent of the plaintiff-landlord and have thereby committed breach of the terms and conditions of lease, resulting into the consequences of termination of lease by issuing a notice dated 24-5-1991 u/s 106 of the Transfer of Property Act, 1882, duly received by the defendants.

3. Special Civil Suit No. 947 of 1993 was filed by two brothers Anil Dhondu Shinde and Kishore Dhondu Shinde against the owner of the suit property-Govind Jagannath Samant, joined as the defendant No. 2 and the lessees Laxman Vishnu Parulekar and Chhaya Laxman Parulekar, joined as the defendant Nos. 1 and 3 respectively. It was a suit for specific performance of the agreement to sell dated 30-11-1990 and declaration dated 24-9-1991, said to have been executed in favour of the plaintiffs.

4. All the three suits were tried together by a Court of Civil Judge, Senior Division at Thane, in exercise of its ordinary civil jurisdiction u/s 9 of the Civil Procedure Code, 1908. The parties led common evidence and all the suits were decided by a common judgment on 30-3-2002. The Trial Court dismissed Special Civil Suit No. 947 of 1993 for specific performance of the contract and also Regular Civil Suit no. 657 of 1991 for injunction filed by two brothers Anil Shinde and Kishore Shinde. However, it passed a decree for delivery of possession of the suit property in favour of the owner Govind Jagannath Samant, who was the plaintiff in Regular Civil Suit No. 814 of 1990.

5. Anil Shinde and Kishore Shinde, two brothers, filed three appeals, namely, Civil Appeal Nos. 160 of 2002, 161 of 2002 and 162 of 2002 challenging the judgment and decree passed by the Trial Court in all the three suits on 30-3-2002. All these appeals have been dismissed by the Appellate Court by its common judgment and order dated 27-8-2003. The decision given by the Appellate Court in appeals arising out of Special Civil Suit No. 947 of 1993 for specific performance of the contract, and Regular Civil Suit No. 657 of 1991 for injunction-both filed by two brothers, Anil Shinde and Kishore Shinde have attained finality. The present second appeal challenges a decree for possession passed by the Trial Court in Regular Civil Suit No. 814 of 1991, as has been confirmed in Civil Appeal No. 161 of 2002 by the Appellate Court, which has dismissed the appeal.

6. On 11-2-2004, this Court admitted the second appeal on the substantial question of law framed in Ground No. (e) of the memo of appeal, which is reproduced below:

"(e) That both the Lower Courts have acted against law and thereby committed an error in giving judgment and further ought to have held that the suit of the Respondent is not maintainable under law, as the suit is not filed under Bombay Rent Act."

Except the aforesaid substantial question of law, no other substantial question of law has either been framed or has been urged by the appellants.

7. The findings of fact recorded by the Courts below giving rise to the substantial question of law, need to be stated. The original plaintiff is undisputedly the owner of the suit property. By a registered agreement of lease dated 4-2-1976, the property was leased out in favour of the defendant No. 1 Laxman Vishnu Parulekar for a period of 98 years containing Clause (12), which is reproduced below:

"12. Not to let out or give on licence any portion of the said building to any person, except with the prior written consent of the lessor, which consent may be granted in the sole discretion of the lessor."

The finding of the Trial Court is that by agreement to sell dated 30-11-1990, the defendant Nos. 1 and 2 have agreed to transfer the suit property to the defendant Nos. 3 and 4 without any authority and they are also illegally put in possession of the suit property. It has also been held that defendant No. 1 has sub-let or assigned the possession of the premises in favour of the defendant Nos. 3 and 4 without prior consent of the plaintiff. It is also a finding recorded that the defendant No. 1 had no right to sub-let the suit premises to the defendant Nos. 3 and 4. The Appellate Court has held that the possession of the defendant Nos. 3 and 4 is that of the trespassers. It is the finding recorded that the defendant No. 1 has committed breach of the terms and conditions of the lease-agreement [Clause No. (12)] by handing over possession of the suit premises to the defendant Nos. 3 and 4 and hence the plaintiff is entitled to a decree for possession of the suit property on the basis of the termination of lease in accordance with Section 106 of the Transfer of Property Act. These findings are also confirmed in appeal by the Appellate Court.

8. Accepting the aforesaid findings of fact recorded by both the Courts below, Shri Gorwadkar, the learned counsel appearing for the appellants, proceeds to develop his argument. He submits that the lease in respect of the "open land" is covered by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "the Bombay Act"), as it would be the "premises" covered by Section 5(8) of the Bombay Act. He submits that the grounds on which the Courts below have passed a decree for possession and maintained it, are covered by Sections 12 and 13 of the Bombay Act. According to him, the matter is fully governed by the Bombay Act, which confers exclusive jurisdiction upon the Courts constituted u/s 28 of the Bombay Act. He submits that the jurisdiction of the Court other than one referred to u/s 28 of the Bombay Act is expressly barred. According to him, the decree in question has not been passed by a Court constituted u/s 28,

but it has been passed by the Court of Civil Judge, Senior Division, Thane, in exercise of its ordinary civil jurisdiction u/s 9 of the CPC read with Section 24 of the Bombay Civil Courts Act, 1869. He, therefore, submits that the decree passed being in lack of inherent jurisdiction becomes nullity. He has relied upon the decisions of the Gujarat High Court in Mohmad Husain Chotumiya Shaikh Vs. Taraben Manilal Shah, ; and Govindbhai Parshottamdas Patel and Others Vs. New Shorrock Mills, Nadiad,

9. Shri Ram Apte, the learned Senior Counsel appearing for the respondent No. 1, has invited my attention to the stand taken by the appellants/defendant Nos. 3 and 4 in their written statement and submits that the objection raised by the Trial Court was regarding the pecuniary jurisdiction of the Court of Civil Judge, Senior Division to entertain, try and decide the suit. According to him, the jurisdictional facts, which are material to raise the question of lack of inherent jurisdiction because of the bar created u/s 28(1)(b) of the said Act, have not been pleaded in the written statement. He submits that even if the suit was to be tried u/s 28(1)(b) of the Bombay Act, it would be the same Court of Civil Judge, Senior Division, which has passed the decree in the present suit. He submits that the forum does not change and no prejudice is caused merely because the specific provision invoking the jurisdiction of the said Court u/s 28(1)(b) of the Bombay Act has not been mentioned. He has relied upon the decision of the Apex Court in Smt. Kamala Devi Budhia and Others Vs. Hem Prabha Ganguli and Others, , for the proposition that the instant suit can be treated as one filed u/s 28(1)(b) of the Bombay Act. Inviting my attention to the pleadings of the defendant Nos. 1, 3 and 4, he submits that it is a case of surrender of tenancy by the defendant No. 1, the original lessee, and in view of the stand taken by the defendant Nos. 3 and 4, it is not a case of claiming protection of the Bombay Act. They are held to be trespassers. Shri Apte, the learned Senior Counsel, has relied upon the decision of the Division Bench of this Court in Ratanlal Manikchand Shah Vs. Chanbasappa Sanganasappa Chincholi and Others,

10. The rights and liabilities of the lessor and the lessee or the landlord and the tenant are governed by the general law of Indian Contract Act and the Transfer of Property Act, which are the central legislations. The disputes in respect of such rights and liabilities can be resolved by invoking ordinary civil jurisdiction of the Civil Court u/s 9 of the Civil Procedure Code. The rent laws are the special enactments made by the State Legislatures to provide additional protection to the tenants by regulating the rates of rent, repairs of premises, eviction of tenants, etc., and provide a special machinery or the forum to decide the disputes in respect of it. The special law does not abrogate or repeal the general law and the remedies provided therein, but it merely keeps it in a dormant state. The landlord is not permitted to snap his relationship with the tenant merely by his act of service of notice to quit u/s 106 of the Transfer of Property Act, as is permissible under the general law. In spite of service of notice to quit, the rent law says that the tenant continues to be the tenant enjoying the rights of a lessee and cannot be evicted unless the grounds for eviction as are stipulated

therein are made out.

11. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was brought into force with effect from 19-1-1948 with a view to amend and consolidate the law relating to the control of rents and repairs of certain premises, or rates of hotels and lodging houses and of eviction and also to control the charges for licence of premises, etc. It was made applicable to the Bombay area of the State of Maharashtra. Section 3 of the said Act deals with the commencement and duration of the Act. Sub-section (1) therein states that the Act shall come into operation on such date as the State Government, may, by notification in the Official Gazette, appoint in this behalf. Sub-section (2) therein states that it shall remain in force upto and inclusive of the 31st day of March 2000 and shall then expire. Sub-section (3) therein states that Section 7 of the Bombay General Clauses Act, 1904, shall apply upon the expiry of this Act or upon this Act or any provision thereof ceasing to be in force in any area, as if it had then been repealed by a Maharashtra Act. Section 6 therein deals with the applicability of the Act to the premises let or given on licence for residence, education, business, trade or storage in the areas specified in Schedule I under Part II of the said Act. The definition of "premises" u/s 5(8) includes any land not being used for agricultural purposes.

12. The lease in question was in respect of "open land", which was included in the definition of the "premises" u/s 5(8) of the Bombay Act. The provisions of the Bombay Act were applicable on the date of filing of the suit in question on 10-10-1991. If the findings of fact recorded by both the Courts below are accepted, then on the touchstone of the provisions of Sections 12, 13 and 28 of the Bombay Act, which were then in force, the jurisdiction of the Court of Civil Judge, Senior Division at Thane, constituted u/s 28 of the said Act, was attracted and the jurisdiction of the Court other than it, was expressly barred. The suit in question was entertained, tried and decided by the Civil Court in exercise of its ordinary civil jurisdiction u/s 9 of the Civil Procedure Code. Obviously, the Court, which decided the suit in question, suffered inherent lack of jurisdiction to entertain such a suit, in view of the bar of jurisdiction created u/s 28(1)(b) of the Bombay Act.

13. Once it is held that the ordinary civil jurisdiction of the Civil Judge, Senior Division u/s 9 of the CPC to entertain the suit in question on 10-10-1991 was barred u/s 28 of the Bombay Act, the question as to whether a decree passed by such Court on 30-3-2002, i.e. after the repeal of the Bombay Act on 30-1-2000, can be treated as nullity, needs to be decided.

14. The Legislature of the State has brought into force the Maharashtra Rent Control Act, 1999 (for short, "the Maharashtra Act") with effect from 31-3-2000, on which date the notification in the Official Gazette was issued, as required by sub-section (3) of Section 1 therein. It applies to the premises let for the purposes of residence, education, business, trade or storage in the areas specified in Schedule I or Schedule II in terms of sub-section (1) of Section 2 of

the said Act. Sub-section (9) of Section 7 therein deals with the definition of "premises", which is reproduced below:

"(9) "premises" means any building or part of a building let or given on licence separately (other than a farm building) including,--

(i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house."

The open land is not covered by the definition of "premises", reproduced above. Thus, the Act has no applicability to the leases in respect of open lands, whether for agricultural or non-agricultural purpose.

15. Section 58 of the Maharashtra Act dealing with repeal and saving being relevant is reproduced below:

"58. Repeal and saving

(1) On the commencement of this Act, the following laws, that is to say,--

(a) the Bombay Rents, Hotel and Lodging house Rates Control Act, 1947;

(b) The Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of house and Rent Control Order, 1949 and

(c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954; shall stand repealed.

(2) Notwithstanding such repeal--

(a) all applications, suits and other proceedings under the said Acts pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under this Act;

(d) All prosecutions instituted under the provisions of any of the repealed Acts

shall be effective and disposed of in accordance with the law."

In view of sub-section (1) of Section 58 above, the Bombay Act was repealed on 31-3-2000, that is the date on which the Maharashtra Act was brought into force. Sub-section (2) of Section 58 is a saving clause, it takes care of all such transactions, which are in respect of all such applications, suits and other proceedings initiated under the Bombay Act and pending on the date of repeal of the said Act. Such applications, suits or other proceedings are required to be continued as if the Maharashtra Act had never been passed.

16. Sub-section (3) of Section 3 of the Bombay Act states that Section 7 of the Bombay General Clauses Act, 1904 shall apply upon the expiry of the Bombay Act as if it had not been repealed by the Maharashtra Act. Hence, Section 7 of the Bombay General Clauses Act being relevant, is reproduced below:

"7. Where this Act, or any Bombay Act, or Maharashtra Act, made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed."

If the repealing enactment does not contain any saving clause or if the saving clause in the repealing enactment is not applicable, then Section 7 of the Bombay General Clauses Act can be invoked. Unless a different intention is expressed by repealing enactment, the repeal shall not revive anything not in force or existing at the time on which the repeal takes effect or affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability, and such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the repealing enactment had not been passed.

17. The effect of repeal and saving clauses contained in the repealing Act and

Section 6 of the General Clauses Act, 1897, which is in pari materia of Section 7 of the Bombay General Clauses Act, 1904 came up for consideration before the Apex Court in the case of Qudrat Ullah Vs. Municipal Board, Bareilly, . The Apex Court has laid down the following principles on the question of repeal of enactment and its effect.

(1) If the repealing enactment makes a special provision regarding pending or past transactions, it is this provision that will determine whether the liability arising under the repealed enactment survives or is extinguished.

(2) In the absence of applicability of the saving clause in the repealing statute, the result would be that a statute is deemed not to have been on the statute book at all.

(3) Section 6 of the General Clauses Act applies generally in the absence of a special saving provision in the repealing statute, for when there is one then a different intention is indicated.

(4) In any case, where a repeal is followed by a fresh legislation on the subject, the Court has to look to the provisions of the new Act to see whether they indicate a different intention.

(5) What is observed by Section 6 of the General Clauses Act is-(a) previous operation of the repealed enactment, (b) rights, privileges, obligations and liabilities acquired, accrued or incurred under the enactment repealed, and (c) investigations, legal proceedings and remedies in respect of any such right, privilege, obligation or liability.

Applying the aforesaid principles of law, the question of impact of Section 58 of the Maharashtra Act and Section 7 of the Bombay General Clauses Act on the ordinary civil jurisdiction of the Court u/s 9 of the CPC will have to be considered.

18. Sub-section (2) of Section 58 of the Maharashtra Act makes a special provision regarding pending and passed transactions and it is this provision that will determine whether the liability arising under the repealed enactment survives or extinguishes. It applies to all the applications, suits or other proceedings instituted under the Bombay Act and pending. It does not apply to the applications, suits or other proceedings instituted under the law other than the Bombay Act. In the absence of applicability of sub-section (2) of Section 58 regarding saving, the result would be that the repealed enactment is completely obliterated from its inception as if it never existed.

19. The suit in question was neither entertained under any provision of the Bombay Act, nor was instituted in the forum provided to resolve the dispute arising out of the operation of the Bombay Act. It was instituted, tried and decided u/s 9 of the Civil Procedure Code, which is the law other than the Bombay Act. The provision of saving under sub-section (2) of Section 58 of the Bombay Act would not, therefore, apply to the suit in question. But for the provision of Section 28(1)(b) of the Bombay Act, the ordinary civil jurisdiction u/

s 9 of the CPC was available to entertain, try and decide the suit in question. Once a bar u/s 28(1)(b) of the Bombay Act is lifted as a result of repeal on 31-3-2000, the effect would be that such a bar never existed even on the date of filing of the suit in question on 10-10-1991; as a result, it cannot be said that the decree passed by the Trial Court in question was without jurisdiction.

20. Clauses (a) to (e) of Section 7 of the Bombay General Clauses Act would apply in the absence of there being any different intention expressed under the repealing enactment. In the present case, although the Bombay Act was applicable to the leases in respect of open lands, the repealing Act, i.e. the Maharashtra Act, does not apply to such leases; as a result, it is only the ordinary civil jurisdiction of the Court u/s 9 of the Civil Procedure Code, which becomes available. From the date of repeal of the Bombay Act on 31-3-2000, the jurisdiction u/s 28(1)(b) of the Bombay Act ceases to be available. Thus, the Legislature has made its intention very clear that the clauses (a) to (e) of Section 7 of the Bombay General Clauses Act shall not apply to any proceedings in respect of leases of open lands. In view of this, the decree passed by the Trial Court in question is not hit by clauses (a) to (e) of Section 7 of the Bombay General Clauses Act and it cannot be treated as without jurisdiction and nullity.

21. In the decision of the Apex Court in the case of Qudrat Ullah, cited supra, the impact of Section 6 of the General Clauses Act on Section 3 of the repealed Act was considered. It was held that the repealed Act had a limited duration of operation. Before the expiry of the duration of the repealed Act, it was repealed. Section 3 of the repealed Act provided that no suit without the permission of the District Magistrate could be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more grounds specified therein. The Apex Court has held that the survival of the right or continuation of the operation of the Act to the proceedings is all that is ensured and not the expansion or extension of that right. It is held that the right is circumscribed in content to the conditions set out and limited in duration to the period beyond which the Act does not exist. It has been held that to hold otherwise would be to give more quantum of right to the party than he would have enjoyed had the repeal not been made. The Apex Court has held that the previous operation cannot be converted into sanctioning subsequent operation.

22. As pointed out earlier, in the present case, the Bombay Act was brought into force on 19-1-1948 and sub-section (2) of Section 3 therein stated that it shall remain in force up to and inclusive of the 31st day of March, 2000 and shall then expire. So, upon expiry of the Bombay Act on 31st March, 2000, the provisions of general law of the Indian Contract Act and the Transfer of Property Act along with the jurisdiction of the Civil Court u/s 9 of the Civil Procedure Code, come into operation from the suspended or dormant state. To hold that the Trial Court acting u/s 9 of the CPC had no jurisdiction to pass a decree after repeal of the Bombay Act, would amount to extending the operation of the Bombay Act beyond the date of its expiry on 31st March, 2000. The Apex Court has held that

such a course is not permissible.

23. In the decision of the Apex Court in the case of Vishwant Kumar Vs. Madan Lal Sharma and Another, the Apex Court considered the question of difference between the rights of a tenant under the Rent Act and the rights of a landlord. It has been held that the right of a statutory tenant to pay rent in exceeding the standard rent or the right to get the standard rent fixed are the protective rights and not the vested rights. It holds that on the other hand, the landlord has rights recognized under the law of contract and the Transfer of Property Act and the date on which the Rent Act was withdrawn, the suspended rights of the landlord revive. The Apex Court took support of the ratio of its earlier decision in M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, concerning the rights of landlord u/s 14(1)(b) of the Rent Act. It was held that a ground of eviction based on illegal sub-letting u/s 14(1)(b) of the Rent Act would not constitute a vesting right of the landlord, but it would be a right within the meaning of Section 6(c) of the General Clauses Act, if proceeding for eviction is pending. It has been held that the tenant has no vested right under the Rent Act, as the tenant has only a protective right. In the present case, undisputedly no proceedings were instituted under the Bombay Act (repealed Act) nor were pending on the date on which the Bombay Act was repealed.

24. In view of above, it cannot be said that the Courts below have committed an error of law in passing a decree for possession by holding that the suit was maintainable invoking the ordinary civil jurisdiction of the Civil Court u/s 9 of the Civil Procedure Code, though the suit was not filed under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The substantial question of law is answered accordingly.

25. There cannot be any dispute that if a case is made out and proved u/s 111(f) and (g) of the Transfer of Property Act regarding implied surrender and forfeiture on the ground of tenant renouncing his character as such by setting up a title in third person or by claiming title in himself, the provisions of the said Act would not be attracted, as has been held by the Division Bench of this Court in Ratanlal's case, cited supra. With the assistance of the learned counsel appearing for the parties, I have gone through the averments made in the plaint and the written statements of the defendant No. 1 and the defendant Nos. 3 and 4. The case made out by the plaintiff in the pleadings is of an unauthorized sub-letting by the defendant No. 1 in favour of the defendant Nos. 3 and 4. The case is not made out either of surrender of lease or forfeiture u/s 111(f) and (g) of the Transfer of Property Act, 1882. The plaintiff has alleged breach of the terms and conditions of the agreement. Though in para 6, the averment is that the defendant No. 1 has, in response to the letter dated 24-5-1991, agreed to hand over possession of the suit property, the same has not been handed over. Unless there is evidence of handing over possession by the lessee and accepting it by the lessor, the question of surrender of tenancy either implied or express would not arise merely on the basis of assurance to surrender the premises. The

questions of implied surrender and forfeiture of tenancy are the questions of fact, required to be pleaded and proved. No issue was framed by the Trial Court and the Appellate Court has also not considered such aspect of the matter. In view of this, no decree can be passed for possession on the ground either of implied surrender or incurring of forfeiture by disclaimer. The principles laid down by the Division Bench of this Court in Ratanlal's case, cited supra, would not, therefore, apply to the facts of the present case.

26. In view of above, the second appeal is dismissed. No order as to costs.

27. At this stage, the learned counsel appearing for the appellants submits that the interim protection granted earlier by this Court be extended for a further period of eight weeks. Shri Apte, the learned Senior Counsel appearing for the respondent No. 1, submits that it should be subject to condition that the Receiver and the appellants hand over the vacant possession of the suit premises to the plaintiff after the expiry of eight weeks.

28. In view of this, the interim protection granted by this Court is extended for a further period of eight weeks from today, after the expiry of which the Receiver and the appellants shall hand over the vacant possession of the suit premises to the plaintiff, failing which the plaintiff shall be entitled to recover the same from the Receiver and the appellants with the costs of Rs. 15,000/- per day till the date of handing over possession. This is, of course, subject to the further orders by the Apex Court, if any further proceedings are filed.