

(1982) 07 BOM CK 0003

In the Bombay High Court

Case No : Civil Revision Application No. 237 of 1980 with 287 of 1980

Chandrakant Shankarrao Deshmukh

APPELLANT

Vs

Haribhau Tukaramji Kathane and others

RESPONDENT

Date of Decision : 01-07-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 342, 364, 45

Evidence Act, 1872 — Section 24

Penal Code, 1860 (IPC) — Section 302

Citation : (1983) MhLj 88

Hon'ble Judges : R.D. Tulpule, J; M.M. Qazi, J

Bench : Division Bench

Advocate : P.N. Deopujari, for the Appellant; S.C. Mehadia, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Tulpule, J.—These two revision applications raise a common question of law and which question is increasingly being raised in a large number of suits and proceedings between landlords and tenants in Courts in this region, governed by the provisions of C. P. and Berar Letting of Houses and Rent Control Order, 1949.

2. The provisions of the C. P. and Berar Letting of Houses and Rent Control Order do not apply to certain classes of premises, residential as well as business, constructed after a particular year unlike the provisions of the other rent restriction Acts. Suits, therefore, in this region are filed depending upon whether the Rent Control Order is applicable or otherwise, after obtaining a permission from the Rent Controller or straightway in the Small Cause Court so far as Nagpur is concerned and in other Courts having jurisdiction.

3. The opponents in both these petitions are Haribhau and others, the owners of the premises called "Prakash Bhavan", Ward No. 41, New Ramdaspath, Nagpur. The petitioners are tenants in these premises occupying separately portions thereof. Civil Suit No. 1130 of 1977 was filed by Haribhau and others against their tenant Chandrakant, who was a tenant in respect of the premises and

agreed to pay a monthly rent of Rs. 300. Civil Suit No. 1132 of 1977 was filed by the same Haribhau and others against their tenant Narendra, who was a tenant of premises leased out on agreed monthly rent of Rs. 115. Since the premises were constructed subsequent to 1951, it was claimed the Rent Control Order did not apply to them. The plaintiffs had terminated the tenancy of both Chandrakant as well as Narendra by a notice to quit and demanded possession from them. Both these suits came to be filed in September 1977. In both these suits, the claim for rent at the agreed rate was for the month of August 1977. from 1st September 1977, plaintiffs had claimed mesne profits upto the date of the filing of the suits, which was 12th September 1977.

4. On 1st April 1978, the plaintiffs filed two applications in each of these suits, which were Ex. 13 in Civil Suit No. 1132 of 1977 against Narendra and also the same Ex. 13 in Civil Suit No. 1130 of 1977 against Chandrakant. They prayed therein that the defendants who were tenants and were, therefore, liable to pay rent or compensation for use and occupation as damages be directed to pay that amount, namely Rs. 115 in Narendra's case and Rs. 300 in Chandrakant's case, per month in the Court. The said amount, they contended, was accumulating and the defendants are taking undue advantage of the pendency of the proceedings and are not paying any charges even with regard to their use and occupation of the premises in their occupation. He, therefore, prayed that the tenants defendants be directed to pay the amounts at the said rate upto 30th April 1978 and thereafter go on depositing at that rate for the future period, until the disposal of the suit.

5. Both these applications came to be allowed by the learned trial Judge by his order dated 21-12-1979. Defendant-tenants were directed to deposit the amounts per month as well as the arrears as claimed by the plaintiff. The learned trial Judge observed that the plaintiffs would be required to pay Corporation taxes as the rent is inclusive of those taxes and if they do not receive anything from the tenants, then they would be hard put to pay those taxes. The learned trial Judge granted the request on the ground that it was necessary to do so to meet the ends of justice, in the exercise of his inherent powers u/s 151 of the Civil Procedure Code. The defendants-tenants have challenged these orders and have filed these Revision Applications disputing the correctness of these orders.

6. These Revision Applications came to be placed before a Single Judge (Mr. Justice Mohta) of this Court. Before the learned Single Judge reliance was placed upon a decision, also of a single Judge of this Court, in Suresh v. Purushottam Civil Revision Application No. 500 of 1979 decided on 19-12-1979, which was then unreported, for the contention that an order of this kind could not be passed u/s 151, CPC and the Courts have no jurisdiction to do so. Before the learned Single Judge, it was urged that in Suresh's case (subsequently reported in 1982 Mh. L J 99) the learned Single Judge (Mr. Justice Pratap) considered the decision and observations in Padam Sen and Another Vs. The State of Uttar Pradesh, . However, the learned single Judge did not refer to a later decision in

Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, which ran counter to the observations relied upon by the learned single Judge in Padmasan's case. This case was probably not brought to the notice of the learned single Judge, Mr. Justice Pratap and, therefore, the decision in Suresh's case required reconsideration. The learned Single Judge, Mr. Justice Mohta, agreed with the submission of the landlords and referred these two revision applications to a Division Bench. That is how these Revision Applications are now placed before us for hearing and disposal.

7. Elaborate arguments were advanced on behalf of the revision-applicants by Mr. Deopujari. Mr. Deopujari's contention principally was, as was observed by the learned single Judge, that there is no provision in the CPC to pass an order directing payment of rent or mesne profits pending decision of a suit. Mr. Deopujari contended that the only provision which is to be found in the CPC permitting payment of mesne profits is after the decree and after their determination under Order 20, Rule 12(1)(c). Mr. Deopujari's contention further was that an order of this kind would virtually amount to a decree for mesne profits being passed even without there being any decree at all. It would also result in passing multiple decrees and the plaintiffs would be able to get the monies which may become due and payable under the decree even before payment of Court fee and even without any execution. There is, he submitted, no provision either for determination of mesne profits pendente lite or for award of mesne profits pending the passing of a decree. His submission was that section 151, CPC does not confer any right upon the Court. It only preserves and protects those rights which it possesses and those rights could be exercised only for a limited purpose where there is no specific provision in the procedural code to prevent abuse of the process of Court or to subserve the ends of justice. There is no right in a plaintiff, nor could any right be created in the garb of powers u/s 151, CPC to award a decree and execution without any decision.

8. Secondly it was submitted that the subject matter of the suit was arrears of rent prior to 31st August 1977. Though Mr. Deopujari apparently did not dispute that payment of such rent could be directed to be made and deposited, he submitted that so far as the liability subsequent to 1st September, 1977 was concerned, it was a subject of mesne profits to be determined only after an enquiry as directed and contemplated under Order 20, Rule 20 (i) (c) Civil Procedure Code. He submitted that the provisions of Order 20, Rule 12 (i) (c) CPC which come into operation and step in only after a decree is passed that mesne profits can be determined and there could be no other way. He submitted that mesne profits could not be directed to be paid in exercise of the powers u/s 151 Civil Procedure Code. For that purpose he relied upon a number of decisions to which we shall presently come. He also referred to a decision of the Supreme Court reported in Nain Singh Vs. Koonwarjee and Others, .

9. For the opponents, it was submitted that Suresh's case (supra) does not lay down the correct proposition of law. It was urged that the revision applicant

therein succeeded on two grounds and primarily and really on one ground. The learned Judge it was pointed out held firstly that there is no jurisdiction in the Court to pass such an order and there is no provision in the CPC to do so. Section 151 of the CPC is not meant for inventing new rights for the parties and that the powers therein are to be exercised only in furtherance of the provisions of the CPC and the existing substantive rights. No new rights could be created.

10. It was then pointed out that if the Court has jurisdiction to pass an order of this kind, then the question whether there is any remedy provided for the execution or exercise of that right would not take away the jurisdiction conferred. The absence of remedy is a matter, if at all, for the Legislature to decide. But where the power exists it cannot be said that there is no jurisdiction to pass an order of the kind.

11. On merits it was submitted that certain provisions of the CPC were not pointed out and brought to the notice of the learned Judge when he decided Suresh's case. It was submitted that considering the substance of the matter and the subject of controversy, there are provisions in the CPC which permit an order of this kind to be passed. It was also urged that it is erroneous to think that the Court is so powerless that where it has the jurisdiction to pass an order of a particular kind, it has no power to enforce that order. There are numerous ways and manner in which an order which is passed in accordance with that power, and in exercise of that power, could be enforced in a variety of ways against a person who does not obey that order. Apart from the direction by way of costs, even before the matter is concluded, such a person can be forced to obey the order on pain of certain consequences which may be disastrous to him. The absence of remedy in any event, assuming if there is any, cannot take away the jurisdiction in the Court where it exists. If the jurisdiction exists then the order cannot be struck down as without jurisdiction in the exercise of powers u/s 151 Civil Procedure Code.

12. Analysing the decision in Suresh's case, we find that the learned Judge framed before him a question as to whether there is in the Code a provision for grant of interim mesne profits pending decision of the suit for possession. Since the question was answered in the negative, the only power which it was felt, came to the rescue of the order was section 151, Civil Procedure Code. u/s 151 Civil Procedure Code, it was felt, that such an order could not be passed and, therefore, there is no jurisdiction in the Court to do so. The power u/s 151 CPC as was pointed out by the learned Judge was a power *ex-debito justitiae*. It could not be exercised unless the case fell within one of the four categories he set out. This matter did not fall in his opinion in that category. He pointed out that it must be a case requiring exercise not of a substantive right but of a procedural method. It must be necessary to meet the ends of the situation. The Code must not provide any express remedy and the power is required to be exercised to meet the ends of justice or to prevent abuse of the process of Court. These conditions were found to be not existing in the instant case and, therefore, he

held that there was no jurisdiction. It was also not covered in his opinion by the provisions of section 94(e) of the Code of Civil Procedure. Following the decision in Padmasen's case (supra) and Kamal Kumar Bose Vs. Sm. Ashalata Dey and Others, , he felt that such an order could not be passed. He also felt that even assuming an order could be passed, it would be an exercise in vacuua, inasmuch as the order could not be enforced. No Court would solemnly pass an order which it knows or is aware cannot be enforced. The pronouncements of Courts are not meant to operate in vacuum and cannot be empty formal declarations. For the reasons and for the provisions to which we shall draw attention presently, we do not think that this is a correct way of approach to the problem.

13. Certain provisions of the CPC immediately become relevant for the determination of the question raised. As was pointed out by the learned Judge, section 94(e), CPC empowers a Court to "make such other interlocutory orders as may appear to the Court to be just and convenient" "to prevent ends of justice being defeated". As is well known and common the provisions of the sections of the CPC are elaborated and amplified by the orders and Rules in the First Schedule of the Civil Procedure Code. Interlocutory orders which could be made and for which there is a specific provision in the CPC in the First Schedule are to be found in Order 39. Order 39 is divided into two parts. Rules 1 to 5 deal with injunctions, while Rule 6 onwards deal with interlocutory orders. We may at this stage refer to three Rules of Order 39, namely Rules 7, 10 and 11. Order 39, Rule 7 is not directly involved in the present case and we may only point out that under sub-rule (a) of Rule 7, the Court has a power "on the application of any party to a suit" to "make an order for the detention, preservation or inspection of any property which is the subject matter of such suit or as to which any question may arise therein". We may have occasion to refer to this sub-rule when we deal with the case relied upon of the Supreme Court in the judgment referred to by the learned Judge.

14. We then go to Rule 10. It is necessary for our purpose to reproduce Rule 10, of Order 39 CPC which read thus:

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court.

Sub-rule (1) of Rule 11 of Order 39, CPC clearly provides that where a Court has made an order to a party in a suit or proceeding "to do or not to do a thing during the pendency of the suit or proceeding" and any such party "commits any default" in respect thereof, the Court may "dismiss the suit or proceeding" if he be the plaintiff, or if he be the defendant "strike out his defence". It will thus be seen that if a Court has the power to make an order and makes an order, if that order is not obeyed or there is a default committed, depending upon who the defaulter is, he will be and he could be visited with the penalty of dismissal of the

suit, if he be the plaintiff or striking out his defence, if he be the defendant. At least, therefore, so far as Maharashtra State is concerned, in respect of an order which is properly passed by a Court with jurisdiction, it cannot be said that there is no power in the Court to secure obedience to its order or that it is powerless to enforce that order. We feel that the counsel appearing in Saresh's case failed to notice this provision in Order 39, Rule 11, CPC and bring it to the notice of the learned Judge when it was contended that the order of the Court could not be enforced, resulting therefore in passing an empty vacuous order. We also feel that the provisions of Order 39, Rule 10, CPC are equally material and should have been brought to the notice of the learned Judge.

15. We now go to the provisions of Order 39, Rule 10, Civil Procedure Code. It will be seen upon an analysis of the provisions of Rule 10 that an interlocutory order in respect of the "subject matter of a suit" can be passed by the Court under certain conditions. These conditions are (1) the subject-matter of the suit must be money or some other deliverable "thing" including therefore any moveable property; (2) the party thereto must admit that he holds such money or deliverable thing for another party; and (3) such party must admit either that it belongs to the other party or is due to that other party, then the Court would be entitled to pass an interim order in that behalf. It will thus be seen that where the subject matter of the suit is money or any deliverable thing and it is admitted by any party to the suit that it either belongs where it is money or is due to that other party, then the Court has a power firstly to order it to be deposited in Court or deliver it to such party with or without security, subject to such further directions which the Court may pass.

16. The first question which may, therefore, arise in a suit between a landlord and tenant, whose tenancy according to the landlord is terminated is what is the subject matter of a suit of this kind. It is true that where the landlord also sues for possession the subject matter of the suit is not only rent money and/or compensation for use and occupation but also possession of immoveable property. Mr. Deopujari submitted that the scope of the suit in such a case was the demand for rent prior to the termination, and mesne profits subsequent to termination. Now it is common knowledge and can be easily predicated, that in such a suit, where there is a dispute as to the termination of the tenancy, the finding of the Court may result either in holding that the tenancy is not terminated or that the tenancy is terminated. Depending upon the finding of the question of termination of the tenancy, rent will be due from the tenant to the landlord plaintiff or mesne profits subsequent to the termination of the tenancy. Now it is true that mesne profits may not be synonymous or equal to the rent which is payable. But it is difficult to think that that would be any way less than the rent which was agreed to be paid. But they may be more. But where the same premises are continued in the occupation of the tenant in the same situation then it is almost impossible that mesne profits could be less than the agreed rent. It will thus be seen that the determination of the contractual status or rights of the parties would merely have the effect of the change of the label

relating to the amount recoverable by a plaintiff landlord from his tenant or ex-tenant, as the case may be. The character and the nature of that right remains the same. Facts giving rise to that right and the circumstances are the same. That circumstance is the fact that the property belongs to the plaintiff landlord, use and occupation whereof has been permitted and given to the defendant. During the contractual status of such occupier, the law prescribes it as rent. Subsequent to the termination of the contractual relationship it is compensation for use and occupation. The fundamental character of the claim and the circumstances giving rise to the claim do not however undergo any change and continue to be the same, namely the fact that a property belonging to one is being used and occupied by another.

17. In a suit therefore by a landlord against his tenant, the subject matter of the suit is where he sues for delivery of possession, possession and delivery of that property to him and the claim relating to the use and occupation of that property may be as a tenant in his contractual capacity or on account of his being in fact in his possession and occupation. The subject matter of the suit, therefore, in a suit for possession against a tenant or ex-tenant as the case may be would be money recoverable for use and occupation, as also the very property itself.

18. Now it cannot be disputed that both these things, namely right to recover money for use and occupation, as well as rent where it is due or claimed is capable of delivery. It cannot also be disputed and denied that where a tenant admits that he was a tenant he admits the liability to pay for his use and occupation of that property. He may dispute his liability to deliver the property, where he claims that his tenancy has not been validly and legally terminated. But it cannot be said that such an amount, call it either rent or call it for compensation for use and occupation, is not due to the plaintiff. In other words, therefore, in terms of Rule 10, in a suit between a landlord and tenant, the subject matter of the suit is money claim for use and occupation or property, before the termination of the contract and after the termination of the contract, which the tenant does not dispute belongs to the plaintiff. It is quite clear that such a situation may not be available where a suit is brought against a trespasser. But we are not concerned with such cases, inasmuch as the question before us is whether there is no provision in the CPC at an interim stage to direct delivery of money or payment or deposit of any sum in Court which is admittedly due to another party and is the subject matter of that suit. As we have pointed out, therefore, properly speaking and upon a natural and liberal construction of the words occurring in Rule 10, the "subject matter of a suit" between a landlord and tenant is money and immoveable property. Though immoveable property may not be a "thing" capable of delivery the money on account of the use and occupation of property admittedly belonging to another is undoubtedly one such. If that is so we think the Court clearly has a power in a given case to direct such party to deposit it in Court or deliver it to the plaintiff. It would be therefore wrong to say that there is no provision in the CPC by which such an order could be passed. We think where a defendant admits that he is a tenant, he impliedly

admits that the property belongs to the plaintiff and money for use and occupation thereof is due to him. He may dispute the nomenclature of that due which he is liable to pay. He may dispute the quantum. But the principle of liability is not denied. If the principle of liability is not denied, and if the quantum is only disputed, then it is obvious that the Court has the power to decide and direct the extent of the quantum which may be ordered to be deposited. A tenant can, therefore, always be directed, subject to the other circumstances and conditions, to deposit rent due or becoming due from him to his landlord during the pendency of a suit, call it either compensation for use and occupation or rent, depending upon whether the tenancy is or is not terminated.

19. Order 39, Rule 10, CPC by itself does not impose any conditions or limitations upon the exercise of that power. It follows, therefore, that to prevent the abuse of the process of Court and in order to subserve the ends of justice, the powers conferred upon a Court under Order 39, Rule 10, CPC can be invoked by any party. The question whether the Court will exercise that power in his favour is entirely a different question. But it cannot be denied that such a power exists. If the power exists, then there is jurisdiction to pass an order of the kind which we have indicated above. If there is jurisdiction to pass an order of this kind, we fail to see how the order can be struck down or described as without jurisdiction, merely because section 151 is invoked in addition to Order 39, Rule 10 and the principle underlying that Rule.

20. We may also advert to the provisions Order 12, CPC permitting judgments on admission. In the case which we have before us for consideration, namely a suit between a landlord and tenant it is quite conceivable and common that a tenant admits that he is liable to pay a particular amount of rent which may be claimed by or due to the landlord from him. If that happens, even by virtue of Order 12, Rule I CPC to the extent the claim is admitted, a decree or judgment could straightaway be passed. For that purpose it is not necessary to wait until the decision of the suit. To us it appears that the principle underlying the provisions of Order 12, CPC empowering the courts to make orders and even deliver judgments, on the basis of admitted parts of the claim can be extended even to a case where a suit is brought against a tenant, who is in occupation of any premises for possession and a claim therein is made for past and future mesne profits. To us it also appears that it is implicit in the relationship, that it is implicit in the circumstances, that the liability on the part of the person in occupation for payment on account of use and occupation of the premises is admitted. If it is admitted, then the form which the order will take directing him to make that payment will vary and may depend upon the circumstances and the situation. It may be an amount of rent claimed as due and admitted. It may be an amount equivalent to rent where the claim is for mesne profits before the institution of the suit and also subsequent to the institution of the suit until delivery of property. The nature of the claim and the label with which it would be described will not change the character or the principle governing the orders in that behalf. We feel, therefore, that on the basis of the principle enshrined in Order 12, CPC

empowering the Court to pass orders and decrees on admission, it is a mere extension of that principle to make an order relating to delivery of an amount claimed as due prior to the institution of the suit and pending trial and decision of the suit. It is clear to us that the liability to pay for use and occupation of the premises during the pendency of the suit, no matter by whatever name it is called, is not only admitted but is a necessary postulate of the situation. We feel, therefore, that the combined result of the provisions of section 151, Civil Procedure Code, principle underlying the provisions of Order 12, CPC and the provision made for passing interlocutory orders under Order 39, Rule 10, CPC in a case of this kind clearly and easily permit the Courts to pass orders for deposit of money pending decision of a suit. Whereas the provisions of section 151, CPC can be exercised and utilised in aid and in furtherance of the provisions expressly made in the CPC they cannot be employed as against the said provisions. As we have pointed out, Order 39, Rule 10, CPC and the principle underlying Order 12, CPC are provisions in the Code specifically intended to give relief in certain circumstances. In such a case the principle and the provisions of section 151, CPC can be called in aid to cover cases which are analogous to these principles but may not be directly covered by the express words in the Code.

21. We do not think that there is any substance in the contention advanced by Mr. Deopujari that such an order would be beyond the scope of the suit. We think that that is taking too mechanical, too artificial and constrained a view of the pleadings. Besides, in our opinion, the expression "the subject matter of the suit" is wider than the expression "claim in the suit." Advisedly, therefore, in our opinion, in Order 39, Rule 10, CPC the expression used is "the subject matter of the suit" and not "claim in suit". Though, therefore, the claim in suit may be mesne profits or rent, in our opinion, that would make no difference to the very essence and nature of the claim.

22. We will now briefly refer to the decisions relied upon by the learned counsel for the applicant and which were cited in Suresh's case (supra). We may firstly refer to the decision reported in Padma Sen v. State of V. P. In that case the order which was called in question before the Supreme Court was an order passed by the Additional Munsif appointing a Commissioner "to seize the account books" of the plaintiff. It is this order appointing a commissioner and directing seizing the account books of the plaintiff, which was challenged. It was held that it could not be supported u/s 151, Civil Procedure Code. Now it is clear to us that the power to seize account books on the ground that they were likely to be tampered with and formed the basis of the evidence of the defendant in the possession of the plaintiff and must therefore come before the Court is an order which could not be passed under any of the provisions of the Civil Procedure Code. We have adverted to Order 39, Rule 7 (1) (a), CPC earlier in the course of our judgment. Though therefore, a commissioner could have been appointed for the purpose of inspection and an order could have been passed for the purposes of preservation of any property which is the subject matter of a suit or in respect of which a question may arise, there was no power for seizure whatsoever. It is

possible to say that a question in regard to the existence of the account books might have arisen in such a suit, then a power for its inspection or preservation could have been exercised in terms of Order 39, Rule 7, Civil Procedure Code. But where it is extremely doubtful whether the account books of the plaintiff could be the subject matter of such suit, or any question thereof could have arisen in such suit, an order for seizure could not be passed. Perhaps orders for preservation or inspection could have been passed. But it is clear that no order could have been passed for its seizure. We do not see how this decision assists the defendant tenants. Power to pass orders for detention, preservation or inspection of any property which is the subject matter of the suit or as to which a question may arise therein stands on a different footing than the power to seize, even if it is assumed that a question about the accounts may arise in a suit. It is plain to us that where for instance the subject matter of the suit is hire charges in respect of any vehicle or animal given to the defendant and he admits that the vehicle or animal is given to him on hire but disputes the liability to return on the ground that the contract is not terminated, in a proper case the Court would have a power to direct delivery of the vehicle or animal in question back to the plaintiff. We think that on principle no exception could be found in the case of a tenant against whom a landlord has filed a suit for possession and for rent or mesne profits. Such a power is readily exercisable, we think under the twin provisions of section 151 and Order 39, Rule 10, Civil Procedure Code.

23. We may then refer to two other cases also of the Supreme Court which were mentioned at the Bar. *Manohar Lal v. Seth Hiralal* and *Nain-Singh v. Koonwarjee*. We do not think that any reference to them in detail is necessary excepting to point out as said therein that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the Legislature.

24. *Nainsingh's* case (*supra*) upon which Mr. Deopujari relied, in our opinion, has no application. All that the decision laid down was that the provisions of section 151 could not be invoked to circumvent the specific provisions of the Code where the specific provisions of the Code provide a particular way for obtaining a relief and that way is not availed of. Section 151 in such a case cannot be called in aid. As we have pointed out, there are specific provisions in the Code dealing with a case of this kind, which can be called in aid for the purpose of furtherance of justice and prevent the abuse of the process of Court, though not specifically provided for.

24A. The provisions of Civil Procedure Code, it is common knowledge, are either modelled or borrowed from the provisions of the English Rules of practice, the Supreme Court rules and rules framed under the Judicature Acts. Order 39, Rule 10 was formerly word for word section 502 of the 1882 Code. It has been retained intact thereafter in the 1908 Code as Order 39, Rule 10. The analogous

provisions under the English Supreme Court Rules are to be found in Order 32, Rule 6 and Order 50, Rule 8. Order 39, Rule 10 of our CPC appear to be a combination of the powers conferred therein limited to the purpose and extent specified in Rule 10. Instances of exercise of those powers before decree are not wanting (see for instance *Landergan v. Feast* L V L T 42.) In *Wanklyn v. Wilson* L R 35 C D 18 C the observations of *lessen M. R.* were reproduced where he said that the Court has the power "in the fair exercise of its judicial discretion to order a sum of money to be paid into Court when it has been sufficiently ascertained that such a sum will be due on taking of the account". That was no doubt a suit for accounts. But we do not think that the principle in any way is different. In *Hollis v. Burton* L R 1892 C D 226, *Kay L. J.* observed "the Court has for many years been in the habit of directing a defendant who has made such an admission to pay the amount in Court not that it decides the case against him, but it orders him to pay that money (which he admits is in his hands and which the admission shows is really money upon which the plaintiff has a claim) to abide by the result of the action." The power to make an order to deposit in Court moneys which were the subject matter of the suit (that was a suit for partition of an estate) u/s 502 of CPC 1882 was recognised by the Full Bench in ILR 27 Mad. 168, though in that case its particular exercise was held to be without jurisdiction. In I L R 36 Bom. 20 the English practice and principle of the *cestui que trust* having a right *ex debito justitiae* to have the fund brought to court was expressed to be embodied in the provisions of Order 39, Rule 10 CPC 1908 and it was not necessary to appoint a receiver of that fund. That was a case under the Guardian and Wards Act to which the provisions of CPC applied u/s 141 thereof.

24-B. There is yet one more reason why we think that the provisions of section 151 can be properly called in aid in the present situation. It is common knowledge that on account of the paucity of residential accommodation, the growth of the population and reduced number of available houses, increased cost of construction and reduced building activity and the various rent restriction laws have combined to produce scarcity in the matter of accommodation. As a consequence disputes between landlords and tenants have increased manifold. They have also acquired an importance and value out of proportion. As a result there is a great deal of congestion of such causes in Courts resulting in long drawn out trials and pendency of suits and proceedings. Indeed in the normal course a suit in the Small Cause Court in Nagpur, it is said, takes about 3 to 4 years to reach hearing. At other places this tenure and life varies depending upon the number of courts as well as the number of cases instituted. In Bombay it is common knowledge that cases take inordinately long time to come up for trial and so is the situation in most of the metropolitan towns and with lesser or greater degree in other towns.

25. During all these times the landlord has to keep on paying taxes and other outgoings on the property, maintain it in good condition and repair it so that its life does not shorten. In many cases landlords depend for their livelihood upon

the income from the properties. It would be a hardship in the circumstances if the landlord has the misfortune of having to file suits against his tenants who cannot be ordered to pay any amount on account of their use and occupation of their premises while the landlord is required to meet his responsibilities and liabilities. The process of the Court over which neither the landlord nor the tenant defendant has any control cannot be allowed to be abused and work to the detriment of a person. If it is capable of resulting in a harm, then the Courts are not powerless to make orders so as to mitigate that harm. Besides we are unable to see any justification for a tenant to deny his moral and legal responsibility to pay, as long as he is in occupation of the premises on the supposed strict words of law or procedure not providing for a situation of this kind. To us it appears that the provisions of section 151, CPC and the inherent jurisdiction and powers of the Court are ideally meant and suited to bring relief and redress to meet the ends of the situation and to meet the ends of justice. If factual circumstances tend to result in operating unjustly against a particular litigant, then we do not think that the powers u/s 151, CPC cannot be utilised for his assistance. Courts would undoubtedly and should in such a situation go to his assistance and would not be precluded from doing so by the cold words of the Code or of the law. Life and activity can be infused in them to meet such a situation by virtue of the provisions of section 151, Civil Procedure Code.

26. Considerable reliance was placed upon a decision of the Calcutta High Court reported in *Kama Kumar Bose v. Ashalata*, by Mr. Deopujari before us and which was also referred is Suresh's case. We think that the observations in that case have to be understood in the light of the prayer which was made. That was also a suit between a landlord and tenant. The landlord had succeeded in the lower appellate Court which had awarded to him possession of the ground floor and the first floor of the premises from the tenant, at the same time apportioning the rent in respect of the premises which were allowed to be retained by the tenant. Dissatisfied by this decree and order, appeals were filed both by the landlord as well as the tenant. In the tenant's appeal, landlord filed an application that the tenant be directed to deposit all arrears of rent or damages during the pendency of the appeal. It was submitted on his behalf that unless he did so the tenant "cannot be allowed to proceed with his appeal". The Calcutta High Court did not go into the question whether an order could or could not be made directing the tenant to deposit such amount either by way of rent or by way of damages. It only and really dealt with the question Whether the tenant could not be allowed to proceed with the appeal unless he made the deposit. In other words, it felt that such an order operates as a clog on the right of appeal and cannot be made. It is, therefore, one thing to say that a right of appeal and the appeal itself cannot be brought to the Court or terminated on account of non-payment of rent or damages, and another thing to say that there is no power in the Court to direct deposit. We do not think that the decision in *Kamal Kumar's* case lays down any such proposition that in an appropriate case, the Court has no power to direct deposit of rent or damages in lieu of occupation. The question whether

the Court would refuse to proceed with the appeal or dismiss the appeal is entirely a different question. The character or the nature of the remedy in our opinion and with respect does not determine the existence or otherwise of the power to make a particular order.

34. Mr. Deopujari then contended, following the decision of the Gauhati High Court, *Raja Ram v. K. P. Singh* A I R 1973 Gau. 17 that an order for payment of future mesne profits can only be made after enquiry and such payment or deposit is made via an enquiry under Order 20, Rule 12(1)(c), CPC and in no other way. This decision proceeds upon an earlier decision of the Assam High Court reported in *Surajmal Jain v. Kanaklata* AIR 1964 Gau 102 and follows it. We think that no such proposition was laid down with very great respect in *Surajmal's* case (*supra*). In that particular case, we may point out that the tenant contended that fair rent was Rs. 50 per month only. The appellate Court however without going into the question as to what would be the future mesne profits and compensation for use and occupation subsequent to the passing of the decree for future compensation from the institution of the suit till the delivery of possession, proceeded to pass an order at the rate of Rs. 200 per month from the date of the institution of the suit till recovery of possession. This was set aside after observing that the quantum of payment is dependent upon a future event, namely delivery of possession. Besides we think the question as to what is payable by way of mesne profits in view of the controversy as to what was the fair rent had also to be decided and could not be pre-judged or determined. We do not see, therefore, anything in the Assam case or the Gauhati case which run cover to the view which we have taken. These cases do not lay down in our opinion that resort to Order 39, Rule 10 read with section 151, CPC cannot be had during the pendency of a proceeding or suit. It does not say that the provisions of Order 20, Rule 12(1)(c) override the provisions of Order 39, CPC and are excluded in its turn during the pendency of the suit.

35. In *Rana Rai Singh v. Krishna Chandra* A I R 1981 All. 280 upon which Mr. Deopujari placed reliance, it was held that the trial Court while passing a decree has no power to direct an enquiry and determination of future mesne profits in execution proceedings. Apart from the question whether this is a correct statement of law or otherwise, we are unable to see how it has any application to the facts of the present case

36. A number of decisions were cited before us by Mr. Mehadia appearing for the respondent to show that section 151 CPC is available to pass orders pendente lite and of an interim nature in order to do justice and to prevent the abuse of the process of court and law. We may only briefly refer to some of them since we agree and have held above that such powers could be exercised and used and in furtherance of similar provisions occurring in the CPC to prevent the abuse of the process of Court and to do justice. These decisions were those reported in *Sushilabai v. Ramcharan* 1976 Mh. L J 82 and *Jai Singh v. Khimi Bhiklu* A I R 1978 H P 45 wherein a number of decisions on this matter were reviewed.

37. We would, therefore, overrule the decision in Suresh's case (supra) dismiss these revision applications and hold that the orders were properly passed and the Court had jurisdiction to pass the orders. We may point out and mention that in both these cases the amount directed to be paid is the very amount which was agreed to be paid by way of rent by the defendants to plaintiff landlord. We make it clear that it is entirely within the power of the court to determine as to what should be ordered to be paid or deposited in a given case by defendant-tenants depending upon the various factors and circumstances present and appearing in the case. Revision applications dismissed with costs. Rule discharged.

Revision applications dismissed.