

(2011) 06 BOM CK 0029
In the Bombay High Court
Case No : W. P. No. 2932 of 1999

Dattatraya Savlaram Ghadigaonkar since deceased through his LRs. Savita Dattatraya Ghadigaonkar and others APPELLANT

Vs

Satyapal Uttamchand Chaudhary Since deceased through his LRs. Vivek Satyapal Chaudhary and another RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 394(1), 394A
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 108, 12, 12(3), 13, 13(1)
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 108

Citation : (2012) 1 BomCR 349 : (2011) 6 MhLj 500 : (2012) 1 RCR(Rent) 120

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : R.A. Thorat with P.J. Thorat instructed by Smt. Pranali Kakade, for the Appellant; A.V. Anturkar, instructed by S.V. Sadavarte, for the Respondent

Judgement

V.M. Kanade, J.—Petitioner is the original Defendant/tenant and Respondent is the original Plaintiff/landlord. For the sake of convenience, parties shall be referred to "landlord" and "tenant".

2. A suit was filed by landlord for eviction of tenant from the suit premises on various grounds which were available to him under sections 12 and 13 of the Bombay Rent Act. It was contended by the landlord that the rent of the first floor was Rs 413.70 ps, rent of the second floor was Rs 385.71 ps, rent of the terrace was Rs 195/- and the entire monthly rent was to the tune of Rs 994.41 ps. It was contended, firstly, that the tenant did not pay the rent in respect of the suit premises in spite of repeated demands made by the landlord. Secondly, it was contended that the tenant had carried out alterations and additions of permanent nature without permission of the landlord. It was contended that the tenant had constructed 10 moris in the suit premises. It was contended that the tenant had

constructed permanent passage joining the adjoining building. It was contended that two iron gates were also constructed. According to the landlord, tenant did not obtain sanction of the BMC in respect of the said constructions. Thirdly, it was contended that the premises were required reasonably and for bona fide for himself, Fourthly, it was contended that the tenant caused nuisance to the other tenants and occupants and used to threaten the landlord when the landlord used to collect the rent. Lastly, it was contended that the suit premises were not used in a proper manner and, therefore, tenant had committed breach of section 108(o) of the Transfer of Property Act.

3. The notice of demand and termination of tenancy was sent to the tenant by RPAD and one copy was sent under Certificate of Posting and the third copy was pasted on the suit premises and, therefore, the tenancy was properly and validly terminated. It was contended that the tenant had not raised any dispute about the standard rent and, therefore, he was not entitled to get protection u/s 12(3) (b).

4. The tenant filed his Written Statement and denied the allegations of the landlord as alleged in the plaint. It was firstly contended that the landlord had ceased to be the owner of the suit premises. Secondly, it was contended that the property was under attachment by the BMC and, therefore, the landlord had no right to recover possession or recover the arrears of rent. It was then contended that contractual rent had not been ascertained and determined between the parties. It was contended that demand notice was not received by him. The allegations of unauthorized construction of a permanent nature also was denied. It was contended that so far as moris and construction of iron gates is concerned, this was done with the consent of the landlord and the tenant was entitled to recover the said amount from the landlord. The allegation of nuisance also was denied. The tenant also filed his additional written statement in which he contended that he had not constructed a permanent passage adjoining the two buildings. It was contended that this passage was constructed by the landlord. Both, the landlord and the tenant, led oral as well as documentary evidence. Trial Court, however, dismissed the suit. Against this order, the landlord preferred an appeal before the District Court. The lower Appellate Court allowed the appeal and decreed the suit. Being aggrieved by the judgment and order passed by the lower Appellate Court, tenant/original Defendant has preferred this Petition under Article 227 of the Constitution of India.

5. It was contended by Shri Thorat, the learned Counsel appearing on behalf of the tenant/Defendant, that the lower Appellate Court had erred in holding that the tenant/Defendant had carried out permanent construction without consent of the landlord. He submitted that construction of moris, wooden passage and two iron gates did not amount to construction of permanent nature. The tenant/Defendant was not liable to be evicted under the provisions of section 13(1)(b). It was submitted that construction of moris in the suit premises had been held by various decisions of this Court as not amounting to permanent construction and,

in fact, it has been held to be essential for the beneficial enjoyment of the suit premises. Secondly, it was contended that the construction of wooden passage supported by beams would not amount to construction of a permanent nature and the same could be removed without causing any damage to the property. Thirdly, it was submitted that putting up of iron gates in the passage leading to suit premises also would not amount to construction of a permanent nature. It was submitted that no finding was given by the lower Appellate Court that this construction was of a permanent nature and, therefore, the landlord was not entitled to get possession of the suit premises u/s 13(1)(b) of the said Act. Reliance was placed on the judgment of the Apex Court in Brijendra Nath Bhargava and Another Vs. Harsh Wardhan and Others, and also another judgment of this Court in The Pune Art Industries Vs. Narayan Kashinath Date, .

6. So far as the ground of nuisance is concerned, it was contended by the learned Counsel appearing on behalf of the tenant/Defendant that the only averments regarding nuisance were found in para 12 of the plaint and it was stated that the tenant was causing nuisance to tenants and occupants by abusing the tenants and rent collector. It was contended that, admittedly, there was no conviction of the tenant as required u/s 13(1)(c) and the only factor which the Court had to consider was : whether conduct of the tenant was causing nuisance or annoyance to the neighbours and adjoining occupiers. It was submitted that there was no proof, either documentary or oral regarding sale of illicit liquor, murder or selling adulterated liquor. It was submitted that none of the occupants was examined. Similarly, no documents were produced on record to show that the tenant had been convicted for the alleged acts. Reliance was placed on the judgment in Caitan D'Souza v. Miss Jerbai S. C. Dinshaw, 1971 Mh.L.J. 974 : B.L.R. LXXIII 418. It was further contended that the lower Appellate Court also had erred in coming to the conclusion that the acts were contrary to the provisions of section 108(o) and 13(1)(a) of the Bombay Rent Act. It was submitted that the lower Appellate Court had erred in holding that running of social club by the tenant in the suit premises amounts to nuisance and annoyance.

7. It was submitted by the learned Counsel for the tenant/Defendant that so far as arrears of rent and service of notice u/s 12 of the Bombay Rent Act is concerned, the lower Appellate Court had erred in holding that the notice was served. It was submitted that the lower Appellate Court had erred in holding that pasting of notice of demand by the landlord/plaintiff was proper service and it had been proved by the landlord/plaintiff. It was submitted that service of notice by RPAD or UPC was not proved by the landlord/plaintiff. It was submitted that notice of demand could be served by pasting the same only if it could be shown that service of notice by other modes such as by posting or by tendering is not practicable. Reliance was placed on the judgment in Ramavtar Ramasahaya Khatod Vs. Baban Gurunath Pathari, and in Parvatibai Maruti Hande vs Satish Mohanram Prajapati, 2002 (Supp.) Bom. C.R. 522 (para 8). It was submitted that the landlord/plaintiff was holding an amount of Rs 85,000/- which was paid

by the tenant as construction loan and this could be adjusted towards the arrears of rent and, therefore, there was no outstanding amount which was to be paid by the tenant on the date when alleged notice of demand was served. Reliance was placed on the judgment of the Apex Court in Mohd. Salimuddin Vs. Misri Lal and Another, and in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, .

8. So far as the ground of bona fide requirement is concerned, it was submitted by the learned Counsel for tenant/Defendant that, in plaint, the only averment which was made was that the landlord/plaintiff required the premises reasonably and bona fide for himself and no particulars about his requirement were mentioned in the said plaint and, therefore, the evidence which was produced beyond the pleadings was required to be discarded. Reliance was placed on the judgment in Sonubai w/o Krishnaji Pol v. Yellawa S. Doddamani, 1994 Bom. R.C. 397. It was further submitted that the trial Court also had taken into consideration that 12 rooms were being made available to the landlord but he failed to start or commence any business. It created doubt in respect of his requirement. This fact was not considered by the lower Appellate Court. On the question of hardship, it was contended that the lower Appellate Court had committed an error of law in not considering the provisions of section 13(2) in its proper perspective. It was submitted that without giving any reasons, the lower Appellate Court had observed that balance of comparative hardship was in favour of the landlord. It was further submitted that assuming that the bona fide requirement was established, the Court was required to take into consideration whether partial decree for eviction could be passed while taking into consideration the hardship caused to the parties u/s 13(2) of the Bombay Rent Act. Reliance was placed upon the decision in Rehman Jeo Wangnoo Vs. Ram Chand and Others, and in Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, .

9. Shri Anturkar, the learned Counsel appearing on behalf of the landlord/plaintiff, on the other hand, submitted that this Court has limited jurisdiction while exercising its power under Article 227 of the Constitution of India. He relied upon the judgment of the Apex Court in Shalini Shyam Shetty & anr v. Rajendra Shankar Patil, 2010 (6) Mh.LJ. 661 and in Surya Dev Rai Vs. Ram Chander Rai and Others, . He submitted that the lower Appellate Court had not committed any error of law apparent on the face of record and that it had taken into consideration all over documentary and oral evidence on record and had given cogent reasons while recording a finding in favour of the landlord/plaintiff and against the tenant/Defendant. He submitted that, therefore, no case was made out for interfering with the finding of fact recorded by the lower Appellate Court.

10. Shri Anturkar, learned Counsel for the landlord/plaintiff further submitted that so far as the ground of permanent construction u/s 13(1)(b) is concerned, the lower Appellate Court had given a finding that the construction was of a permanent nature and, for that purpose, had relied on oral and documentary

evidence on record. He submitted that the lower Appellate Court had taken into consideration admissions which were given by the tenant and had also taken into consideration the nature of permanent construction. He invited my attention to the evidence of tenant at page 197, particularly the admission given by the tenant in his cross-examination. He also invited my attention to the evidence of P.W.1 - Satyapal Uttamchand Chaudhary at page 60 (para 5), page 63 (11th line from the bottom), page 69 where reference is made regarding iron gate and page 71 (para 15). He also invited my attention to cross-examination of P.W.1 at page 140 (para 35), page 176 (para 63), page 178 (para 67), page 186 (para 13). He also invited my attention to evidence of D.W.1 -Dattatraya Ghadigaonkar at page 189 (para 18). He also invited my attention to the judgment of the lower Appellate Court at page 533 (para 64), page 539 (para 70), page 543 (para 76) and page 546 (para 79). He also invited my attention to the photographs which were exhibited in the trial Court for the purpose of showing the nature of construction which was made by the tenant/Defendant. It was, therefore, submitted that case of permanent construction had been established by the landlord/plaintiff and the order passed by the lower Appellate Court is required to be confirmed by this Court.

11. Shri Anturkar the learned Counsel appearing on behalf of the landlord/plaintiff next submitted that so far as the ground of nuisance is concerned, the lower Appellate Court had considered the evidence on record in detail and had appreciated the evidence and had rightly held that nuisance was established. He invited my attention to the observations made by me lower Appellate Court on this point at pages 551 to 556 (para 86 at page 551). So far as the question of service of demand notice is concerned, it was submitted that the lower Appellate Court has given a finding that notice had been properly served by pasting and this being a finding of fact, no interference was called for by this Court. So far as the ground of bona fide requirement is concerned, it was submitted that mere absence of plea is not ground to non-suit the landlord/plaintiff. He submitted that, the landlord adduced sufficient evidence for the purpose of establishing his bona fide and genuine requirement. Lastly, it was submitted that so far as the contention of the tenant/Defendant regarding non-consideration of partial decree being passed u/s 13(2) is concerned, the said submission was never made before the lower Appellate Court and, therefore, the lower Appellate Court had no occasion to consider that aspect.

12. After having heard the learned Counsel appearing on behalf of the Petitioner and Respondent at length, in my view, no case is made out by the Petitioner for interfering with the well reasoned order passed by the lower Appellate Court while exercising limited jurisdiction of this Court under Article 227 of the Constitution of India.

13. Before I consider the rival submissions, it would be relevant to take into consideration the power and jurisdiction of this Court under Article 227 of the Constitution of India.

14. The Apex Court in its judgment in Shama Prashant Raje Vs. Ganpatrao and Others, has observed in para 5 as under:--

5. In view of the rival submissions we have carefully scrutinised the orders of the Controller, that of the appellate authority under the Control Order and the order of the learned Single Judge which has been affirmed by the Division Bench. Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently, Article 226 is not intended to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of an inferior tribunal if the High Court comes to a conclusion that such tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior tribunal or the inferior tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior tribunal.

Similarly, the Apex Court in Surya Dev Rai Vs. Ram Chander Rai and Others, has observed as under :--

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder :--

(1)....

(2)....

(3)....

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9).....

In the recent judgment, the Apex Court has again taken into consideration various earlier judgments of the Apex Court and has reiterated that the High Court, while exercising its power under Article 227 of the Constitution of India, should not ordinarily interfere with the finding of fact recorded by the lower Courts, unless there is a clear error of law apparent on the face of record or the finding is perverse. The Apex Court has observed in *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, as under:--

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated :

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar Vs. Union of India and others*, and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like section 115 of the CPC by the CPC (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

15. In the present case, so far as the ground u/s 13(1)(b) is concerned that is construction of permanent structure on the premises by the tenant, the trial Court gave a finding in the negative. The lower Appellate Court, however, held that the construction of the wooden bridge was of a permanent nature and, therefore, the tenant was liable to be evicted in view of the provisions of section 13(1)(b).

16. Before taking into consideration the submissions made by the learned Counsel appearing on behalf of the Petitioners, it will be relevant to take into consideration the said provisions of section 13(1)(b) which reads as under :--

13 When landlord may recover possession.-- (1) Notwithstanding anything contained in this Act [but subject to [the provisions of sections 15 and 15A], a landlord shall be entitled to recover possession of any premises if the Court is satisfied--

(a).....

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

[Explanation.-- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the local authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an

exhaust outlet or a smoke chimney; or].

17. If a plain meaning is given to the said provision, it can be seen that the word "permanent" is used in contradistinction to what is "temporary". The word "permanently", therefore, is used in antithesis to "temporarily" and temporary structure is not within the contemplation of this section and what is expected is that there should be element of permanency in the structure. If a proper meaning is to be given to the said section then, in that case, it has to be seen that it is implicit in the language of this clause that the structure is one which is in addition to or different from the original premises which are given on rent.

18. In order to determine whether the structure is of a permanent character or not, factors which are to be taken into consideration are as follows; (i) nature of the structure, (ii) intention of the party who puts up the structure or, in other words, purpose for putting up the structure and (iii) to see in the proper perspective how it has affected the original structure. Therefore, there cannot be any strait jacket formula to decide whether the structure is permanent or temporary. There can be no rigid or hard and fast rule or formula defining the permanent structure. The intention for erecting the structure also has to be gathered from the nature of the structure and surrounding circumstances and, therefore, use of particular type of materials is not decisive though it would be an important material for consideration.

19. The learned Counsel appearing on behalf of the Petitioners had argued that there was no specific Finding that the construction was of a permanent nature, causing damage to the suit property. Secondly, it was contended that the construction of wooden passage supported by beams embedded in walls also would not amount to construction of a permanent nature and the same could be removed without causing any damage to the property. In support of this contention, a reliance was placed on the judgment of the Apex Court in Brijendra Nath Bhargava and Another Vs. Harsh Wardhan and Others, and also of this Court in The Pune Art Industries Vs. Narayan Kashinath Date, .

20. So far as the wooden bridge is concerned, the submission made by the learned Counsel for the Petitioner/tenant cannot be accepted. I have perused the judgment and order passed by the lower Appellate Court and also checked whether finding given by the lower Appellate Court is supported by the evidence on record. There is a specific statement made by the Plaintiff that the Defendant is running his business from the adjoining building and that from the first floor of the suit premises, Defendant constructed an over bridge connecting the first floor of the adjoining building. He further stated that, for that purpose, external wall of his building was demolished to construct the over bridge and that Defendant had also constructed a wooden over bridge which was fixed to the suit premises and to the adjoining building. He has further stated that the bridge is about 3 ft in height and the construction of his building was damaged and the said structure is of a permanent nature. He has also stated that Defendant constructed a roof over the bridge and that BMC had taken action against him in

respect of that structure. Defendant also has admitted in his cross-examination that there is construction of the bridge connecting the suit premises and room Nos. 67 and 68 in the next building. Defendant was also asked a question whether the BMC had given notice dated 23-4-1994 in which it was written that the bridge was of ladi, coba etc. Defendant has stated that the contents of the notice are not correct and that due to oversight, he had omitted to write that the bridge was of wooden planks. Plaintiff also in his evidence has stated that the bridge was constructed by demolishing the parapet wall of the suit building and Defendant had fixed a gate in such a way that if the door of the gate is opened, it makes bridge over the gutter and if the door is closed the gutter remains open and that the Defendant had fixed wooden logs for crossing the gutter. Plaintiff has also stated that on the ground floor, Defendant had fixed two gates so that nobody would come in the suit building.

21. The lower Appellate Court has, in para 64 of its judgment, considered the nature of the construction and from para 70 onwards it has considered the material on record in respect of construction of the bridge. The lower Appellate Court has observed that, regarding construction of the bridge, Plaintiff has examined Junior Engineer from the BMC who has stated that a complaint was received from the Plaintiff dated 19-8-1993 and on 9-8-1995, they demolished the unauthorized bridge connecting the two buildings by following due process of law. This witness was not cross-examined by the Defendant. In para 76 of its judgment, the lower Appellate Court has not accepted the contention of the Defendant that the bridge was constructed by the Plaintiff and in para 77, the contention of the Defendant that bridge was not of a permanent nature was not accepted. In para 79, the lower Appellate Court, in terms, has observed that merely because the bridge was of a wooden planks, it could not be said that it is not of a permanent nature. The lower Appellate Court has given reasons why it felt that the reasoning given by the trial Court was not correct. The submissions made by the learned Counsel for the Petitioners, therefore, cannot be accepted. The lower Appellate Court has recorded a finding that construction was of a permanent nature and that the bridge was constructed by the Defendant. In my view, the lower Appellate Court was justified in coming to the said conclusion.

22. Reliance was placed by the learned Counsel appearing on behalf of the Petitioner"/tenant on two judgments. First judgment on which reliance was placed is in Brijendra Nath Bhargava and Another Vs. Harsh Wardhan and Others, and more particularly on para 12 of the said judgment. In my view, ratio of the said judgment would not apply to the facts of the present case. In the said case, a suit was filed by the landlord in the year 1974 against the tenant in respect of a showroom situated at M.I. Road, Jaipur, inter alia, on the ground of material alterations in the premises. In the said case, tenant had constructed a balcony (Dochatti) and the High Court held that it amounted to carrying out of material alterations in the premises. It was submitted that the Apex Court held that construction of a wooden cabin inside the showroom which was of a wooden structure built on beams could not be said to be material alteration in question

within the meaning of section 13(1)(c).

23. In my view, submission made by the learned Counsel appearing on behalf of the Respondent/landlord that ratio of the said judgment in Brijendra Nath Bhargava and Another Vs. Harsh Wardhan and Others, would not apply to the facts of the present case is of some substance. It was submitted by Shri Anturkar, learned Counsel for the Respondent/landlord that, firstly, provisions of section 13(1)(c) of the of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and Bombay Rent Act were different and, secondly, it was contended that the Apex Court, in that case, also observed that there was a waiver by the landlord. Section 13(1)(c) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 reads as under:--

13(1)(c). -- that the tenant has without the permission of the landlord made or permitted to be made any such construction as, in the opinion of the Court has materially altered the premises or is likely to diminish the value thereof.

The words "permitted to be made" are not found in the provisions of the Bombay Rent Act and one of the grounds on which the Apex Court set aside the judgment of the High Court was that the High Court has not considered right, if any, which had accrued to the landlord, had been waived since the wooden balcony (Dochatti) was made in 1958 and the suit was filed in 1974. In the present case, Plaintiff immediately filed a complaint with the BMC which had demolished the wooden bridge in 1995 and, thereafter, it was reconstructed by the Defendant.

24. So far as the second judgment in Pune Art industries, 1994 (3) Bom.C.R. 681 (supra) is concerned, the learned Single Judge of this Court has held that extension of a wooden loft would not amount to permanent construction. In the said case, there was already a wooden loft admeasuring 15" X 17" in existence and, according to the landlord, the loft was extended by 3" X 15" and, therefore, the entire area of 15" X 20" was covered by the loft. In the said case, High Court interfered with the finding of the lower Appellate Court since it observed that both the Courts had not considered whether construction is in the nature of permanent construction and, therefore, the High Court was required to consider that case and hold that extension of 3" X 15" would not amount to permanent construction since it was a wooden loft. Secondly, in the said case there was a wooden ladder in existence at one place but it was shifted to another place and that also, the Court held, would not amount to permanent construction. In my view, ratio of the said judgment also would not apply to the facts of the present case.

25. In the present case, the lower Appellate Court has taken into consideration whether the said construction is of a permanent nature or not and has given a finding to that effect and this Court, therefore, cannot substitute view taken by the lower Appellate Court by its own view while exercising writ jurisdiction under Article 227 of the Constitution of India.

26. So far as the ground of nuisance or annoyance is concerned, the lower

Appellate Court has held that the Petitioner/tenant had caused nuisance or annoyance within the meaning of section 13(1)(c) and also section 108(o) of the Transfer of Property Act. The case of the landlord, the Respondent herein, is that the Petitioner/tenant was running a gambling house in the name of social club. It was also contended that he used to sell illicit liquor in the suit premises and also used the premises for calling call-girls. It was also contended that one murder had taken place in the suit premises and, therefore the Petitioner/tenant had caused nuisance or annoyance by his actions and was liable to be evicted. All these allegations were denied in the Written Statement. The landlord. Respondent herein, examined himself and stated that the Petitioner/tenant was selling liquor in the suit premises till 1976. He further stated that in 1976, 36 persons died because of consuming liquor and in the year 1986, the Petitioner/tenant was arrested under MISA. He also stated that the Petitioner/tenant started running a gambling house in the suit premises and he used to invite call-girls in the suit premises. He has further stated that one person was murdered in the suit premises and the statement of the tenant was recorded. He further stated that the police had raided the suit premises on number of occasions on account of business of the tenant of selling illicit liquor in the suit premises. In the cross-examination, tenant denied all these suggestions which were put to him. He, however, admitted that murder had taken place and his statement was recorded by the police. He also admitted that he was running social club call Vijay Social Club in the suit premises.

27. Shri Thorat, the learned Counsel appearing on behalf of the Petitioner/tenant submitted that the Petitioner/tenant was never convicted of the said offences and, therefore, only the conduct of the tenant was required to be seen. It was submitted that since no oral or documentary proof was produced by the landlord, it could not be said that the ground of nuisance was established.

28. So far as the ground of nuisance u/s 13(1)(c) is concerned, it reads as under :--

13. When landlord may recover possession.--

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

(a).....

(b).....

(c) that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used (for immoral or illegal purposes; or that the tenant has in respect of the premises been convicted of an offence of contravention of any provision of clause (a) of sub-section(1) of section 394 or of section 394-A of the Bombay

Municipal Corporation Act; or

If a plain meaning is to be given to the said provision, conviction for using the premises for immoral or illegal purposes and conviction for offence of contravention of section 394(1)(a) or 394A of B.M.C. Act is not a sine qua non for the purpose of proving the case u/s 13(1)(c). It is sufficient if the landlord establishes that the conduct of the tenant is causing nuisance or annoyance to the neighbouring or adjoining occupiers. It is obvious that the said provision had been made in order to ensure that the tenant should be a law abiding citizen vis-a-vis the premises and he should not unduly disturb or interfere with the normal, reasonable and comfortable life of his neighbours. So far as the nuisance is concerned, it will not be possible to give any precise or universal formula of what activities constitute nuisance. However, it can be said that if what is being done interferes with the neighbours in the comfortable and convenient enjoyment of their premises then such a conduct can be held to be causing nuisance. The word "nuisance" has been defined in the Municipal Corporation Act as under :--

Nuisance includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance, or offence to the sense of sight, smelling, or hearing or which is, or may be dangerous to life or injurious to health or property.

So far as the expression "annoyance" is concerned, it is difficult to make any distinction between nuisance and an annoyance but as both the words have been used side by side, an annoyance would mean something less than a nuisance. Both these expressions have wide amplitude concerning a variety of facts and circumstances and cannot be fenced by definite meaning. A reasonable apprehension of a nuisance from the acts done by the neighbour in a manner which will produce an interference with the pleasurable and reasonable enjoyment of the adjoining house would fall within the word "nuisance or annoyance."

29. In the present case, Petitioner/tenant had admitted that he was running a social club in the suit premises. The lower Appellate Court has taken into consideration the evidence of the Plaintiff/tenant and the suggestions made to the tenant i.e. the Petitioner herein and the admissions given by him. The lower Appellate Court, on the basis of admissions given by him, had held that the Petitioner/tenant had admitted that he was running a gambling house in the name of social club in the suit premises. In my view, the lower Appellate Court has taken into consideration the material which was available on record and had given a finding on the basis of available material on record and had held that the conduct of the tenant amounted to nuisance or annoyance within the meaning of the said section. Therefore, it will not be possible for this Court to interfere with the said finding while exercising limited jurisdiction under Article 227 of the Constitution of India.

30. On the ground of bona fide requirement, on the basis of the material which is on record the lower Appellate Court came to the conclusion that the Plaintiff/

landlord had established his requirement and also held that greater hardship would be caused to the Plaintiff. So far as the contention of the learned Counsel appearing on behalf of the Petitioner/tenant that there were no averments in the plaint and material particulars had not been given regarding his requirement and, therefore, no decree could be passed u/s 13(1)(g), in my view, cannot be accepted. Plaintiff/landlord, in his plaint, has made a specific averment that he requires the said premises for his personal use. The lower Appellate Court has considered various judgments which were referred to by the Plaintiff and Defendant and had held that Plaintiff had established his case of bona fide requirement and also established that greater hardship would be caused to him. In my view, cogent reasons have been given by the lower Appellate Court while coming to the said conclusion and it will not be possible to interfere with the said finding.

31. So far as the ground of arrears of rent and service of demand notice u/s 12 of the Bombay Rent Act is concerned, in my view, submission made by the learned Counsel appearing on behalf of the Petitioner/tenant has to be accepted. It is a settled position in law that service of notice of demand can be served by pasting the same upon the suit premises only after it is shown that service of notice by other modes i.e. by post or by tender is not practicable. In the present case, it is obvious that the lower Appellate Court clearly erred in holding that pasting of notice of demand is a proper service, though it held that service of notice of demand by RPAD or UPC is not proved by the Respondent/Plaintiff. The finding of the lower Appellate Court on this point, therefore, will have to be set aside since the demand notice was not properly served.

32. In the result, except the submission on the point of service of demand notice, all other submissions made by the learned Counsel for the Petitioner/tenant cannot be accepted and the Petition will have to be dismissed.

33. Accordingly Petition is dismissed. Rule is discharged.

34. At this stage, the learned Counsel appearing on behalf of the Petitioner submits that operation of this judgment may be stayed for a period of 10 weeks in order to enable him to challenge this Judgment in the Apex Court. Decree, therefore, passed by the lower Appellate Court shall not be executed for a period of 10 weeks from today.

35. Petition is accordingly disposed of.