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**(1968) 02 BOM CK 0026**

**In the Bombay High Court**

**Case No :** Special Civil Application No's. 243 and 244 of 1967

Bijibai Saldhana

APPELLANT

Vs

Rama Mandhar Thannu Mishra and Another

RESPONDENT

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**Date of Decision :** 06-02-1968

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 14, 15, 5, 5(11)  
Constitution of India, 1950 — Article 227  
Transfer of Property Act, 1882 — Section 105, 8

**Citation :** AIR 1969 Bom 103 : (1968) 70 BOMLR 428 : (1969) ILR (Bom) 536 : (1968) MhLj 901

**Hon'ble Judges :** Bal, J

**Bench :** Single Bench

**Advocate :** V.T. Walawalkar and D.D. Samant, for the Appellant; R.B. Andhyarujina and Vilas V. Kamat, for the Respondent

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## **Judgement**

Bal, J.—These two companion matters -raise a common question of law for decision and can be conveniently dealt with together. The facts giving rise to them are briefly these:

2. The property bearing Tika No. 16, C. S. Nos. 5 and 6 of Thana, formerly belonged to one Vasanji Padamsi. On a part of this property there was a shed known as the "Big go down. By a lease deed dated 13th April 1959 Vasanji leased out the shed and the site under it to one D. B. Naik at a monthly rent of Rs. 225. Under the terms of the lease the lessee was entitled to make improvements, alterations or modifications at his own cost and was also entitled to sub-let the premises subject to the condition that when the lease was terminated the sub-lease would also be deemed to be terminated. Naik converted a part of the shed into four shops. Two of these were let out by him to Mahamood Adbul Rahman alias S. A. P. Mahamood, the petitioner in Special Civil Application No. 244 of 1967, at a monthly rent of Rs. 150 and one more was let out to Bijibai Saldhana, the petitioner in Special Civil Application No.243 of 1967,

at a monthly rent of Rs. 60. There was a dispute as to when these shops were let out to the two petitioners; the petitioners claiming that they had entered into Possession on 25th April 1959 and the respondent No.1 (hereinafter referred to as ("the respondent")) contending that they had come on the property in September 1959. Both the Courts below have, however, concurrently found that the premises were let to the petitioners in September 1959 and that finding is not challenged before me by Mr. Walavalkar, learned Counsel for the petitioners.

3. On 28th September 1959 Naik assigned his rights to one P. Hamid Koya by an assignment-deed of that date and the petitioners attorned to the assignee. Thereafter, in 1961, Vasanji filed a suit for eviction and arrears of rent against Naik and Koya in the Civil Court at Thana. The claim for eviction was, however, subsequently given up and a decree for arrears of rent alone was passed in that suit. Pending the said suit the property was purchased from Vasanji by Ram Manohar Thannu Mishra, the respondent in both these petitions. It is not known whether the respondent had been brought on the record of that suit before the decree was passed but proceedings for the execution of that decree were started jointly by Vasanji and the respondent. A Receiver came to be appointed in those proceedings and although his appointment was for the purpose of collecting rent from the sub-tenants who were occupying the premises, he somehow obtained possession of the premises in the occupation of Mahamood on 22nd March 1962 by breaking open his locks during his absence. This led to an application by Mahamood (Misc. Application No. 53/ 62) to the Executing Court for restoration of possession. The matter was compromised and a compromise purshis signed by the respondent and by the constituted attorney of Mahamood as well as by the Receiver, was filed in Court on 2nd July 1962. Under the terms of the compromise Mahamood was to be restored to possession on 6th July 1962 on his paying Rs. 530. Mahamood was further to pay Rs. 175 per month as rent of the premises from 1st July 1962 onwards. Mahamood paid Rs. 530 as agreed and was put in possession of the premises on 6th July 1962.

4. After Mahamood was thus restored to possession, the respondent filed Civil Suit No. 271/62 against Naik and Koya for eviction. To that suit he joined the Receiver also as a party-defendant. None of the two petitioners was, however; made a party to that suit. The suit was dismissed by the trial Court but in an appeal filed by the respondent in the District Court at Thana, that dismissal was set aside and the suit was decreed. The respondent then started execution proceedings and in execution of a warrant issued in those proceedings dispossessed both the petitioners on 1st August 1964.

5. The petitioners approached the Executing Court by filing applications for restoration of possession under Rule 100 of Order 21 of the CPC but their applications were dismissed. Both of them then filed original suits in the Civil Court at Thana for establishing their right to present possession and for restoration of possession. Their suits, however, came to be dismissed and the appeals filed by them in the District Court at Than also met with the same fate.

They have, therefore, come to this High Court under Article 227 of the Constitution for challenging the decisions of the Courts below.

6. On these facts which are no longer dispute, Mr. Walavalkar, learned Counsel for the petitioners, argued two points before me viz.,

(i) that the premises were let to the petitioners lawfully by Naik and hence they were "tenants" as defined in S. 5(11)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Rent Act"); and

(ii) that by virtue of the compromise between the respondent and Mahamood (recorded in Misc. Application No. 53/62) the latter also became a contractual tenant of the respondent from July 1962. According to Mr. Walavalkar, the petitioners being thus "tenants" under the Rent Act, were entitled to the protection of that Act and were not liable to eviction in execution of the decree obtained by the respondent in Civil Suit No.271/62 against Naik and Koya.

7. Before dealing with the first of the above points it will be convenient to set out the relevant provisions of the Rent Act which admittedly applies to the premises with which we are concerned in these petitions.

8. Section 15(1) of the Rent Act read. as follows:

"15. (1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein."

There is a proviso to this section but it is not material for the purposes of this case.

9. The expression "but subject to any contract to the contrary" was introduced retrospectively by Bombay Ordinance III of 1959 (hereinafter referred to as "the Ordinance") which was later repealed and replaced by Bombay Act 49 of 1959. Prior to this amendment sub-letting, transfers and assignments were totally prohibited irrespective of whether the contract of lease permitted the same or not. A large number of tenants had, however, sub-let the premises" let to them or transferred or assigned their interest therein in spite of the prohibition, with the result that the sub-tenants, transferees or assignees as well as the tenants themselves stood in danger of being evicted. To remedy the situation thus created and to provide a dead line after which sub-letting would not be lawful, the Governor of Bombay promulgated the Ordinance on 21st May 1959. Section 15 as it then stood was re-numbered as S. 15(1) and a new sub-section was added as sub-section (2). It was again substituted by a fresh sub-section (2) by Maharashtra Act No. 36 of 1962.

10. Section 15(2) as It now stands consists of two paragraphs. The first legalises sub-letting, transfers and assignments which had taken place prior to 21st May 1959. provided the sub-tenants, transferees or assignees had continued in

possession till that date, while the second provides: "The provisions aforesaid of this sub- section shall not affect in any manner the operation of sub-section (1) after the commencement of the Ordinance aforementioned". Thus after 21st May 1959, a tenant could lawfully sub-let if, and only if, the contract of lease expressly permitted him to do so. In the present case, the lease-deed dated 13th April 1959 by clause (4) of it, expressly permitted the lessee Naik to sub-let the premises leased to him and it is, therefore, beyond dispute that the petitioners were lawful sub-tenants. The question, however, is whether for that reason they became the tenants of the landlord Vasanji and after him of his transferee i.e. the respondent, and were entitled to protection against eviction by him in execution of his decree against Naik.

11. Section 14 of the Rent Act which was amended simultaneously with S.15(1) in 1959 reads:

"14. Where the Interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance (1959) shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued."

12. This shows that in order to be elevated to the status of a direct tenant of the landlord on the determination of the interest of the head-tenant, the subtenant must not only be a lawful subtenant but the premises must further have been let to him prior to 21st May 1959. In the Courts below the petitioners were contending that the premises had been let to them by Naik prior to 21st May 1959 and hence they became direct tenants of the respondent on the determination of the interest of Naik by the decree obtained against him by the respondent. That contention is not now open to them in view of the concurrent finding of the Courts below that the premises were let to the petitioners on or about 1st September 1959 and Mr. Walavalkar has rightly not urged that contention before me but has on the contrary fairly conceded that the petitioners are not entitled to the benefit of the provisions of Section 14.

13. Reliance is placed by Mr. Walavalkar solely on the provisions of section 5(11) (b) of the Rent Act. He argues (without prejudice to his second contention on behalf of Mahamood) that both the petitioners are statutory tenants according to the definition given in this section and are hence entitled to the protection embodied in Section 12(1) of the Rent Act, which reads:

"12(1). A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

14. In order to give protection to the tenant, this section imposes a prohibition against the landlord in the matter of recovering possession. The expression "tenant" appearing in this section must of necessity mean a statutory tenant, for no question of recovering possession can arise unless the contractual tenancy is first terminated. It is also clear that the protection is available to the tenant against the person who can be said to be his landlord under the Rent Act at the relevant time. It must, therefore, be seen whether the petitioners were statutory tenants of the respondent as contended by Mr. Walavalkar, at the time when the respondent evicted them.

15. Although, Mr. Walavalkar is relying only on clause (b) of sub-section (11) of Section 5 of the Rent Act, in order to understand his argument it will be necessary to refer to some of the other clauses also. Section 5(11) of the Rent Act which defines the term "tenant" for the purposes of that Act reads:

"5(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes--

(a) such sub-tenants and other persons as have derived title under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959;

(aa) any person to whom interest in premises has been transferred under the Proviso to sub-section (1) of Section 15;

(b) any person remaining, after the determination of the lease, in possession, with or without the assent of the land-lord, of the premises leased to such person or his predecessor who has derived title before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959;

(c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court."

16. The main definition contemplates only a contractual tenant because rent is payable by him alone. Clauses (a) to (c) contemplate persons who are tenants by virtue only of the statutory provisions and are hence commonly known as "statutory tenants". Mr. Walavalkar argues that clause (b) on which he relies, contemplates two categories of persons not covered by the other clauses. There he is right. He is also right in saying that one of these categories contemplates a person to whom the premises are leased and who remains in possession after the determination of his lease. Mr. Walavalkar however goes further and says that the second category contemplates a person to whose predecessor the premises are leased prior to the commencement of the Ordinance and who remains in possession after the determination of the lease, irrespective of whether the person in question came on the premises before or after the commencement of the Ordinance. According to him the expression "who has derived title before the commencement of the Bombay Rents, Hotel and Lodging

House Rates Control (Amendment) Ordinance, 1959" occurring in clause (b) qualifies the expression "his predecessor" and not "any person" as would prima facie appear. In other words according to Mr. Walavalkar, all that is necessary to make any person (of this category) a statutory tenant u/s 5(11)(b) of the Rent Act is that the premises must have been leased to his predecessor before the commencement of the Ordinance. It is then immaterial whether the person claiming to be a tenant was inducted in the premises by his predecessor before or after the commencement of the Ordinance.

17. The argument is untenable and cannot be accepted for several reasons.

18. A plain reading of clause (b) indicates that the expression "who had derived title before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959" was intended to qualify "any person" and not "his predecessor". The reference to derivative title is inappropriate in the case of a person to whom the premises are leased. The clause itself speaks of the premises having been leased to the predecessor and there could, therefore, be no question of his deriving any further title. On the other hand that expression would be quite appropriate to the case of a person obtaining some kind of title from the original lessee before the determination of his lease. That the Legislature has used an almost identical expression in connection with sub-tenants and other persons obtaining title through the original tenant, can be seen from clause (a) and it is unlikely that the very expression would be used in the same section in connection with a different category of persons without any apparent reason. It is true as pointed out by Mr. Walavalkar, that there is no comma after the word "predecessor", but it is well known that punctuation cannot be regarded as a controlling factor and can-not be allowed to control the plain meaning of a text Mr. Walavalkar is not right in saying that unless his argument is accepted, the second category of persons would be covered by clause (a) and a part of clause (b) would be redundant. There is a clear distinction between the cases contemplated by clause (a) and clause (b). Clause (a) contemplates a case where the lease in favour of the head-tenant is not terminated but is subsisting, while clause (b) contemplates a case where that lease has been already terminated.

19. It would be unreasonable to suppose that the Legislature wanted to treat the "pre-ordinance lessees" as a specially privileged class by conferring upon them the right to induct on the premises after 21-5-1959, persons who could claim the protection of the Rent Act, when lessees to whom the premises are let after that date would have no such right; that would, however, be the direct result of accepting the argument of Mr. Walavalkar.

20. The obvious policy of the Rent Act is to prohibit sub-letting and transfers or assignments of his interest by a tenant As originally enacted, it totally prohibited such transactions since the date of its coming into force and penalised the tenant as well as his sub-tenants, transferees and assignees by making them liable to eviction u/s 13(1)(e) as it then stood. Section 15 was amended in 1959 to save

the situation created by a large number of illegal transactions of sub-letting, transfers and assignments by tenants, but then it was made clear that 21-5-1959 would be a dead-line and no sub-letting, transfer or assignment made thereafter would be recognised for giving protection to the sub-tenants, transferees or assignees. Under the general law i.e., under the Transfer of Property Act a tenant has, in the absence of a contract to the contrary, a right to sub-let or to transfer or assign his interest in the premises let to him, but the Rent Act while giving protection to the tenant against eviction, took away this right of his and even after the Ordinance and the Act which replaced it, that right has not been restored to him. The partial relaxation made by introducing the words "but subject to a contract to the contrary" in Section 15(1) has not that effect. It only saves a sub-letting, transfer or assignment made in pursuance of an express contract permitting it, from being unlawful, but does not extend the protection of the Rent Act to the sub-tenant, transferee or assignee brought in after the commencement of the Ordinance. This is made clear by Section 14, which I have already quoted.

21. A question may properly arise as to why the relaxation was then made at all and what was it that was intended to be achieved thereby. The answer is to be found in Section 13(l)(e) which was simultaneously amended by substituting the words "unlawfully sub-let" for the word "sub-let" which was originally there. Section 13(1)(e) as it now stands reads:

"13(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied--

(e) that the tenant has, since the coming into operation of this Act unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein".

22. Prior to the amendment a tenant who sub-let the whole or part of the premises let to him or transferred or assigned his interest therein in any other manner after the Act came into force, was liable to eviction but after the amendment he will be liable to eviction only if the sub-letting, transfer or assignment is unlawful. He will not incur the liability to eviction if the sub-letting, transfer or assignment is lawful as being permitted by an express contract. The purpose of the amendment was thus to save the tenant from eviction if the sub-letting, transfer or assignment made by him was permitted by the contract of lease; the sub-tenant, transferee or assignee being left to his rights, if any, under the general law.

23. Clause (i) of sub-section (1) of Section 13 is in the following terms:

"13(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied - (j) that the rent charged by the tenant for the premises or any part thereof which are sub-let before the commencement of the

Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium, other like sum or consideration in respect of such premises or part."

24. Under this clause a tenant who has sub-let the premises or a part thereof prior to the commencement of the Ordinance (so that the transaction is legalized by the amended Section 15 is still liable to eviction if the rent charged by him to the sub-tenant is in excess of the standard rent and permitted increases or if he has received any fine, premium, other like sum or consideration in respect of such premises but, if the argument of Mr. Walavalkar, is accepted, he would not incur the liability even if he did any of these things, if the sub-letting by him is subsequent to the commencement of the Ordinance, because in that case Section 13(1)(j) would not apply.

25. Section 22(1) of the Rent Act provides as follows:

"22(1) Every tenant who, before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, has without the consent of the landlord given in writing, sub-let the whole or any part of the premises let to him or assigned or transferred in any other manner his interest therein, and every sub-tenant to whom the premises are so sub-let or the assignment or transfer is so made, shall furnish to the landlord, within a month of the receipt of a notice served upon him by the landlord by post or in any other manner, a statement in writing signed by him giving full particulars of such sub-letting, assignment or transfer including the rent charged or paid by him."

26. This section casts an obligation on a pre-ordinance sub-tenant, transferee or assignee and the tenant sub-letting, transferring or assigning to him, to furnish particulars of the transaction between them within one month if the landlord calls upon them to do so by a notice given in the prescribed manner. The protection against eviction given to them is thus coupled with an obligation, breach of which constitutes a criminal offence u/s 22(2); but if the argument of Mr. Walavalkar is accepted, a tenant permitted to sub-let by the contract of lease and sub-letting after the commencement of the Ordinance, as well as his sub-tenant would get the protection of the Rent Act without any similar obligation.

27. It would be unreasonable to suppose that the Legislature intended the above results or wanted to discriminate in that manner between sub-letting, transfer or assignment made prior to the commencement of the Ordinance (and legalized by it) and lawful sub-letting, transfer or assignment made subsequent thereto. The only reasonable conclusion would, therefore, be that though the Legislature did not prohibit sub-letting, transfer or assignment after the ordinance if made in pursuance of an express contract, it did not intend to extend the protection of the Rent Act to sub-tenants, transferees or assignees claiming under such transactions but left them to be governed by the general law. The interpretation of clause (b) of sub-section (11) of Section 5 of the Rent Act must be consistent

with the above considerations and it must therefore be held, rejecting the argument of Mr. Walavalkar, that the expression "who has derived title before the commencement of the Bombay Rents, Hotel & Lodging House Rates Control (Amendment) Ordinance 1959", occurring in the said clause qualifies the expression "any person" and not "his predecessor". It follows that neither of the petitioners had acquired the status of a statutory tenant under the Rent Act.

28. Again, the protection afforded by the Rent Act is available to a tenant against his own landlord. In the case of a sub-tenant his landlord is the head-tenant till the interest of the latter in the premises in question is determined. The protection available to the sub-tenant till then would, therefore, be against eviction by the head-tenant. So long as the interest of the head-tenant subsists, the original lessor is not his landlord and there can be no occasion for the latter to seek to evict him. This is clear from the definition of the term landlord given in Section 5(3) which reads:

"5. In this Act unless there is anything repugnant to the subject or context-

(3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian or Receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sub-let any premises."

29. The original lessor would become the landlord of the sub-tenant and the protection would be available to him against the lessor only if the sub-tenant steps into the shoes of the head-tenant on the determination of his interest in the premises; but for this to happen, Section 14 prescribes a condition viz., that the premises must have been sub-let before the commencement of the Ordinance. This condition is admittedly not satisfied in the case of either of the two petitioners. None of them was therefore, entitled to protection under the Rent Act against eviction by the respondent when he dispossessed them on 1-8-1964.

30. Bijibai Saldhana, the petitioner in Spl. C. A. No.243/67 has not pleaded any other ground in support of her petition and her petition must, therefore, fail.

31. Turning to the second Point urged by Mr. Walavalkar (which is available only to Mahamood, the petitioner in Spl, C. A. No. 244 of 1967) the agreement relied on is in writing in the form of a compromise purshis dated 2-7-1962 filed in Misc. Application No. 53/62 of the Civil Court at Thana. It is a short document signed by the parties and is in the following terms:-

"It is agreed between the parties that the aforesaid applicant will be put in possession, within five days from this day i.e. on Friday 6-7-1962, of Gala of

three rooms on the ground floor now in possession of Shri Supjara. The possession of the upper portion of the said Gala of three rooms and articles therein is also to be handed over to the said applicant. The applicant to pay Rs. 530 (Rs. five hundred thirty only) before obtaining the possession i.e. on Friday the 6th July 1962.

The applicant agrees to pay Rs. 175 per month as rent of the premises from 1st July 1962 onwards. Parties to bear their own costs."

Being a document on which the petitioner's claim to tenancy rights is based, the interpretation of this purshis would be a question of law. In fact it needs no "interpretation" as such because its meaning is plain on the face of it. The respondent had already become the owner of the property and was entitled to receive the rent and the petitioner agreed to pay Rs. 175 per month as rent of the premises in his occupation from 1st July 1962 onwards. The payment was towards future rent and had nothing to do with the amount of the decree obtained by Vasanji against Naik and Koya for past arrears. It was the respondent who signed the purshis as the principal party. The endorsement of the Court shows that it was read out to him and he admitted the agreement before the compromise was recorded. By this agreement petitioner Mahamood became the person by whom the rent for the premises was payable and hence a contractual tenant under the principal definition in Section 5(11) of the Rent Act, while the respondent who was the other party to the agreement became entitled to receive the rent from Mahamood and hence his landlord according to the definition of that term in Section 5(3) of the Rent Act, which I have quoted above. There cannot be the least doubt about this legal position. There is no dispute that in pursuance of this agreement Mahamood paid Rs. 530 and was put in possession on 6-7-1962. It is significant to note that the rent which was formerly Rs. 150 per month was, by this agreement, raised to Rs. 175 per month. It may be, as contended by Mr. Andhyarujina, that this was because Mahamood was found to be in possession of three shops although initially only two shops had been let to him. That does not derogate from the legal effect of the agreement but on the contrary confirms the position that a fresh agreement of tenancy was entered into between the parties.

32. The Courts below rejected the contention of Mahamood on this point because in the compromise it was nowhere stated that Mahamood was accepted by the respondent as a tenant. That is clearly an erroneous view of the law. When the requirements of a contract of tenancy are fulfilled, it is not necessary that it should be stated expressly that the person in question was "accepted" as a tenant.

33. Mr. Andhyarujina argued that the creation of a contractual tenancy in favour of Mahamood on 2-7-1962 was a legal impossibility because the tenancy of Naik was then subsisting. The argument has no substance. It is incorrect in the first place to say that the contractual tenancy of Naik was subsisting on 2-7-1962. It is an admitted position that suit No.271 of 1962 was filed by Vasanji and the

respondent on 5-7-1962. This must have been on the basis that the contractual tenancy of Naik had already been terminated (presumably before the filing of the former suit of 1961, which was also for eviction). Naik was, therefore, only a statutory tenant who had already parted with possession. Assuming, however, that the contractual tenancy of Naik was subsisting, the contention urged by Mr. Andhyarujina may perhaps be available to Naik but certainly not to the respondent who purported to create the tenancy in favour of Mahamood and accepted Rs. 530 under the agreement. He cannot be allowed to take advantage of his own wrong, if it be a wrong at all. He must be held bound by the agreement according to its tenor. Same would be the position regarding Mr. Andhyarujina's argument that the respondent could not have created a tenancy in favour of Mahamood as the premises were then in the possession of the Receiver. It has to be remembered that the Receiver had been appointed for the benefit of the respondent who was the real decree-holder and was acting on his behalf.

34. It is an admitted position that the contractual tenancy of Mahamood was never terminated nor was any decree for possession obtained against him. His dispossession by the respondent on 1-8-1964 was, therefore, clearly illegal.

35. Although I have found in favour of Mahamood on the point of his claim to contractual tenancy, I do not think I should interfere with the orders of the Courts below in his case for the following reasons:

36. The suit premises are admittedly not in existence now. They were demolished long ago and in place of the old structure an entirely new building of a different type is now standing. An order awarding possession to him would therefore be unexcitable and infructuous. Secondly, before dispossession Mahamood was in occupation of the premises for 25 months and was, under the agreement, liable to pay Rs. 175 per month during that period. He, however, made no payment whatsoever. On the contrary when he applied for a temporary injunction against the respondent during the pendency of the suit and the Court called upon him to deposit the amount or at least to give security for the same he flatly refused to make the deposit or even to give security for the amount admittedly due from him.

37. The petition of Mahamood must also, therefore, fail but I will not saddle him with the costs thereof.

38. Mr. Andhyarujina referred me to several cases, mostly on the scope of the powers of the High Court under Article 227 of the Constitution and the principles governing the exercise of those Powers. In view, however, of the conclusions I have arrived at and in view of the fact that I am not interfering with the orders of the Courts below which are in favour of Mr. Andhyarujina's client, it is not necessary for me to deal with any of those cases.

39. In the result the Spl. C. A. No. 243 of 1967 fails and the rule issued therein is discharged with costs. The Spl C. A No. 244/67 also fails and the rule therein is

discharged but there will be no order as to costs.

40. K.S.B.

41. Rules discharged.