

(2010) 09 BOM CK 0093

In the Bombay High Court

Case No : Civil Revision Application No. 583 of 2008 and Civil Application No. 217 of 2010

Da"Cunha Associates Private Limited

APPELLANT

Vs

Dilip Jhangiani and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 13, 13(1), 14, 14(2)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, Order 7 Rule 3, 151
Maharashtra Housing and Area Development Act, 1976 — Section 18
Maharashtra Rent Control Act, 1999 — Section 25, 3, 3(1), 3(3)
Transfer of Property Act, 1882 — Section 111
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21

Citation : (2011) 1 ALLMR 206 : (2011) 2 BomCR 157 : (2010) 112 BOMLR 3921

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : S.U. Kamdar, Vishal Kanade, Pooja Patil, Vinay Bandivadekar and Amit Mehta, instructed by Mahimtura and Co, for the Appellant; V.A. Thorat, P.S. Dani, Karim Vakil, A. Dasgupta, Vaibhav Sugadare, Ravi Kadam and Kusum Mourya, instructed by Basant Tilokani and Co. for Respondent Nos. 1 to 4, S.V. Borkar and V.V. Warerkar, instructed by Warerkar and Warerkar, for the Respondent

Judgement

R.C. Chavan, J.—This Civil Revision Application is directed against Judgment and Order passed by the Appellate Bench of Court of Small Causes reversing Judgment of the Trial Judge dismissing landlord's suit and granting decree of applicant's ejectment.

2. Facts which are material for deciding this Civil Revision Application are as under:

The Respondent Nos. 1 to 4 (original Plaintiffs) are the owners of the property known as Elysium Mansion, 7, Walton Road, Colaba, Mumbai 400 005. Premises known as Office No. 9 on the West wing of 4th floor of said building admeasuring

970 square feet are the subject matter of these proceedings. They were let out to Sterling General Insurance Company Limited. On 18th June, 1969 said Sterling General Insurance Company Limited gave these premises on licence to the present applicant. On 30th October, 1969, the applicant claims to have acquired from Indian Cotton Mills Federation a licence in respect of even the remaining 508 square feet of the West wing on the 4th floor known as Office No. 10 (not a subject matter of these proceedings) and thus occupies in all 1475 square feet area on the West wing, which, according to Applicant, constitutes one premises.

3. Respondent No. 5 (original Defendant No. 1) Oriental Insurance Company Limited is successor of Sterling General Insurance Company Limited and is a Public Sector Corporation having a paid up share capital of more than Rs. 100,00,000/-, and therefore in view of provisions of Section 3 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "Maharashtra Rent Act") does not have the protection of the Rent Act.

4. The Plaintiffs, therefore, filed a suit before the Court of Small Causes for ejectment of Applicant, who was in occupation, and the Defendant No. 5 Oriental Insurance Company Limited, the tenant, from premises known as Office No. 9. The learned Trial Judge upheld the Applicant's contention that since applicant was not shown to be an entity excluded from protection of the Rent Act, a decree could not be passed against it, and dismissed the suit. The Appellate Bench reversed this by its impugned Judgment.

5. I have heard the learned Senior Counsel for Applicant as well as the Respondent Nos. 1 to 4 the landlords. The decree is assailed on three counts : first, that the decree is inexecutable, as it is in respect of property which is not sufficiently identifiable; secondly, the pleas in plaint were not sufficiently clear on identification of suit premises & the Plaintiff's affidavit dated 4th September, 2004 was construed as a pleading without affording to applicant an opportunity to cross examine the deponent; and lastly and most importantly, that the Appellate Bench erred in holding that Applicant did not have the protection of Rent Act, misconstruing the provisions of Section 3 of the Maharashtra Rent Control Act, 1999. The learned Senior Counsel for the Applicants submitted that even if Respondent No. 5, the original tenant, is held to have no protection of the Rent Act, since applicant was a licensee, who was deemed to be tenant u/s 15A of the Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 (hereinafter referred to as "Bombay Rent Act") upon termination of his tenancy, he would become direct tenant of the landlord u/s 14 of the Bombay Rent Act. Once the applicant is held to be the tenant of the landlord, since applicant is not excluded from protection of the Maharashtra Rent Act by operation of Section 3 of the Maharashtra Rent Act, applicant's ejectment would have to be sought only by invoking provisions of the Maharashtra Rent Act.

6. The learned Counsel for both the parties relied on a number of Judgments in support of their respective contentions.

7. First, I would deal with the contention that a decree could not be passed because the premises are not sufficiently identifiable. For this purpose the learned Senior Counsel for the Applicant relied on Judgment in Nahar Singh Vs. Harnak Singh and Others, where the Supreme Court was considering dismissal of a second appeal by High Court upholding reversal by the first appellate court of decree for Specific performance of agreement of sale granted by Trial court. The Supreme Court upheld the finding of the 1st appellate court that such a decree could not have been passed as the property was not identifiable.

8. In Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, the Court held that if suit property was not capable of being identified in a suit for specific performance the suit ought to have been dismissed.

9. The learned Senior Counsel submitted that the Courts below erred in granting a decree on the basis of an affidavit about description of the premises. The learned Counsel submitted that the affidavit could not have taken the place of pleadings. The affidavit was filed on 4th September, 2004, and begins with the words that it was being filed pursuant to directions given under Order VII, Rule 3 of the Code of Civil Procedure, 1908. The filing was objected to by the applicant. The learned trial Judge passed an elaborate order on 7th September, 2004 accepting this affidavit on record, giving liberty to both the parties to lead evidence on this aspect. Applicant then filed an elaborate affidavit-in-reply dated 15th October, 2004. The landlord filed architect Kini's affidavit dated 2nd November, 2004 annexing his report. Architect was elaborately cross examined on 9th December, 2004. On behalf of applicant architect Agshikar's affidavit was filed on 15th March, 2005. His additional affidavit was filed on 13th October, 2005 and he was cross examined on 27th October, 2005.

10. In Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, cited on behalf of the applicant, the Supreme Court refused to entertain a plea which did not have sufficient foundation in pleadings. The learned Senior Counsel for the Applicant, therefore, submitted that the Appellate Bench erred in relying on an affidavit and treating it as pleadings.

11. In Syed and Co. and Ors. v. State of Jammu and Kashmir and Ors. the Supreme Court reiterated the time tested principle that without there being pleading, evidence could not be led. This was restated in Bachhaj Nahar Vs. Nilima Mandal and Another, .

12. The learned Senior Counsel for landlord did not dispute the position that there has to be a pleading first to enable a party to tender evidence, but pointed out that trial Court had treated the affidavit dated 4th September, 2004 as pleading, affidavits were then tendered and witnesses were cross examined on the issue.

13. There can be no doubt than an objection to evidence illegally admitted would be raised in a revision. But it is unfortunate that the applicant seeks to raise a technical objection in the context of what has been elaborated in the preceding

paragraph. Pleadings are intended to put parties to a notice as to what case is being put up, to avoid parties being taken by surprise. Ideally, the landlord ought to have raised the pleas in the plaint or could have raised them by appropriate amendment. But this is a mere irregularity and not an illegality, since applicant was not only put to sufficient notice, but had cross examined landlord's architect and tendered his own architect's evidence, who too was cross examined on behalf of adversaries. The grievance of the applicant is that since affidavit dated 4th September, 2004 filed by Plaintiff was treated as pleading, he could not be cross examined.

14. First, it is not in dispute that Plaintiff is a subsequent purchaser, who could say about the situation of office Nos. 9 and 10 on seeing them, just as anyone else could do. Therefore, his word on the subject would not be of any special value. And the parties had examined two experts who gave contradictory conclusions on the question. Therefore, it seems that the objection is really being raised only to protract the proceedings and has no substance.

15. In *L. Moolchand and Others Vs. Fatima Sultana Begum and Others*, which was cited at bar, the Supreme Court was considering the scope of inherent powers of a Civil court. Objections to sale had been raised under Order XXI, Rule 90 read with Section 151 of the Code of Civil Procedure, 1908. The trial Court rejected the objection as not maintainable. The High Court observed that objection under Order XXI, Rule 90 did not lie but trial Court would have examined the matter u/s 151 of the Code of Civil Procedure, 1908. The Supreme Court refused to interfere. However, the objection raised in the present case is not one which would warrant remitting the matter to trial Court for any further enquiry as the discussion to follow would show.

16. The question is not and cannot be as to how the premises appear now-or even after the applicant acquired licences in respect of office premises Nos. 9 and 10. It is not even the applicant's case that office premises Nos. 9 and 10 were both let out to one tenant who inducted applicant as licensee. While Respondent No. 5's predecessor was tenant in respect of suit premises, office No. 10 was let out to Indian Cotton Mills Federation, who inducted the applicant. Thus, the premises were, when the applicant came to possess them, different. His licensors have not merged into one entity. He is not paying licence fees for both the office premises to Respondent No. 5. In these circumstances, it is cheeky of the applicant to cash on his own sin of merging the two premises-which itself is thoroughly impermissible, without the consent of parties concerned-and then to seek to take advantage of such merger. If he has obliterated the distinctive features which separate the two office spaces, he must suffer consequences of slicing off the suit premises-which will split his office. It is unfortunate that such a plea was raised, without remembering that licences in respect of the two premises are from two different entities, taken at two different points of time. Therefore, all the contentions raised in this behalf would have to be rejected.

17. This takes me to the question of availability of protection of the Rent Act to the applicant. It may be recalled that the argument on behalf of the applicant is that protection of Rent Act is available to the applicant as lawful subtenant and that he does not have to go with the tenant as the protection is withdrawn, not, for the premises but to a class of entities occupying the premises. On the other hand, the learned Senior Counsel for the landlord submitted that the exemption from operation of Rent Act applies to premises tenanted by entities specified in Section 3(1)(b) of the Maharashtra Rent Act and not to entities alone and in any case, the applicant cannot have any protection, if the tenant is liable to be evicted.

18. Before dealing with numerous Judgments cited, it may be useful to quote for ready reference provisions of Section 4 of the Bombay Rent Act and Section 3 of the Maharashtra Rent Act as under:

Bombay Rent Act

4 Exemption.

(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy.(license)or other like relationship created by a grant from (or a licence given by) the Government in respect of premises (requisitioned or taken or lease)(or on licece) by the Government, including any premises taken on behalf of the Government on the basis of tenancy (or of licence) or other like relationship by, or in the name of any officer subordinate to the Government authorized in this behalf; but it shall apply in respect of (premises let, or given on licence, to) to the Government or a local authority. (or taken on behalf of the Government on such basis by, or in the name of, such officer.) 1(A) On and from such date as the State Government may, by notification in the Official Gazette, appoint, in the areas to which provisions of Part II apply u/s 6 to premises let or given on licence for any of the purposes referred to in that section, the provisions relating to standard rent and permitted increases shall, notwithstanding anything contained in this Act, not apply for a period of five years to any premises the construction or reconstruction of which is completed on or after such date:

Provided that, nothing in this sub-section shall apply:

(a) to premises referred to in Sections 17B and 17C;

(b) to premises which are constructed or reconstructed in any housing scheme undertaken by Government or the Maharashtra Housing and Area Development Authority or of any of its Boards established u/s 18 of the Maharashtra Housing and Area Development Act, 1976 or in any housing scheme undertaken by any person in pursuance of any exemption or sanction granted by the State Government under the provisions of Section 20 or 21 of the Urban Land (Ceiling and Regulation) Act, 1976, for sale thereof to persons belonging to economically weaker sections of the people and to whom such premises are sold.

Maharashtra Rent Act

3 Exemption

(1) This Act shall not apply-

(a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

19. There is no dispute that when suit was filed the Maharashtra Rent Act was applicable.

20. It may be seen that Section 4(1) of the Bombay Rent Act begins with the words : This Act shall not apply to any premises....

Relevant portion of Section 3 of the Maharashtra Rent Act reads thus:

(i) This Act shall not apply

(a) to any premises belonging to ... Clause (a) of Sub-section 3 is substantially Sub-section (1) of Section 4 of the old Act. Both the Clauses contain the same expression to any premise Therefore, the contention is that Section 3(1)(b) of the new Act applies to premises and not to particular category of tenants. For this purpose reliance was placed by the learned Senior Counsel for the landlord on Judgment of the Supreme Court in Bhatia CO-operative housing Society Ltd. v. D.C. Patel reported at (1953) SC reports 185 where the Supreme Court was considering applicability of the provision of the Bombay Rent Act to premises belonging to local authority in the light of provision of Section 4(1) of the said Act. The Court held as under:

Learned Counsel for the respondent took a preliminary objection, founded on the provisions of Section 28 of the Bombay Act, that the City Civil Court had no jurisdiction to entertain the suit, for that section clearly states that in Greater Bombay the Court of Small Causes alone shall have jurisdiction to entertain and try any suit between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of that Part of the Act applied and to decide any application made under the Act and to deal with any

claim or question arising out of the Act and no other Court should have jurisdiction to entertain any suit or proceeding or to deal with such claim or question. If, as contended for by the appellant, the Act does not apply to the premises, then Section 28, which is an integral part of the Act and takes away the jurisdiction of all Courts other than the Small Causes Court in Greater Bombay, cannot obviously be invoked by the respondent. The crucial point, therefore, in order to determine the question of the jurisdiction of the City Civil Court to entertain the suit, is to ascertain whether, in view of Section 4 of the Act, the Act applies to the premises at all. If it does, the City Civil Court has no jurisdiction but if it does not, then it has such jurisdiction. The question at once arises as to who is to decide this point in controversy. It is well settled that a Civil Court has inherent power to decide the question of its own jurisdiction, although, as a result of its enquiry, it may turn out that it has no jurisdiction over the suit. Accordingly we think, in agreement with the High Court, that this preliminary objection is not well founded in principle or on authority and should be rejected.

The main controversy between the parties is as to whether the Act applies to the demised premises. The solution of that controversy depends upon a true construction of Section 4(1) of the Bombay Act LVII of 1947, which runs as follows:

4(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority.

It is clear that the above sub-section has three parts, namely-

- (1) This Act shall not apply to premises belonging to the Government or a local authority.
- (2) This Act shall not apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government,
- (3) This Act shall apply in respect of premises let out to the Government or a local authority.

The contention of the appellant Society is that the demised premises belonged to the Trustees for the improvement of the City of Bombay and now belong to the Bombay Municipality both of which bodies are local authorities and, therefore, the Act does not apply to the demised premises. Learned Counsel for the respondent, however, urges that the object of the Act, as recited in the preamble, is inter alia, to control rent. It follows, therefore, that the object of the legislation was that the provisions of the Act would be applicable only as between the landlord and tenant. Section 4(1) provides for an exemption from or

exception to that general object. The purpose of the first two parts of Section 4(1) is to exempt two cases of relationship of landlord and tenant from the operation of the Act, namely, (1) where the Government or a local authority lets out premises belonging to it, and (2) where the Government lets out premises taken on lease or requisitioned by it. It will be observed that the second part of Section 4(1) quite clearly exempts any tenancy or other like relationship created by the Government, but the first part makes no reference to any tenancy or other like relationship at all, but exempts the premises belonging to the Government or a local authority. If the intention of the first part were as formulated in item (1), then the first part of Section 4(1), like the second part, would have run thus:

This Act shall not apply to any tenancy or other like relationship created by Government or local authority in respect of premises belonging to it.

The Legislature was familiar with this form of expression, for it adopted it in the second part and yet it did not use that form in the first. The conclusion is, therefore, irresistible that the Legislature did not by the first part intend to exempt the relationship of landlord and tenant but intended to confer on the premises belonging to Government an immunity from the operation of the Act.

Learned Counsel for the respondent next contends that the immunity given by the first part should be held to be available only to the Government or a local authority to which the premises belong. If that were the intention then the Legislature would have used phraseology similar to what it did in the second part, namely, it would have expressly made the Act inapplicable as against the Government or a local authority. This it did not do and the only inference that can be drawn from this circumstance is that this departure was made deliberately with a view to exempt the premises itself.

It is said that if the first part of the section is so construed as to exempt the premises from the operation of the Act, not only as between the Government or a local authority on the one hand and its lessee on the other, but also as between that lessee and his subtenant, then the whole purpose of the Act will be frustrated, for it is well known that most of the lands in Greater Bombay belong to the Government or one or other local authority, e.g., Bombay Port Trust and Bombay Municipality and the greater number of tenants will not be able to avail themselves of the benefit and protection of the Act. In the first place, the preamble to the Act clearly shows that the object of the Act was to consolidate the law relating to the control of rents and repairs of certain premises and not of all premises. The Legislature may well have thought that an immunity given to premises belonging to the Government or a local authority will facilitate the speedy development of its lands by inducing lessees to take up building leases on terms advantageous to the Government or a local authority. Further, as pointed out by Romar L.J. in *Clark v. Downes* (1931) 145 L.T. 20, which case was approved by Lord Goddard C.J. in *Rudler v. Franks* (1947) 1 K.B. 530 such immunity will increase the value of the right of reversion belonging to the

Government or a local authority. The fact that the Government or a local authority may be trusted to act fairly and reasonably may have induced the Legislature all the more readily to give such immunity to premises belonging to the Government or a local authority but it cannot be overlooked that the primary object of giving this immunity was to protect the interests of the Government or a local authority. This protection requires that the immunity should be held to attach to the premises itself and the benefit of it should be available not only to the Government or a local authority but also to the lessee deriving title from it. If the benefit of the immunity was given only to the Government or a local authority and not to its lessee as suggested by learned Counsel for the respondent and the Act applied to the premises as against the lessee, then it must follow that u/s 15 of the Act it will not be lawful for the lessee to sublet the premises or any part of it. If such were the consequences, nobody will take a building lease from the Government or a local authority and the immunity given to the Government or a local authority will, for all practical purposes and in so far as the building leases are concerned, be wholly illusory and worthless and the underlying purpose for bestowing such immunity will be rendered wholly ineffective. In our opinion, therefore, the consideration of the protection of the interests of the sub-tenants in premises belonging to the Government or a local authority cannot override the plain meaning of the preamble or the first part of Section 4(1) and frustrate the real purpose of protecting and furthering the interests of the Government or a local authority by conferring on its property an immunity from the operation of the Act.

....

In our view in the case before us the demised premises including the building belong to a local authority and are outside the operation of the Act. This Act being out of the way, the appellants were well within their rights to file the suit in ejectment in the City Civil Court and that Court had jurisdiction to entertain the suit and to pass the decree that it did.

(emphasis supplied)

21. This view was followed up by the Supreme Court in *Parwati Bai Vs. Radhika*, to which my attention was drawn by the learned Senior Counsel for Respondent No. 1. The Supreme Court was considering provisions of the Madhya Pradesh Accommodation Control Act, 1961 which were similar to those of the Bombay Rent Act. In that case, premises belonging to a Municipality, taken on rent by the landlord had been sublet to a tenant. The landlord sought tenant's ejectment, bypassing the provision of the Madhya Pradesh Accommodation Control Act, 1961, contending that since ownership of premises vested in Municipality, the provisions of the Act were not applicable. Right up to High Court tenant's plea that he had the protection of the Madhya Pradesh Accommodation Control Act, 1961, as the plaintiff was not the Municipality, was upheld. Allowing the appeal and ordering tenant's ejectment, the Supreme Court held:

4. It is well settled by a decision of the Court in Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, wherein *pari materia* provisions contained in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 came up for consideration of this Court. It was held that the exemption is not conferred on the relationship of landlord and tenant but on the premises itself making it immune from the operation of the Act. In identical facts, as the present case is, the decision of this Court was followed by the High Court of Madhya Pradesh in Radheylal Somsingh v. Ratansingh Kishansingh 1977 MPLJ 335 and it was held that the immunity from operation of the Madhya Pradesh Accommodation Control Act, 1961 is in respect of the premises and not with respect to the parties. If a tenant in municipal premises lets out the premises to another, a suit by the tenant for ejectment of his tenant and arrears of rent would not be governed by the Act as the premises are exempt u/s 3(1)(b) of Act though the suit is not between the municipality as landlord and against its tenant. We find ourselves in agreement with the view taken by the High Court of Madhya Pradesh in Radheylal's case. It is unfortunate that this decision binding in the State of Madhya Pradesh was not taken note of by the courts below as also by the High Court

22. In Dattaram Tukaram Bordekar, since deceased by his heirs and legal representatives Vs. Prakash Dattatraya Tiwatane, a learned Single Judge of this Court held that provision of Section 4 of the Bombay Rent Act applied to premises and not persons.

23. In Carona Ltd. Vs. Parvathy Swaminathan and Sons, the Supreme Court considered reduction of share capital by a Company after its tenancy was terminated and held that it would still lose the protection of Rent Act in view of provision of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999. It is doubtful if this Judgment could be an authority for the proposition that Section 3(1)(b) applies to premises and not persons. It only underlines that crucial date for finding out which provision applies is the date on which right is sought to be exercised.

24. In Commissioner of Income Tax, West Bengal-I Vs. Padamchand Ramgopal, on which the learned Senior Counsel placed reliance the Supreme Court was considering an objection to jurisdiction of the Court which passed the decree taken in execution proceedings, on the ground that land in question was agricultural land not amenable to Court exercising jurisdiction under the Bombay Rent Act. In this context the Supreme Court held that crucial date for considering applicability of the Act would be the date on which the right is sought to be exercised.

25. It is doubtful if Judgment in Crompton Greaves Ltd. Vs. State of Maharashtra and Others, would be of help in resolving the controversy since the challenge therein was to the validity of Section 3(1)(b) of Maharashtra Rent Control Act, 1999. In Saraswat Co-op. Bank Ltd. and Another Vs. State of Maharashtra and Others, , the Supreme Court upheld constitutional validity of Section 3(1)(b) of

the Maharashtra Rent Control Act, 1999.

26. The learned Senior Counsel for the applicant submitted that though both Sub-clauses (a) and (b) of Section 3(1) of the Maharashtra Rent Act use similar expression to any premises, Section 3(1)(b) is aimed at specified entities and not the premises themselves. He pointed out that this question had been considered by the Apex Court in *LEELABAI PANSARE'S* case and in view of this Judgment, directly interpreting Section 3(1)(b), it may not be necessary or permissible to rely on earlier Judgments for interpreting the provision by drawing analogy.

27. In *Smt. Leelabai Gajanan Pansare and Others Vs. The Oriental Insurance Co. Ltd. and Others*, the Supreme Court was considering the following point for determination.

Point for determination

49. Whether the High Court was right in holding that the word PSUs in Section 3(1)(b) excluded government companies as defined u/s 617 of the 1956 Act.

28. After discussing historical and other aspects, the Court observed in paragraph 58 that Section 3(1)(b) was introduced to exclude cash rich entities from the protection of the Rent Act. The Court then went on to hold as under:

59. ...In our view, the changes made in the present Rent Act by which landlords are permitted to charge premium, the provisions by which cash-rich entities are excluded from the protection of the Rent Act and the provision providing for annual increase at a nominal rate of 5% are structural changes brought about by the present Rent Act, 1999 vis-r-vis the 1947 Act. The Rent Act of 1999 is the sequel to the judgment of this Court in *Malpe Vishwanath Acharya v. State of Maharashtra* (1998) 2 SCC.

...

61. In the light of the discussion mentioned hereinabove, we need to interpret Section 3(1)(b). The said clause excludes entities-enumerated therein from the protection of the said Rent Act, namely, banks, PSUs, statutory corporations, foreign missions, international agencies, multinational companies and private limited companies and public limited companies having a paid-up share capital of Rs. 1,00,00,000 or more....

70. ...In the present case, we find that the legislature has opted for an economic criterion, namely, entities which are in a position to pay rent at market rates are to stand excluded from Rent Act protection. This is the test of financial capability. This is the golden thread which runs through Section 3(1)(b). Be it banks, PSUs, statutory corporations, multinational companies, foreign missions, international agencies and public and private limited companies having a paid-up share capital of Rs. 1,00,00,000 or more stand excluded from the Rent Act protection. This criterion has been selected by the legislature knowing fully well that each of these entities including PSUs can afford to pay rent at the market rates.

74. ...Applying this test, we hold that Section 3(1)(b) clearly applies to different categories of tenants, all of whom are capable of paying rent at market rates. Multinational companies, international agencies, statutory corporations, government companies, public sector companies can certainly afford to pay rent at the market rates. This thought is further highlighted by the last category in Section 3(1)(b). Private limited companies and public limited companies having a paid-up share capital of more than Rs. 1,00,00,000 are excluded from the protection of the Rent Act. This further supports the view which we have taken that each and every entity mentioned in Section 3(1)(b) can afford to pay rent at the market rates.

29. In the light of these rulings, it has to be decided if Section 3(1)(b) applies to premises or a class of tenants. There can be no doubt the expression used in Section 3(1)(b) to indicate the incidence of legislation, or its object, is same as that used in Section 4 of the Bombay Rent Act which has been interpreted by the Supreme Court in Bhatia Co-operative housing society Ltd. and followed up in Parwati Bai. It cannot also be doubted that Judgment in Bhatia Co-operative housing society Ltd. had not come up for reconsideration in Leelabai's case and has not been (and could not have been) overruled by the bench of Apex Court, deciding Leelabai's case. The contention that when similar expression is used it ought to be similarly interpreted cannot also be overlooked. But the question is, is there any conflict in the two Judgments to infer that Judgment in Bhatia Co-operative housing society Ltd. will no longer be applicable"

30. Since premises are subject matter of any tenancy to which Rent legislation applies, both Section 4 of the Bombay Rent Act and Section 3(1)(b) of the Maharashtra Rent Act stipulate that the Acts will not apply to premises.- But these premises are not identified by criteria like geographical location or historical importance, but, the criteria of owner's occupant's status. Though premises are exempted, such premises have to be identified with entities having the defined status. The elaborate discussion Leelabai Pansare's case would show as to why premises tenanted by particular class of entities were sought to be excluded. Therefore, the question whether the tenant belongs to that class decides whether the premises are exempt. At the cost of repetition attention may be drawn to observations of the Supreme Court in Bhatia Co-operative housing society Ltd., drawing a distinction in expression used while granting exemption to premises taken on lease by the Government and the premises belonging to the Government; which reads as under:

...The purpose of the first two parts of Section 4(1) is to exempt two cases of relationship of landlord and tenant from the operation of the Act, namely, (1) where the Government or a local authority lets out premises belonging to it, and (2) where the Government lets out premises taken on lease or requisitioned by it. It will be observed that the second part of Section 4(1) quite clearly exempts any tenancy or other like relationship created by the Government, but the first part makes no reference to any tenancy or other like relationship at all, but

exempts the premises belonging to the Government or a local authority. If the intention of the first part were as formulated in item (1), then the first part of Section 4(1), like the second part, would have run thus:

This Act shall not apply to any tenancy or other like relationship created by Government or local authority in respect of premises belonging to it.

The Legislature was familiar with this form of expression, for it adopted it in the second part and yet it did not use that form in the first. The conclusion is, therefore, irresistible that the Legislature did not by the first part intend to exempt the relationship of landlord and tenant but intended to confer on the premises belonging to Government an immunity from the operation of the Act....

(emphasis supplied)

31. The provisions of Section 3 of the Maharashtra Rent Act are similarly worded. There is nothing in the Judgment in Leelabai Pansare's case to indicate that exemption will not apply to the premises tenanted by the entity fulfilling the criteria, or would apply only to relationship. It will be improper to read the Judgment out of the context of the question which it was considering-which was only if PSUs were excluded from the exemption granted. Therefore, it is impermissible to conclude that observations in Bhatia Co-operative housing Society Ltd. will not apply to interpretation of Section 3(1)(b) of the Maharashtra Rent Act or that any different interpretation can be decided from Judgment in Leelabai Pansare's case. It would, therefore, follow that the premises would be excluded from applicability of provisions of the Rent Act since the tenant is Respondent No. 5.

32. The learned Counsel for the Applicant submitted that the object of inserting this Clause (b) in Section 3(1) of the Maharashtra Rent Control Act, 1999 is explained in Leelabai Pansare's case - namely to exclude cash rich corporations from the protection of the Rent Act. Therefore, according to the learned Counsel excluding the premises rather than entity, would have consequences not intended by the legislature. He submitted that such an interpretation would result in withdrawal of protection to entities like the applicant which is not a cash rich entity having a paid capital of over Rs. 1 crore, and would thus defeat the object of legislation.

33. As rightly pointed out by the learned Senior Counsel for Respondent No. 1, the landlord, if the line of reasoning proposed by learned Counsel for applicant were to be accepted, cash rich corporations would be able to defeat the exclusion from protection by simply inducting as subtenants its employees or even entities created by itself having a paid up capital of less than Rs. 1 crore. It cannot be the business of a Corporation covered by Section 3(1)(b) of the Rent Act to sublet premises taken on rent, when it does not need them.

34. Secondly, need of going to object of legislation for the purpose of interpretation of a clause would arise only if there is any ambiguity. In Bhatia Co-

operative housing Society Ltd., the Supreme Court has clearly demonstrated that had the legislature so desired, it could have phrased the clause differently. While enacting Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, the law makers had the benefit of Judgment in Bhatia Co-operative housing Society Ltd. rendered years ago. It will have to be presumed that the legislature still chose the same expression for carving out an exclusion because it intended to exclude premises and not relationship-or an entity. It is settled canon of interpretation that same expression used at different places in the same piece of legislation must be given the same meaning wherever it is used. Accepting the argument of the learned Senior Counsel for the Applicant would lead to an anomalous situation of the same expression being interpreted differently in two clause of one sub-section. Therefore, howsoever inconvenient the interpretation might be for the applicant, it has to be held that the exclusion from protection applies to the premises tenanted by Respondent No. 5 and not just to the relationship of Respondent No. 1 with Respondent No. 5.

35. As a corollary if Respondent No. 5 has to be evicted, claim of applicant for protection would be questionable. The learned Senior Counsel for applicant however submitted that it is not always necessary that a sub-tenant too would be liable to be evicted if a decree of ejectment of tenant is passed and in such a case, subtenant may become direct tenant of the landlord. He relied on a number of Judgments in support of his contention.

36. In Jaswantra Tricumlal Vyas Vs. Bai Jiwi and Others, on which the learned Senior Counsel relied a full bench of this Court held that when tenancy of a tenant is terminated, subtenancy lawfully created would be protected by provision of Tenancy Act, though it is true that u/s 111(c) of the Transfer of Property Act, 1882 (T.P. Act for short) the termination of a tenancy brings about the termination of the subtenancy, and Section 3 of the Tenancy Act has applied the provisions of Chapter V of the Transfer of Property Act, 1882, to the tenancies and leases of land to which the Act applied. But at the same time the application of the T.P. Act is subject to the provisions not being inconsistent with any provisions of the Tenancy Act. The Court observed that there were at least two sections of Bombay Tenancy Act, namely Sections 4 and 5, which are clearly inconsistent with the provisions of Section 111(c) of the Transfer of Property Act.

37. In Madhusudan A. Mahale Vs. P.M. Gidh and Others, on which the learned Senior Counsel for the applicant relied. This Court was considering petition of an original licensee whose ejectment was sought by the licensor who was not the owner of the premises. The claim was that licensee had become direct tenant of the owner, since the owner had terminated the tenancy of original tenant-licensor. This Court noted that u/s 5(3) of the Bombay Rent Act, the term landlord includes, in respect of a licensee, his licensor. Analysing provision of Section 14(2) and 15A of the Rent Act, the Court held that a licensee does not become tenant of the owner, and his licensor would continue to be the landlord till the licensor's interest subsists. The argument therefore is that qua the

present applicant, the landlord is Respondent No. 5, the Oriental Insurance Company Limited and therefore applicant continued to have protection of the Rent Act, as the applicant is not an entity excluded by operation of Section 3 of the Act from the protection of Rent Act.

38. In *Hiralal Vallabhram Vs. Kastorbhai Lalbhai and Others*, the Court held that it was not correct to say that as soon as a notice determining a contractual tenancy is given, the sub-tenant of the contractual tenant who was there from before has to be deemed a tenant u/s 14 from the date the time in the notice expires. It was further observed that the interest of a tenant, who for purposes of Section 14, is a contractual tenant comes to an end completely only when he is not only no longer a contractual tenant but also when he has lost the right to remain in possession which Section 12 has given to him, and is no longer even a statutory tenant. In other words Section 14 would come into play in favour of the sub-tenant only after the tenancy of the contractual tenants has been determined by notice and the contractual tenant has been ordered to be ejected u/s 28 on any of the grounds in Section 12 or Section 13. Till that event happens, or till he gives up the tenancy himself, the interest of a tenant who may be a contractual tenant, for purposes of Section 14, cannot be said to have determined i. e. come to an end completely in order to give rise to a tenancy between the pre-existing sub-tenant and the landlord.

39. In *Anandram Chandanmal Munot and Another Vs. Bansilal Chunilal Kabra (Since Deceased) Through L.Rs. and Others*, the Supreme Court reiterated that sub-tenant becomes a tenant only after the interest of tenant comes to an end. In this context observations in paragraphs 15, 18, 22 & 23 may be usefully reproduced as under:

15. ...The assertion of Mr. Jain was that when rent is in arrears, it is qua the premises and the sub-tenant who is occupying the premises would also be liable for default in payment of rent of the premises and thus could be evicted along with the main tenant. This argument overlooks the relationship of subtenant with the main tenant when he would be paying the rent of the premises under his sub-tenancy and the requirement of notice u/s 12 of the Act. Definition of tenant under sub-tenant (11) of Section 5 of the Act does include also a sub-tenant inducted before 1-2-1973 and it means when the subtenant becomes a tenant on the determination of the tenancy of the main tenant.

18. It will be thus seen that the interest of a sub-tenant who satisfies the conditions of Section 14 ripens into that of a tenant when the interest of the main tenant (who inducted him as a sub-tenant) is determined by an order of eviction passed against him....

40. The Supreme Court quoted in paragraph 22 observations of a learned Single Judge of this Court to the following effect.

If in a suit against the tenant other persons are joined on the allegation that they are sub-tenants and if an eviction-is sought only on the grounds which are

personal to the tenant, then a decree in ejectment against him will result in conferring direct tenancy rights on the lawful sub-tenants. They cannot be ejected in that suit on those grounds. On the other hand, if the landlord seeks possession on the grounds which are not personal to the tenant and which concern the premises themselves, then it is open to the landlord in the same suit to plead and prove those grounds not only against the tenants but against the other persons impleaded in the suit and who are ultimately held to be lawful sub-tenants. In such a case the issues would be heard and decided between the landlord on the one side and the tenants and subtenants on the other. If the subtenants are not impleaded even in such a suit then the landlord, after obtaining a decree against the tenant, will have to file a fresh suit against the sub-tenants, who by then had become his direct deemed tenants by virtue of Section 14 of the Rent Act. In my opinion this would be the proper interpretation of Section 14 of the Rent Act when that section is read along with the other relevant provisions of the Rent Act.

41. In paragraph 23 the Supreme Court held as under:

...We generally agree with the observations of the learned Single Judge and may add one more illustration to one given by him. Clause (f) of Sub-section (1) of Section 13 of the provides that a landlord is entitled to recover possession of the premises if the court is satisfied that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the coming into operation of this Act, to be in such service or employment. When eviction is sought on this ground as given in Clause (f) it is difficult to see how a sub-tenant can become a direct tenant of the landlord when the tenancy of the main tenant is determined.

(emphasis supplied)

42. There can be no doubt that in view of provision of Section 14 of the Bombay Rent Act, (corresponding to Section 25 of the Maharashtra Rent Control Act, 1999) upon determination of interest of a tenant in the premises, a subtenant would become direct tenant of the landlord-but only in certain circumstances and not always. As held in Anandram's case (supra) by the Supreme Court, (approving a paragraph from Judgment of this Court), if ejectment is sought on grounds which are not personal to the tenant, but which concern the premises themselves, a landlord can sue for ejectment of tenant and subtenant together, as the landlord has done in the present case. Since protection of Rent Act does not apply to the premises, the relationship will be governed by provisions of Transfer of Property Act and u/s 111(c), termination of tenancy brings about termination of subtenancy as well and therefore the decree for applicant's ejectment cannot be faulted.

43. The learned Counsel for the parties also placed reliance on Judgments in Nalanikant Ramadas Gujjar Vs. Tulasibai (dead) by LR. and others, , Hindustan

Ferrodo Ltd., now known as Hindustan Composites Ltd. Vs. Mrs. Hari Lachman Hasija, , Achal Misra Vs. Rama Shanker Singh and Others, , Janaklali S. Gupta (Deceased) through Lrs. Vs. Namdeo Mahadeo (Deceased) by Lrs. and Another, , which have been considered but need not be dealt with in view of the foregoing discussion.

44. To sum up:

(i) Absence of pleading about identity of property is a self created illusion of applicant by merging two licences taken from the different licensors;

(ii) After objection was raised under Order VII, Rule 3 of the Code of Civil Procedure, 1908, the learned Trial Judge rightly treated affidavit of Respondent No. 1 dated 4th September, 2004 as a pleading ;

(iii) After leading evidence of his own architect and cross examining architect of Respondent No. 1 (that is after joining the issue) applicant cannot have any grievance about identity of suit premises;

(iv) Exclusion from applicability of the Maharashtra Rent Act applies to suit premises, by virtue of it having been tenanted by Respondent No. 5 an entity covered by Section 3(1)(b) of the Rent Act;

(v) Since the ground for ejectment is not personal to tenant(like non-payment of rent) but concerns the premises, landlord was entitled to seek ejectment of both tenant and applicant in the same suit.

45. Consequently, the Appellate Bench must be held to have rightly decreed the suit.

46. Civil Revision Application is dismissed.

47. In view of dismissal of Civil Revision Application, Civil Application No. 217 of 2010 does not survive and the same is accordingly disposed of.