
(2005) 04 BOM CK 0122

In the Bombay High Court

Case No : Writ Petition No's. 4451, 4452 and 4453 of 1999

Chandramohan Mahehshwari and Another

APPELLANT

Vs

Sarojbai Subhashchandra Agrawal and Others

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Central Provinces and Berar Letting of Premises and Rent Control Act, 1946 — Section 2, 6, 7, 9
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8
Consumer Protection Act, 1986 — Section 13(4), 13(5), 13(6), 21, 22
Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 — Rule 41
Industrial Disputes (Central) Rules, 1957 — Rule 22
Industrial Disputes Act, 1947 — Section 17, 17A(1), 20(3)

Citation : (2005) 5 BomCR 186 : (2005) 3 MhLj 627

Hon'ble Judges : B.R. Gavai, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : A. Shelat, for the Appellant; V.N. Meshram and A.S. Kilor, AGP for Respondent Nos. 2 and 3, for the Respondent

Judgement

A.P. Deshpande, J.—Heard the learned counsel for the respective parties.

2. The learned Single Judge of this Court, Justice S. K. Shah has made the following reference :--

"Whether the Rent Controller exercising the powers under the provisions of the Central Provinces and Berar Letting of Premises and Rent Control Order, 1949 has power to consider and decide the application for setting aside the ex parte order passed by him?"

3. These writ petitions are placed before the Division Bench under the orders of the Hon'ble the Chief Justice, for deciding the reference. Before we proceed to deal with the question that falls for adjudication, it is relevant to note that neither the Central Provinces and Berar Letting of Premises and Rent Control Act, 1946 (hereinafter referred to as the Act) nor the Central Provinces and Berar

Letting of Premises and Rent Control Order, 1949 (hereinafter referred to as the Rent Control Order) make any express provision in regard to the procedure to be followed by the Rent Controller while adjudicating the lis between landlord and tenant. Few relevant provisions of the Act and the Rent Control Order which have a bearing on the issue need to be stated.

4. Section 2 of the Act vests the State Government with power to regulate the letting and sub-letting of any accommodation or class of accommodation by issuing general or special order, by notification. The regulation of letting or sub-letting of accommodation could be in regard to residential or non-residential, whether furnished or unfurnished and whether with or without board. Section 6 gives overriding effect to an order made or deemed to have been made u/s 2 over other Acts. Section 7 bars the jurisdiction of all Civil Courts Tribunal and vests the jurisdiction exclusively with the officer or authority empowered under an order made or deemed to be made u/s 2 in respect of any matter specified in Section 2. Section 9 empowers the authority under an Order made u/s 2 to take or cause to be taken such steps and use or cause to be used, such force as may, in the opinion of such authority be reasonably necessary for securing compliance with or for preventing or rectifying any contravention of such order made u/s 2 or for the effective exercise of such power.

From the above provisions of the Act it is obvious that no express provision is made under the Act regulating in any manner the procedure to be followed by the authority under the order made u/s 2. The only relevant provision is to be found in Section 2 which delegates the powers to the State Government to issue general or special order, by notification, to provide for regulating the letting and sub-letting of any accommodation, whereas Section 6 gives an overriding effect to the order to be made u/s 2 and Section 9 empowers the authority under an order made u/s 2, if the said order so provides to take or cause to be taken such steps as are necessary for securing compliance of such order.

5. The Rent Control Order also is conspicuously silent in regard to the procedure to be followed by the Rent Controller while dealing with the cases to be decided by him. The Rent Controller by virtue of Clause 12 is obliged to decide the dispute between landlord and tenant in regard to any increase of rent claimed under Clauses 9, 10 and 11. Clause 13 deals with requirement of previous written permission of the Controller for a landlord to give a notice to a tenant determining the lease and the Rent Controller is to adjudicate whether the landlord is entitled to grant of permission on various grounds stipulated in Clause 13. In regard to the procedure, Clause 18-A lays down the following :--

Clause 18-A(1) Every written application to the Rent Controller shall be accompanied by as many true copies thereof on the plaint paper as there are non-applicants.

(2) Every notice issued by the Rent Controller to the parties shall be registered post.

(3) Every notice issued by the Rent Controller to a non-applicant shall be accompanied by a copy of the written application filed before him.

(4) Every notice referred to in Sub-clause (3) shall specify a date before which the non-applicant shall file a reply to the application before the Rent Controller.

(5) In the event of an adjournment which is rendered necessary on account of any default of either party the Rent Controller may direct the defaulting party to pay the costs of the other party occasioned by the adjournment.

6. Perusal of Clause 18-A(5) reveals that in the event of an adjournment, which is rendered necessary on account of default of either party the Rent Controller may saddle costs on a party seeking adjournment.

7. Clause 19 provides that in any proceeding before the Rent Controller any party may appear by a legal practitioner or an agent authorised in writing in that behalf. Clause 21 makes a provision for filing of an appeal against an order of Rent Controller before the Collector. Clause 21(2)(2-a) provides for the review of an order passed by the Appellate Authority.

From the above provisions, it is crystal clear that neither the Act nor the Rent Control Order has expressly provided for as to what procedure should be followed by the Rent Controller while adjudicating the dispute before him and as such the situation poses a question which is referred by the learned Single Judge i.e. in the absence of any express provision vesting the Rent Controller with power to set aside an ex parte order would the said authority be deemed to possess the said power.

8. There are two groups of judgments which take divergent views. The judgments reported are 1962 NLJ 180, Haji Zakeria Suleman v. The Collector, Yeotmal and Ors. 1969 Mh.L.J. 421, Diwalibai and Ors. v. Jaikumar and Ors. 1976 Mh.L.J. 16, Parameshwar Prasad v. House Allotment Officer 1982 Mh.L.J. 199, Tulshiram Kashiram Tijare v. Sushma w/o Keshao Raich and Anr., take a view that the jurisdiction to dismiss an application in default or to proceed ex parte is implicit in the jurisdiction to entertain and adjudicate the rival claims made before the Rent Controller by the parties in proceedings under the Rent Control Order. The implied power to dismiss a case the case in default or to proceed ex parte further implies a duty to restore an application dismissed in default or to set aside ex parte order, if the defaulting party satisfies the authority that there was good cause for non-appearance. The judgments further proceed to emphasis that the authorities under the Rent Control order are quasi-judicial Tribunals empowered to adjudicate upon the civil rights of parties and this is a necessary rule of procedure that power should vest during the proceedings before the Tribunal either to dismiss a case in default or to proceed ex parte, so also to set aside the order of dismissal in default or the order to proceed ex parte, if the party shows sufficient cause for setting aside the said order.

9. It will not be out of place to point out that the judgment reported in 1962 NLJ 180 (supra) is the judgment of a Division Bench of this Court. The Division Bench of this Court in the said judgment observed that the jurisdiction to dismiss an application for default of appearance or to proceed ex parte against a party who fails to enter appearance is implicit in the jurisdiction to entertain and adjudicate the claims made before the Rent Controller by the parties to the proceedings under the Rent Control Order. The relevant observations of the Division Bench are to be found in para 5 of the judgment:--

"Now we may say at once that we are in agreement with the view taken by the appellate authority that there is no inherent power in the Rent Controller or in the Rent Control Authorities to dismiss an application for default or to restore it. Inherent power can only be implied in the Civil Courts having general jurisdiction but where, as here, special authorities are constituted under a special statute and for special object, it is not possible to imply inherent powers in them. We must turn to the statute itself to find a power either in its express terms or by necessary implication. There is no express provision in the Rent Control Order permitting the Rent Controller or the Appellate Authority to dismiss for default or to restore to file an application or appeal. But these authorities are specially constituted for a specific purpose and for a special object. The objective as the preamble of the enactment itself indicates is "regulating the letting and subletting of accommodation and other ancillary matters" specified in the Act. This is clear from the parent Act under which the Rent Control Order has been promulgated. Pursuant to this objective, the Rent Controller has been given permission under Clause 13(3) of the Order to hear and decide applications for permission to eject a tenant upon the ground mentioned in Sub-clause (3). In the discharge of his functions under Sub-clause (3) the Rent Controller has to satisfy himself that one or more of the grounds mentioned exist and in that event he "shall grant the landlord permission to give notice to determine the lease as required by Sub-clause (1)". Now, in the discharge of this function the Rent Controller no doubt acts in a quasi-judicial manner. He normally hears both the parties, gets their statements records evidence and hears arguments of counsel. What then is to happen if one or the other of the parties with the avowed object of delaying or defeating the further progress in an application before the Rent Controller and thereby delaying or defeating the very purpose of the statute decides not to put in appearance? It is surely not to be suggested that the Rent Controller is powerless in a case of this kind. It seems to us that in order to facilitate and further the beneficent purposes of the enactment even though no such power can be found in the express provision of the statute we must by necessary implication hold that such a power exists. The rule in matters of this kind is clear.

"If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, the Courts are at liberty to infer that the statute by

implication empowers that detail be carried out. (Craies on Statute Law, 5th Edition; page 105)."

This is precisely the case here "in the discharge of his functions to decide an application for permission to determine a tenancy, the Rent Controller would in conceivable cases find himself absolutely helpless if a recalcitrant party decides at his will to remain absent or not to carry out any particular direction of the Rent Controller in spite of repeated orders. It seems to us that in such circumstances, we must hold that a power to dismiss the application for default or for non-compliance of orders is absolutely essential. Without implying such a power we think that the function of the Rent Controller would be rendered largely ineffective, if not impossible in conceivable cases. We would therefore hold that the Rent Controller has the power to dismiss for default an application of a landlord under Clause 13(3) of the Rent Control Order and to restore the application to file if he is satisfied that good cause exists for such restoration."

10. Following the Division Bench judgment, a learned Single Judge of this Court Justice L. N. Abhyankar has made the following observations in para 6 of his judgment reported in 1969 Mh.L.J. 421, Diwalibai and Ors. v. Jaikumar and Ors. :--

"In my opinion, the Rent Control authorities have entirely missed to appreciate the principle on which this court held that an application dismissed in default was liable to be inquired into and registered if the Rent Control Authority was satisfied that there was good cause for non-appearance. As pointed out by the Division Bench of this Court by which I am bound, the jurisdiction to dismiss an application for default of appearance or to proceed ex parte against a party who fails to enter appearance is implicit in the jurisdiction to entertain and adjudicate upon the claims made before it by the parties in proceedings under the Rent Control Order. This jurisdiction is not traceable to its inherent powers but is implicit in the power to decide the case itself. If there is a power to dismiss an application for non-appearance of the applicant, it hardly needs any emphasis to point out that there is a co-ordinate power to proceed ex parte against a party who fails to appear, but this power to dismiss in default or to proceed ex parte also implies equally a duty to restore an application dismissed for default or to set aside ex parte order if the defaulting party satisfies the authority that there was good cause for non-appearance. This right and this duty is a sine qua non of judicial procedure. The authorities under the Rent Control Act are quasi-judicial tribunals adjudicating upon civil rights of parties and this is a necessary rule of procedure that power should vest during the proceedings of the tribunal either to dismiss in default of appearance of party or to proceed ex parte against a defaulting party. I therefore, do not see how the Rent Controller could have failed to notice that he was bound by the decision of this Court reported in 1962 N.L.J. 180 and apply the principle to the case before him. There is undoubtedly a decision taking a contrary view in Nagpur High Court but the Rent Control authorities in this State are bound by the decision of the High Court in this State."

11. As stated hereinabove, the law laid down in 1962 NLJ 180 : 1969 Mh.L.J. 421 is followed by two other learned Judges in cases reported in 1976 Mh.L.J. 16 : 1982 Mh.L.J. 199, *Tulshiram Kashiram Tijare v. Sushma w/o Keshao Raich and Anr.*

12. Per Contra the judgments reported in 7952 NLJ 404 : 1953 Note 211 : 1954 NLJ 27 : 1995(2) Mh.L.J. 913, *Kausalyabai wd/o Natthu Paraskar and Ors. v. Ramchandra Satbaji Patekar* take a contrary view by adopting a different line of reasoning. These judgments proceed on the premise that the power to set aside ex parte order is in the nature of review of the earlier order. The said judgments then proceed further by laying down that power to review being creature of statute, only to be possessed if the statute vests the authority with power to review and that a quasi-judicial authority cannot exercise the power of review in the absence of a specific provision to that effect. It is held that the Rent Controller after passing an order of dismissal of the case in default or an order to proceed ex parte becomes functus officio and loses seisin of the matter. It may not be out of place at this juncture to point that out of the four judgments referred to above three are of Nagpur High Court, whereas the last judgment is that of the Bombay High Court which is delivered by the learned Single Judge, it also need to be stated that the earlier binding judgments of the Bombay High Court i.e. a Division Bench decision reported in 1962 NLJ 180 a Single Judge's judgment reported in 1969 Mh.L.J. 421 and other two judgments reported in 7976 Mh.L.J. 16 and 1982 Mh.L.J. 199 were not brought to the notice of the learned Single Judge who rendered the judgment reported in 1995(2) Mh.L.J. 913.

13. To sum up the analogy and line of reasoning adopted by the two sets of judgments taking divergent view, the following position emerges :--

(1) The first batch of judgments hold that it is not necessary to have an express provision vesting the Rent Controller with power to either dismiss a matter in default, to proceed ex parte against a defaulting party or to set aside an order of dismissal in default, or to set aside an order to proceed ex parte, as the said power would be incidental and ancillary to the effective exercise of the substantive power vested with the quasi judicial authority. The quasi-judicial authority is vested with power to decide lis between landlord and tenant and for effective exercise of said substantive power all ancillary and incidental power would be implicit in the said authority. The other batch of judgments proceed on all together different line of reasoning by holding that while passing an order to set aside an ex parte order, the quasi judicial authority exercises the power of review which cannot be said to be implicit, it being creature of statute and in the absence of an express provision the Rent Controller would become functus officio and lose seisin of the matter. The learned Single Judge in his judgment reported in 1995 Mh.L.J. 913 assigns one more reason in support of his view by pointing out that the Rent Control Order specifically vests appellate authority viz. the Collector with power to review, whereas in regard to the Rent Controller, no such

provision has been made.

14. We proceed to consider the correctness of the reasoning adopted in the above referred judgments. The learned counsel Mr. Shelat who led the arguments on behalf of the petitioners and rendered his able assistance has placed reliance on the Apex Court judgment reported in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, . In the said case the question that fell for consideration before the Apex Court was as to whether the Tribunal constituted under the Industrial Disputes Act has power to set aside an ex parte award when the statute did not expressly so provide. Another important question is also decided in the said judgment and the same is as to whether the Tribunal while considering the question of setting aside ex parte award exercises the power of review. The Supreme Court formulated the questions in para 3 which reads thus :--

"Two questions arise in the appeal namely (1) whether the Tribunal had any jurisdiction to set aside the ex parte award particularly when it was based on evidence? and (2) whether the Tribunal became functus officio on the expiry of 30 days from the date of publication of the ex parte award u/s 17 by reason of Sub-section (3) of Section 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under Sub-section (1) of Section 17-A to set it aside."

15. The Supreme Court observed in para 6 thus :

"We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand there are indications to the contrary".

16. In para 13 of the judgment, the Supreme Court observed thus :

"The expression "review" is used in two distinct senses namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the later sense that the Court in *Narshi Thakershi's* case, held that no review lies on merits unless a statute specifically provides for it, and as such obviously when a review is sought due to procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process and such power

inheres in every Court or Tribunal".

17. Perusal of the judgment highlights the well-known rule of statutory construction that the Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties and hence ancillary or incidental power need to be read unless there is any indication to the contrary. The Court then proceeds to lay down that the expression "review" is used in two distinct senses in legal parlance and procedural review which is implied in the court or Tribunal to set aside a palpably erroneous order passed under a misapprehension must be corrected *ex debito justitiae*. The said judgment in *Grindlays Bank's* case is followed with a approval in a later judgment reported in 1985 SCC 294, *Satnam Verma v. Union of India*. While dealing with the issue the Court observed in para 6 thus :

"The distressing feature of the situation is that even though the contention which found favour both with the Labour Court and the High Court is wholly untenable in view of the decision of this Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, rendered on December 12, 1980, the matter has been brought to this Court and yet today the same contention is pressed which clearly discloses total ignorance about the law laid down by this Court."

18. The next judgment on which reliance is placed by the petitioners is reported in *Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board Vs. Haji Daud Haji Harun Abu and Others*, . In the said case the question that arose before the Apex Court was in regard to the jurisdiction of National Commission under Consumer Protection Act, 1986 to entertain and decide the rival complaints where several persons claim the same relief simultaneously disputing each other's right to claim the said relief. While dealing with the question of incidental and ancillary power possessed by the Tribunal the Apex Court observed in para 10 thus :

"The jurisdiction of the Commission to entertain and decide complaints necessary means that where plurality of persons claim the same relief simultaneously disputing each other's right to claim the said relief the Commission has the necessary power to adjudicate the rival claims and decide the said dispute also. This power flows from and is incidental and ancillary to the substantive power conferred by Section 21(a)(i) read with Section 22 which applies Sub-sections (4), (5) and (6) of Section 13 to the National Commission as well. It is well settled that where a substantive power is conferred upon a court or tribunal, all incidental and ancillary powers necessary for an effective exercise of the substantive power have to be inferred. See *Khyerbari Tea Co. Ltd. v. State of Assam* AIR AT P. 935. The rule as quoted in *Craies* is :

"One of the first principles of law with regard to the effect of an enabling Act is that if a legislature enables something to be done it gives power at the same

time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view."

19. Reliance is also placed on the judgment reported in *M/s. J.K. Synthetics Ltd. Vs. Collector of Central Excise*, The said judgment is in relation to the jurisdiction and power of the Tribunal under the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982. In the said case a question arose whether the Tribunal's jurisdiction extends to setting aside ex parte order passed by it on merits against the respondent before it, if it finds that the respondent had for sufficient cause, been unable to appear. Answering the point, the Supreme Court relying upon the judgment in *Grindlays Bank's* case made the following observations :--

Para 4 "In *Grindlays Bank Ltd. v. Central Government Industrial Tribunal* the same principles were applied in relation to the Industrial Tribunal constituted under the provisions of the Industrial Disputes Act 1947". It was held that where a party was prevented from appearing at a hearing due to sufficient cause and was faced with an ex parte award. It was as if the party was visited with an award without notice of the proceedings. Where an Industrial Tribunal proceeded to make an award without notice to a party, the award was nothing but a nullity. In such circumstances, the Industrial Tribunal had not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh. The rule in question [Rule 22 of the Industrial Disputes (Central) Rules, 1957] provided that without sufficient cause being shown, if any party to proceedings before the Industrial Tribunal failed to attend or be represented, the Industrial Tribunal had the jurisdiction to proceed ex parte. But if sufficient cause was shown which prevented a party from appearing, the Industrial Tribunal had the power to set aside the ex parte award. The power to proceed ex parte carried with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing."

Para 6 : "If, in a given case, it is established that the respondent was unable to appear before it for no fault of his own the ends of justice would clearly require that the ex parte order against him should be set aside. Not to do so on the ground of lack of power would be manifest injustice. Quite apart from the inherent power that every tribunal and court constituted to do justice has in this respect CEGAT is clothed with express power under Rule 41 to make such order as is necessary to secure the ends of justice."

20. The Apex Court has emphasis that it is settled rule that where the substantive power is conferred upon the Court or Tribunal, incidental and ancillary powers necessary for effective exercise of substantive power have to be inferred. Reliance is also placed on a judgment reported in *New India Assurance Co. Ltd. Vs. R. Srinivasan*, . This judgment again deals with the jurisdiction of the Tribunal under the Consumer Protection Act and Tamilnadu Consumer Protection Rules. The first complaint was dismissed for default of the complainant and hence he filed second complaint on same set of facts and cause of action. The

Apex Court held that the second complaint is not barred as there is no prohibition akin to the one to be found under Order 9, Rule 8 of the Code of Civil Procedure. The Court held that the fact that the case was not decided on merits and was dismissed in default for non-appearance of the complainant cannot be over-looked and therefore, it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default. The relevant and clinching observations are made by the Apex Court in paras 17 and 18 of the judgment and we chose to reproduce the same "Para 17 : But that is not the end of the matter Mahmood J. in his dissenting judgment in the Full Bench case of Narsingh Das v. Mangal Dubey *ilr*(1883) All 163 observed :

"The Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Court, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed, and in the present case therefore, it rests upon the defendants to show that the suit in the form in which it has been brought is prohibited by the rules of procedure applicable to the Courts of Justice of India."

Para 18 : "We only intend to invoke the spirit of the principle behind the above dictum in support of our view that every court or judicial body or authority which has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present the Court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the Court or for that matter of judicial or quasi-judicial body in the absence of the complainant, therefore, the Court will be well within its jurisdiction to dismiss the complaint for non-prosecution. So also it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

21. Per contra, the learned counsel appearing for the respondents placed reliance on a judgment of the Apex Court in *Jyotsana Arvindkumar Shah and Others Vs. Bombay Hospital Trust*, . It has held in the said case that the Tribunal functioning under Consumer Protection Act, 1986 has no power to recall or review an ex parte order passed by it. The Apex Court has held that the State Commission has no jurisdiction to set aside its previous ex parte order more so if it is a reasoned order. The Supreme Court has made the following observation in para 7 :

"We heard the learned counsel on both sides for quite some time. When we asked the learned counsel appearing for the respondent to point out the provision in the Act which enables the State Commission to set aside the reasoned order passed though ex parte he could not lay his hands on any of the provisions of the Act. As a matter of fact before the State Commission the appellants brought to its notice the two orders one passed by the Bihar State Commission in *Chief Manager, UCO Bank v. Ram Govind Agarwal and Ors.* passed

by the National Commission in Director, Forest Research Institute v. Sunshine Enterprises holding that the redressal agencies have no power to recall or review their ex parte order. The State commission had distinguished the abovesaid orders on the ground that in those two cases the opponents had not only not appeared but also failed to put in their written statements. In other words, in the case on hand, according to the State Commission, the opponent (respondent) having filed the written statements, the failure to consider the same by the State Commission before passing the order would be a valid ground for setting aside the ex parte order. The State Commission however fell into an error in not bearing in mind that the Act under which it is functioning has not provided it with any jurisdiction to set aside the ex parte reasoned order. It is also seen from the order of the State Commission that it was influenced by the concluding portion of the judgment of the Bombay High Court to the effect that the respondent (writ petitioner) could approach the appellate authority or make an appropriate application before the State Commission for setting aside the ex parte order if permissible under the law. Here again the State Commission failed to appreciate that the observation of the High Court would help the respondent if permissible under the law. If the law does not permit the respondent to move the application for setting aside the ex parte order, which appears to be the position the order of the State Commission setting aside the ex parte order cannot be sustained. As stated earlier there is no dispute that there is no provision in the Act enabling the State Commission to set aside an ex parte order."

22. True it is that in the above referred judgment, the learned Judges of the Apex Court have held that the State Commission fell into error in not bearing in mind that the Act under which it is functioning has not provided it with any jurisdiction to set aside the ex parte reasoned order and hence proceeded to conclude that if the law does not permit the respondent to move the application for setting aside ex parte order, the order of the State Commission setting aside ex parte order cannot be sustained.

23. No doubt, with due respect we find that there is a conflict in the reasoning adopted by the Apex Court in the judgments reported in New India Assurance Co. Ltd. Vs. R. Srinivasan, on the one hand which follows the line of reasoning in Grindlays Bank's case and the judgments reported in Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board Vs. Haji Daud Haji Harun Abu and Others, , M/s. J.K. Synthetics Ltd. Vs. Collector of Central Excise, and in Jyotsana Arvindkumar Shah and Others Vs. Bombay Hospital Trust, . In view of the direct conflict between two decisions of coequal Benches and as we are unable to reconcile the same we have to consider the further question as to which judgment we need to follow. There are two views i.e. (i) that a later judgment of the Apex Court need to be followed and the other view is that the High Court or the Courts below need to follow the judgment which appears to it to state the law accurately. Our attention is invited to a Full Bench judgment reported in Indo Swiss Time Limited Vs. Umrao and Others, . The Court proceeded to conclude in para 23 by making the following observations :--

"Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not be the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of coequal Benches of the superior Court are earlier or later is a consideration which appears to me as hardly relevant."

24. Similar view is taken by the Full Bench of Allahabad High Court in the judgment reported in *Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and others*, . Our attention is also invited to a Division Bench judgment reported in 2001(3) MPLJ 233 : AIR 2002 M.P. 8, *Smt. Kalabai Choubey and Ors. v. Rajabahadur Yadav and Anr.* which also toe in line with the view taken by the earlier two Full Bench judgments. The Full Bench (Special Bench) of Calcutta High Court also takes the same view in the judgment reported in *Sunil Kr. Bose Vs. Jagabandhu Dhang*, .

25. Last but not the least there is a Full Bench judgment of Bombay High Court following the same line of reasoning. It is reported in *Kamleshkumar Ishwardas Patel Vs. Union of India and others*,

26. While dealing with the issue as to which course is to be followed by the High Court when confronted with contrary decisions of the Supreme Court emanating from the Benches of co-equal strength, the Full Bench held that the High Court is not necessarily bound to follow the decision later in point of time but must follow the one which in its view is better in point of law. For coming to the said conclusion the Full Bench has relied upon a Supreme Court judgment reported in *Atma Ram Vs. The State of Punjab and Others*, .

27. In view of the above referred decisions we respectfully choose to follow the law laid down by the Apex Court in *Grindlays Bank Limited v. The Central Government Industrial Tribunal (supra)* and *Ors., Chief Executive Officers and Vice Chairman v. Haji Harun Abu (supra)* and *New India Assurance Co. Ltd.* referred to *Supra*.

28. In view of the legal position discussed hereinabove we are of the view that the Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for but on the converse principles that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a general principle prohibition cannot be presumed and

in the present case therefore, it rests upon the respondents to show that power and jurisdiction of the Rent Controller to set aside an order to proceed ex parte is prohibited by the Rules of procedure applicable to the Tribunal. In the absence of any prohibition for the exercise of said power by the Rent Controller in the Rent Control Order, the power shall be presumed to be vested in the Rent Controller, as incidental and ancillary power which is in furtherance of effective exercise of the substantive power i.e. to adjudicate lis between landlord and tenant.

29. In the result, we find that the judgments reported in 7962 NLJ 180, 1969 Mh.L.J. 421, 1976 Mh.L.J. 16 and 1982 Mh.L.J. 199 lay down the correct position of law. With utmost respect we find that the judgments reported in 1952 NLJ 404, 1953 NLJ 211, 1954 NLJ 27 and 1995(2) Mh.L.J. 913 does not lay down the correct legal position. Hence, we hold and conclude that the Rent Controller exercising the powers under the provisions of Central Provinces and Berar Letting of Premises and Rent Control Order 1949 has power to consider and decide the application for setting aside the Ex parte order passed by him and answer the reference in the affirmative.

Place the matters before the learned Single Judge for appropriate orders and disposal.