
(1975) 02 MAD CK 0002

In the Madras High Court

Case No : Appl. No's. 122 and 123 of 1971

G. Ramakrishnan and others

APPELLANT

Vs

Corporation of Madras

RESPONDENT

Date of Decision : 27-02-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (1975) 02 MAD CK 0002

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J; Ismail, J

Bench : Full Bench

Advocate : Chellaswamy for M/s. Raj and Raj, for the Appellant; Thillai Villalan, for the Respondent

Judgement

Ismail, J.—These two appeals arise out of two suits, O.S. Nos. 3273 and 6659 of 1968, on the file of the City Civil Court, Madras. Both

the suits were instituted by the Corporation of Madras. The former suit was recovery of property tax for the first half year of 1965.66, that is for

the period from April, 1965 to September, 1965. The latter suit was for recovery of property tax for three half years, namely, the second half year

of 1965 66, that is from October, 1965 to March, 1966, the first half year of 1966 67, that is from April, 1966 to September, 1966 and the first

half year of 1967-68, that is from April, 1967 to September, 1967. The plaint in the first suit was presented on 9th July, 1968 and the plaint in the

second suit was presented on 12th December, 1968. In other words, by the time the former suit was instituted, the property tax for the three half

years covered by the latter suit had become due and payable. In view of this, one of the contentions raised before the trial court was that the latter

suit was barred by the provisions of O.2. R.2, of the C.P.C., particularly with

reference to its explanation providing that successive claims arising under the same obligation shall be deemed to constitute but one cause of action, and the illustration given in the Code to that Explanation. This point was decided against the defendants in the suit by the trial court and the defendants have preferred these appeals on grounds which include the plea of the bar of the suit under O. 2, R.2 of the C.P.C. Admittedly, there is no direct decision of this court on the point in question. In view of the general nature of the question involved as well as the importance of the same, I am of the opinion that it is desirable that the same should be decided by a Bench. Accordingly, I direct that the papers be placed before the Hon"ble the Chief Justice for orders as to posting before a Bench.

These appeals having been posted before the Bench in pursuance of the order of the Hon"ble Mr. Justice Ismail dated 16th January 1975 and coming on for hearing on, Wednesday the 26th February, 1975 and this day, the court delivered the following:

JUDGMENT

Ramaprasada Rao, J.

2. These two appeals are connected. A.S. No. 122 of 1971 is against the judgment and decree of the learned VII Assistant Judge, City Civil

Court, Madras in O.S. No. 6659 of 1968 on his file and A S. No. 123 of 1971 is against the judgment and decree of the same learned Judge in

O.S. No. 3273 of 1968, which was for the recovery of property tax under the Madras City Municipal Corporation Act for the first half year

1965-66 and in which the Corporation of Madras and plaintiff seeks for a charge on the property which has to bear the said property tax. It is

common ground that the defendants paid some amounts towards the property tax, but failed to pay the arrears as claimed for the said half year.

O.S. No. 6649 of 1968, which we shall call the second suit, is again a suit for recovery of a sum of Rs. 8,725.34 being the arrears of property tax

after giving credit to the amounts paid by the owners for the second half year 1965-66, first half year 1966-67, and the first half year 1967-68.

Here also, the Corporation of Madras, as plaintiff, seeks for a charge on the property which is liable to pay the property tax. In the first suit as well

as in the second, the important facet of the defence of the defendants as owners and who are the appellants in both the appeals, is that the suit

property was vacated by Messrs. George Oakes Limited, who were the prior occupants and tenants thereof, on 30th April, 1965, and that the premises were thereafter vacant. This was intimated to the plaintiff under Ex. B-5 dated 7th May 1965. According to the defendants, the property so remained vacant and unlet till 31st August 1966, when Messrs. National Grindlays Bank occupied a portion of the premises and till November 1966 when the other portion of the developed premises was occupied by a hotelier who began to run his hoteliering business under the name and style of Gaylord Restaurant. Consequent upon such vacancy and unletting of which the defendants claim that they have given due notice, the defendants would say that, having regard to their statutory entitlement as to vacancy remission and taking into consideration the various payments made by then from time to time towards property tax due and payable by him in respect of the suit premises, there would not be any amount due by them to the plaintiff. A special defence was raised En O.S. No. 6659 of 1968, According to the defendants, the first suit which was filed on 9th July 1968 should have included the claim made under the second suit as well which was filed on 12th December 1968 and the cause of action in both the suits being the same in the sense that the Corporation of Madras was demanding the property tax due and payable on the same property, the second suit was barred under O. 2, R. 2, C.P.C.

3. The learned trial Judge framed the material issue, whether the defendants are liable to pay the tax as claimed in the suit and the general issues as to what reliefs are the parties entitled to. The suits were tried together. The plaintiff did not let in any oral evidence. The defendants examined three witnesses, D.W. 1 being the lessee of the hotel portion of the building, D.W. 2 an engineer who looked after the improvements done to the quondam premises then occupied by Messrs. George Oakes Limited and D.W. 3 being one of the defendants and the on were of the suit premises. The learned Judge mainly rested his case on Exs. A-1 and A-2. In the said letters written by D.W. 1 as the prospective tenant of the premises, he expressed that he has taken on lease the suit property from December 1965 and therefore, it cannot be said that during the relevant period with which the suits are concerned, there was vacancy and much less unletting of the premises within the meaning of the provisions of the

Madras City Municipal Corporation Act, hereinafter referred to as the Act. He would of course discountenance the sworn testimony of both

D.Ws. 1 and 3 who asserted that the former did not pay and the latter did not receive any rent towards the occupation of one of the other portions

referred to above till August 1966 in one case and November 1966 in the other. He would uncharitably characterise the testimony of these

witnesses as untrue and would say that they were not willing to speak the truth. The learned Judge also would unreasonably reject the import of the

recitals in the registered lease deed Ex. B-1 dated 2nd July 1966 entered into between the landlords on the one hand and the National Grindlays

Bank on the other, wherein it is made clear that the rent became payable only from 16th August 1966. He would also reject the material placed

before him in the matter of opening of the hotel portion (Gaylord) in the premises as and from 3rd November 1966, He would, however, assign no

acceptable reason for not placing any reliance upon the registered lease deed, Ex.B-1 or on the material which appeared to be plausible and

acceptable in relation to the occupancy of Gaylord Hotel in the other portion of the premises. Having thus rejected the oral testimony let in by the

defendants, he would solely, as we said already, rely upon a casual communication made by one of the tenants under Exs. A-1 and A-2 to the

effect that he has taken the premises on lease from December 1965 and negative the claim for vacancy remission as was done by the Corporation

of Madras under Ex. B-13. In the result, therefore, he rejected the defence, accepted the claim and decreed the suits as prayed for.

4. As regards the defence raised by the defendants that the second suit is barred under Order II Rule 2, he was of the view that it was not. It is as

against such common judgment and decrees rendered by the court below that the present appeals have been filed.

5. In order to appreciate the contentions of the parties, it would be convenient to set out the relevant, text of the correspondence that passed

between the plaintiff (Corporation of Madras) and the defendants prior to the Institution of the respective actions as also the gist of the oral

evidence. Under Ex. B-5, which we have already referred to, the land-lords informed the Corporation of Madras that the entirety of premises No.

36-D, Mount Road, Madras which is the suit property fell vacant from 30th April 1965, and requested the Corporation to assess the above

building for property tax thereafter on the above has is. The land-lords followed it up by Ex.B.7 wherein they have represented that the building

was vacant from 1st May 1965, and the new tenant has not yet moved into it, and requested the Corporation to let them know as to what amount

they should pay by way of property tax as they understood that a rebate was given by the Corporation of Madras for buildings that were vacant

for over three months. In the meantime, the Corporation on receipt of Ex.B-7 obviously began to enquire as to whether there was any truth in the

representations made by the land lords. On such an enquiry made, the prospective tenant who was to take a portion of the premises for the

purpose of his hoteliering business wrote under Ex.A-1 as follows:

I have for acknowledgment your letter No. RDC B.IV/57 dated 17th December 1965. I have taken a portion of the above premises on lease, but

the restaurant has not yet started functioning and the lease deed not yet registered. I hope to register the lease deed by the end of January 1966,

when I shall produce the same for your perusal.

We find a note by the Corporation officials in this very exhibit reading as under:

The premises is still vacant. Alterations and additions are being effected. The tenant M/s. Fabulous Restaurant has not stated whether any rent is

paid to the landlord, even though the premises is not occupied. A letter may be written to the tenant to state whether any rent is being paid, even

though the premises is not occupied, and, if so, the amount paid.

In Ex. B-8, the tenant further informs the Corporation that only renovation work is going on in the premises that he has not yet signed the lease

deed with the landlords and that the moment it is done, he will inform the authorities about the terms of the lease. To the same effect is Ex. A-2.

Here again, we find a note by the Corporation Officials who are obviously alert to find out the truth of the representation made by both the

landlords and the tenant which runs as follows :

This Restaurant is but one of the many booked for this purpose. Assessor will please ascertain who are the others, their settled terms of tenancy

and date of commencement of tenure.

The prospective tenant again wrote under Ex.B-10 to the effect that they have not yet signed and registered the lease deed and that the rent will be

paid to the landlords only after the commencement of the business, and categorically stated that they were not paying any rent then. To this Ex.B-

10, there is an annexure which is only an unsigned copy, but some how has gone into the record. In this annexure, one of the landlords mentions

about the continuous vacancy of the building and wanted the Corporation to treat his letter as a claim for remission for the first and second half

year 1965-66. Thereafter, we have a letter from the National and Grindlays Bank Ex.B-11 which also reiterates that the terms and conditions of

the lease were still under negotiations in respect of their occupation of another portion of the premises and that they have not been fully finalised.

Ex.B.-13 is the disposal given by the Corporation authorities obviously in a very summary manner, of the claim for remission made by the landlords

earlier in their various letters already referred to. As to when Ex.B.-13 was served on the landlords is not clear. But under Ex.B.-14 d. 17th

August 1966, the landlords again reiterated their claim for vacancy remission and set out in detail the dates when the premises fell vacant and how

it was not let and how it was being renovated and how there were negotiations by them with the two tenants, namely the National Grindlays Bank

Ltd., and Gaylord Restaurant and lastly they said that they would be entitled to such remission as they could in law. They have also made it clear

that till the date of writing the letter, the premises and unoccupied in the sense that it did not yield any rent as popularly understood. Ex.B.-1 is the

registration copy of the lease deed entered into between the defendants and the Bank wherein it is said that the Bank took on lease the property on

a monthly rent of Rs. 3,890/- only from 16th August 1966. Thereafter, under Ex.B. 16 one of the landlords after stating once again the fact

regarding the occupation of the portions of the premises by both the Bank and the Gaylord Restaurant, claimed vacancy remission and sought for

necessary orders on his application. This was also rejected by the Revenue Officer of the Corporation of Madras under Ex.B.-18. Ex.B-20 is a

letter sent by the first defendant to the plaintiff which does not touch upon the matter in controversy, but would refer to the fact that a cheque for

RS. 20,000/- was being sent towards the property tax. Ex.B.-2 is only a certificate issued by the "Hindu" so as to fortify the case of the landlords

that the Gaylord Restaurant came into the portion of the suit premises only on 3rd November 1966.

6. We shall now refer to the oral evidence. D.W.1 is a partner of the Gaylord Restaurant. He says that he is a lessee of the suit building from 1st

November 1966 and he has taken on lease a portion of the building prior to November 1966. He refers to the repairs done to the premises and in

chief-examination he would say that his portion was ready only on 1st November 1966 and that he started the restaurant on 3rd November 1966.

He categorically states that he started to pay the rent from 1st November 1966. He refers to Exs.A.-1 and A.-2 and explained that what he meant

was that the defendants promised to give the premises on lease to them and that the lease actually commenced only from 1st November 1966. In

cross-examination, nothing very serious was brought out. He reiterated in cross-examination that what he meant by saying that he has taken on

lease was that he wanted to take the portion and there were negotiations for it. He denied the suggestion that as early from September 1965, he

has occupied the premises and that he started to pay the rent to the landlords. He would also admit that the air-conditioning and further repairing to

the premises was undertaken by the landlords and he had nothing to do with it. D.W. 2 is the civil engineer who was obviously examined on the

side of the defendants to speak about the renovations carried on to the premises and he says that when he began the work, the premises was not

fit for occupation and that the first defendant met all the bills for the repairs. In cross-examination he would support the defendants by saying that

between September, 1965 and April 1966, it was vacant and that D.W. 1 was occupying it now in the sense that on the date when he was

examined and that the Grindlays Bank portion was also vacant from September 1965, to April 1966. He would no doubt say that, when he was

supervising the work, D.W.1 also was frequenting there. D.W.3 who was the joint owner of the premises has sworn in the witness box that during

the period from 1st May 1965 to August 1966, the suit premises was not rented to any body and that the Grindlays Bank started paying rent from

August, 1966, and D.W.1 from November 1966. He would also say that they met the bill for repairing and renovation of the suit premises.

Nothing very telling was brought out in of cross-examination of this witness. It is in the background of the above oral and documentary evidence

that the present action should be viewed.

7. At the outset, we are unable to agree with the learned trial Judge that the oral evidence let in by the defendants is not worthy of credence. As to why he said so passes our comprehension. As to how, he got over the registered lease deed Ex.B.-1, between a very reputed Bank and the defendants as lessors which categorically stated that the rent was to be paid from the 1st November 1966 is not clear at all. As to what was the reason for him to say that D. Ws. 1 and 3 were not speaking the truth is not clear to us, besides being a baseless and unwarranted comment. If therefore, the oral evidence, which has not been in any way belittled or shared in cross-examination, has weight and has to gain acceptance from us, then the fact remains that the earliest point of time when the suit premises were occupied by the two tenants was as spoken to by them; M/s. National Grindlays Bank because obliged to pay the rent from 16th August, 1966, and Messrs. Gaylord Restaurant obliged themselves, to pay rent from the 1st November, 1966.

8. The legal contentions of Mr. R. Thillai Villalan, the learned counsel for the Corporation, are as follows: Firstly, he would say that the entitlement as to vacancy remission is not automatic, but depends upon certain requirements which the law compels the owner of the premises claiming such a remission to strictly adhere to. It is in this view it is said that the correspondence that ensued between the Corporation of Madras and the landlords prior to the institution of the action does not clearly point out that there has been such a compliance of the requirements under Jaw, Basing his arguments of S. 105 of the Madras City Municipal Corporation Act, learned counsel would say that, in order to gain an entitlement for vacancy remission, there should have been a notice prior to such a claim informing the Corporation of Madras not only as to the date when the premises had fallen vacant, but also during the period during which such vacancy and unletting subsisted. In the absence of such a prior intimation or notice, a supervening claim as such cannot be the basis for the statutory entitlement. He has put the argument alternatively also thus. The statutory requirements under S.105 is that there should be two notices viz. a notice of intimation about vacancy and unletting followed up by another distinct and separate notice making a claim for the vacancy remission. He would urge, therefore, that the correspondence that ensued between the

respective parties would not satisfy the statutory requirements as above and in the light of it he would say that the claim ought to be rejected.

9. On the other hand, Mr. Chellaswamy, learned counsel for the appellants, would urged that a statutory entitlement is intended for the benefit of

the person who can claim it and therefore, a substantial compliance of the provisions which would form the has is for such claim would be sufficient

and that accent on the form ought to be avoided. With reference to the same correspondence already referred to by us, he would urge that the

claim is in order and ought to have been accepted by the Commissioner. He also hesitantly put forward the plea that the second suit is barred

under Order II Rule 2 C.P.C. Both the parties, however, are agreed that, if the claim for vacancy remission is sustainable in law, then the

Corporation has to recalculate the amount which the landlords are liable So law to pay for the various half years in question and, if on such a

recalculation any amount is payable by the landlords, they would pay the amount to which the Corporation would be entitled.

10. The Tamil Nadu City Municipal Corporation Act as modified in 1962, is a self-contained code and it is intended to consolidate and amend the

law relating to the Municipal affairs of the City of Madras, Provisions like Ss. 137-B, 103 and 390-A of the Act are all features which indicate that

the Corporation Act is a self-contained one not only in the matter of laying down the substantive law, but also in the manner in which the

substantive law should be implemented and proceeded with both by the statutory authority as well as by the citizen who has recourse to it. It has

set its own rules and guidelines in the matter of taxation and finance. One the taxes, which the Municipal Council may levy is property tax. S.99

of the Act provides that, if the Council by a resolution determines that property tax shall be levied, such tax shall be levied on all buildings and land

within the city of Madras, save those exempted. The other part of S.99 is not quite relevant for purposes of our discussion. S.100 sets out the

method of assessment of property tax. S.101 enables the Council to grant exemption to certain buildings from the payment of property tax. There

are also special exemptions provided for in S.102 which provides for an alternative has is of property tax in respect of certain properties. S.103

mandates that property tax shall be a first charge on the building and the land and also upon the movable property, if any, found therein and

belonging to the person liable to pay such tax. S.104 says that the property tax shall be levied every half year and shall, save as otherwise

expressly provided in Sch. IV, be paid by the owner of the assessed premises within 15 days after the commencement of the half year. S.105

deals with vacancy remission. It is convenient to extract It here:

105 (1) when any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in

any half-year, the commissioner shall remit so much, not exceeding one-half of such portion of the tax as relates to the building only as is

proportionate to the number of days during which the building was vacant and unlet in the half-year.

(2) Every claim for remission under sub-S.(1) shall be made during the half-year in respect of which the remission is sought or in the following half-

year and not afterwards.

(3) (a) No claim for such remissions shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to

the commissioner

(i) that the building is vacant and unlet; or

(ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding half-year.

(b) The period in respect of which the remission is made shall be calculated:-

(i) if remission is sought in respect of the half-year in which notice is delivered, from the date of delivery of the notice or from the date on which the

building became vacant and unlet, whichever is later; and

(ii) if remission is sought in respect of the half-year succeeding that in which the notice is delivered, from the commencement of the half-year in

respect of which permission is sought or from the date on which the building became vacant and unlet, whichever is later.

(c) Every notice under Cl.(a) shall expire with the half-year succeeding that during which it is so delivered, and shall have no effect thereafter.

11. Ss.106 to 109 deal with certain obligations on the part of the owner in case of transfer of the building or reconstruction or demolition of the

same, remission of taxes, and the powers of Commissioner to condone non-compliance of certain requirements under the earlier provisions and

also to call for, information for purpose of assessing to property tax.

12. The cumulative effect of the above provisions is fairly clear. The levy is made every half-year and this is the unit of taxation. Such a levy made

every half-year being the has is of taxation, the hypothesis, which would prompt the taxing authorities to levy such a property tax for one half-year,

may not be the same for the other half-year. It is in this respect that the distinctness and reparability of every half-year is maintained throughout in

the Act. As early as 1193, this proposition was recognised and it has stood the test of time. A Division Bench of the Bombay High Court in

Pitamberdas v. Jambusor Town Municipality 17 Bom. 510 said that the levy of a tax in each year gives a new and distinct cause of action, and the

payment of the tax without protest for one year does not bar a suit to recover sum paid in a subsequent year under protest on account of a tax

which was not legally chargeable for that year.

13. In relation to vacancy remission with which we are concerned in these appeals, there are certain guidelines in the matter of the method of

application for remission and the consequential grant of it by the Commissioner. S.105(1) enables the Commissioner in cases where a building has

fallen vacant and unlet for 30 or more consecutive days in any half-year to remit that much of property tax as is provided for therein and in the

successive sub-clauses. S.105(3)(a) says that no claim for such remission under S.105(2) shall be entertained unless the owner has previously

delivered a notice to the Commissioner that the building is vacant and unlet or that the building is likely to fall vacant and remain unlet from a

specified date either in the half year in which the notice is delivered or in the succeeding half year. There is, therefore, a provision for intimation of

prospective vacancy and unletting as well. Such a notice shall be followed up by a claim during the half year in respect of which the remission is

sought or in the following half year and not afterwards. This is provided for in S. 105(2) the method by which remission should be granted is dealt

within S.105(3)(b). This provision, read with S.105(1), is obviously intended to enable the assessing authority to grant such remission to which the

landlord would be entitled and which is obviously variable according to the facts and circumstances of each case.

14. At this stage, it would be necessary to state the nature of the enquiry which

is contemplated under S.105(3)(b). As vacancy remission and an enquiry thereto involves investigation into rights and obligations, the enquiry officer is a quasi judicial tribunal who is to follow the principles of natural justice. He is to hear the affected party and after giving such a full and adequate opportunity to him reckon the vacancy remission to which the landlord may be entitled to and grant that, if he is so entitled to. In the instant case, we do not find any evidence that such an enquiry was held when the statutory authority rejected the vacancy remission. In a casual manner and without any due enquiry as is required of a quasi-judicial tribunal the rejection was made. We, therefore, treat such orders of rejection made as honest and unenforceable in the eye of law.

15. To continue, the important point to be noticed is that every notice contemplated under S.105 shall expire with the half year succeeding that during which it is delivered and shall have no effect thereafter. But, S.108-A enables the Commissioner at his discretion to condone emissions to give notice under S.105 and other sections referred to therein. The point to be considered is whether, in the light of such statutory provisions two independent and separate notices, as urged by Mr. Thilisi Villalan, are necessary under S.105 of the Act, one informing the taxing authority about the vacancy and unletting or the prospective vacancy or unletting followed up independently by a claim for remission. When the statute itself provides that the non-issue of notices contemplated under S.105 can be condoned at the discretion of the Commissioner, then obviously the provision as to delivery of notice contemplated under S.105 (3) (a) is one which is capable of being liberally construed the main intentment of the sub-Cl.(3)(a) (ii) of S.105 is that the taxing authority should be put on notice promptly about the vacancy and unletting or the prospective vacancy and that (here should be a claim for vacancy remission as prescribed by the Act. The word "previously" appearing in sub-Cl.(3)(a) of S.105 of the Act cannot be subject to a rigid interpretation. Taking the above relevant sub-clauses of S.105 together, we are of the view that both the information as to vacancy and unletting, as also the claim for remission under sub-Cl.(1) of S. 105 being integrated one with the other, can be consolidated in one notice, as the purpose of the provisions is not lost by such a process. The learned counsel for the respondent says that the

delivery of the notice regarding the vacancy should precede a claim and these provisions are mandatory. In our view, the word "previously" used in sub-Cl.(3), (a) of S.105 can serve only one public purpose. It is obviously intended to put the taxing authorities on notice of such vacancy or prospective vacancy and alert them to make such investigations as they may be inclined to make to test the truthfulness or correctness of such information. If a notice is cumulative in the sense that it is not only informative of the vacancy but also of the claim for remission in consequence thereof, no prejudice is caused to the taxing authority. Viewed in this light, the delivery of a consolidated notice containing information about the vacancy and coupling it with a claim for remission would not, in our view, be a noncompliance with the provisions of S.105 of the Act, and much less a departure from this provision. By way of analogy, the Supreme Court in *Somawanti v. State of Punjab* AIR 1963 S.C. at page 171 while considering the provisions of the Land Acquisition Act and in a case where the notification under S.4 and the declaration under S.6 were contemporaneously made in one notification, expressed the view:

A notification under sub-S.(1) of S.4 is a condition precedent to the making of notification under sub-S.(1) of S.6. If the Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the provisions of S. 5-A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provisions of the law even though the two notifications are published on the same day.

Therefore, the saving of a consolidated notice containing the information as to vacancy and unletting coupling it with the claim for remission would sub-serve the substance of the requirements of S.105 and would not in any way be a departure from it. As in all cases the substance of the enactment has to prevail over the form, we are of the view, that notice under S.105(3)(a) and the claim under S. 105(2) could be made in one notice and the inclusion of the claim for remission in the notice informing the authority about the vacancy cannot be equitably, justifiably or even legally be said to be noncompliance with the substance of the relevant requirements under S.105.

16. The decision of V. Ramaswami, J. in S.A. 919 of 1971 which was placed before us by Mr. Thillai Villalan, runs as follows:

That section confers power of the Commissioner of the Corporation to remit property tax. But the right to claim this remission is subjected to

certain conditions. The first of such conditions is that the owner of the building shall have previously delivered a notice to the Commissioner

intimating the vacancy or informing him that the building would be vacant from any particular specified future date. The other important condition is

that the claim for remission should be made during the half year in respect of which the remission is sought or in the following half-year, but not

afterwards. The third condition that has to be satisfied is that the building has been vacant and unlet for thirty or more consecutive days in any half-

year. In order, therefore, to entitle the owner for remission he must not only intimate the vacancy but should also specifically make a claim for

remission with reference to the particular period. It would not be sufficient compliance with the section if the owner has merely intimated that the

building has been vacant from a particular date. Since the remission is to be calculated with reference to the number of days for which the building

has been vacant in the particular half-year, the claim therefore must state from what period to what period the building was vacant in order to

enable the Commissioner to grant it.

We do not think that the learned Judge has expressed that view that both the notice of vacancy and the claim for vacancy remission should be

made under independent communications. What is, however, pressed into service is that in the claim for vacancy remission, the landlord must state

from what period to what period the building was vacant in order to enable the Commissioner to grant it This question would arise only in cases

where there has been a partial vacancy or unletting of the premises during a particular half-year. But if the premises was vacant for the entire half-

year the question may not arise. Even otherwise, S. 105(3)(a) compels the landlord to deliver a notice to the Commissioner stating that the building

is vacant and unlet or the building is likely to be vacant from a specified date either in the half-year in which the notice is delivered or in the

succeeding half-year. It is only in the enquiry which as we have already stated is a quasi-judicial enquiry which is obviously contemplated under

S.105(3)(b), that the further hypothesis might be required in order to enable the taxing authority to reckon the actual benefit to which the landlord

is entitled to in consequence of such vacancy. We are of the view that the landlord could furnish such particulars as to the period during which the

building was vacant or is likely to, be vacant during the course of such investigation by the taxing authority. If the opinion expressed by V.

Ramaswami, J. in the above S.A. was that if the landlord failed to state from what period to what period the building was vacant, when he deliver

the notice, then there was no compliance with the norms set out in S.105, we are unable to share that view.

17. In the light of such statutory provisions, the merits have to be considered. In so far as the first case is concerned, Exs. B-5, B-7 and B-14 read

together do comply with the requirements of S. 105. But, each notice is self-contained in the sense that the landlords not only passed on the

information as to vacancy, but they were also claiming contemporaneously their entitlement as to vacancy remission in each of these notices. As in

our view such notice is possible under law and subserve the purpose and intendment of the guidelines set out in S. 105, we are of the view that the

notice as to vacancy remission and the claim for such remission contained in the above exhibits are enough for the defendants to gain the

entitlement under law regarding vacancy remission. As regards the second suit and in so far as it relates to the second half year 1965-66 and the

first half year 1966-67 such notices were given by the defendants, if not in the annexure to Ex. B-10, but certainly under Ex. B-14. No doubt,

there is justification in the contentions of learned counsel for the respondent, when he says that Ex. B-10 as such cannot be taken into

consideration as it is only a copy and it is not even purported to have been signed by any one of the defendants. But, be that as it may, Ex. B-14,

however, is sufficient for us to hold that there was a notice of vacancy coupled with a claim for the legitimate vacancy remission to which the

defendants will be entitled to. It is not necessary for us in these circumstances to consider the import of Ex. B-16. The learned counsel for the

appellants conceded that Ex. B-16 would not tantamount to a notice of the information of vacancy within the meaning of the Act in so far as the

first half year 1967-68 is concerned.

18. Having regard to the above exhibits and in view of the fact that we have accepted the oral evidence let in by the defendants, particularly the sworn testimony of D.Ws. 1 and 3 that the former did not pay the rent and the latter did not receive the rent for that portion of the suit premises occupied by Gaylord Restaurant and in view of the recital in Ex.B-1 in and by which it is clear that National Grindlays Bank began to pay rent from the 16th of November 1966, the appellants claim for vacancy remission has to be accepted and cannot be rejected.

19. The only surviving point for consideration is whether Order II Rule 2 would in any way be a bar to the institution of the second suit. We shall presently consider the merits in this contention. The principles governing the adoption of Order II Rule 2 as a principle of law are very well laid and need not be reiterated, except to make reference to those well-known decisions rendered by our Court, the Privy Council and the Supreme Court.

20. In *Md. Khalil Khan v. Mahbub Ali Mian* AIR (36) 1949 P.C. 78 at page 86 the principles have been summarised by their Lordships thus:

(1) The correct test in cases falling under O. 2, R. 2, is "Whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit" *Moonshee Buziloor Ruheem v. Shamsunnissa Begum* 1867-II M.I.A. 551 : 2 Sar. 259 P.C.

(Supra).

(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment.

Read v. Brown 1889-22 Q.B.D. 128 : 58 L.J.Q.B. 120 (Supra).

(3) If the evidence to support the two claims is different, then the causes of action are also different. *Brunsdon v. Humphrey* 1884-14 Q.B.D. 141 :

53 L.J.Q.B. 476 (Supra).

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. *Brunsdon v. Humphrey* 1884-14

Q.B.D. 141 : 53 L.J.Q.B. 476 (Supra).

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the

relief prayed for by the plaintiff. It refers.....to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. *Muss.*

Chandkour v. Partab Singh 15 I.A. 156 : 16 Cal. 98 P.C. Supra. This observation

was made by Lord Watson in a case under S.43 of the Act of

1882 (Corresponding to O.2, R.2) where plaintiff made various claims in the same suit.

Amongst this is the well-known rule that, if the evidence to support the two claims is different, then the causes of action are also different.

21. In *M.S. Sastri v. Vijayawada Municipality* AIR 1957 A.P. 896 the well-known and eminent Judge, Viswanatha Sastri, J., dealt with an

analogous situation and observed as follows :

The tax had to be assessed and demanded separately for each half year by the Municipality and was also paid by the assessee under protest in

respect of each half year. It is not as if the tax for a half year not paid becomes merged in the tax liability for the succeeding half years or that there

is a continuous running account between the Municipality and the assessee. The assessment for each half-year is a separate proceeding and an

illegal levy in respect of each of the half-years gives rise to a separate cause of action to the plaintiff for recovery of the amount so levied. On each

occasion which the Municipality exacted payment of more than what was lawfully due to it, it was committing an actionable wrong in respect of

which the plaintiff had a distinct cause of action.

22. Again, the Supreme Court in *Sidramappa Vs. Rajashetty and Others*, succinctly laid down the basic principles on which Order II, R. 2 rests. It

stated the requirements of the Order thus :

The requirement of Order 2, R. 2, is that every suit should include the whole of the claim which the plaintiff is entitled to make in respect of a cause

of action. "Cause of action" means the cause of action for which the suit was brought. Cause of action is a cause of action which gives occasion for

and forms the foundation of the suit. If that cause of action enables a person to ask for a larger and wider relief than that to which he limit his claim,

he cannot afterwards seek to recover the balance by independent proceedings.

With great respect, we shall adopt the expression that the cause of action on which the earlier suit and the latter suit are based should be the same

or the foundation for both the suits should be the same and similar. We have already, with reference to the decision of the Bombay High Court

which is very old and in the light of the statutory provisions of the Act themselves, in the course of our Judgment, stated that the levy of property

tax gives rise to a distinct cause of action in each half year in which it is levied and there are Provisions in the Madras City Municipal Corporation

Act itself which enable the Corporation to recover the sum in the manner stated therein. It is in this respect that the special procedure

contemplated in a specially codified enactment, namely the Act, has to prevail over the general norms and procedure contemplated in common law

and as adumbrated in the Criminal Procedure Code, as it is well-known that the special prevails over the general. It is the procedure which is

stated and set out in the Act which has to be followed by the Corporation or by the citizen who claims a relief under that Act and he cannot,

therefore lightly invoke the general principles of procedure and seek to set at naught a claim by the Corporation on the ground that the cause of

action is continuous and one has connection with the other. The second suit is based on a cause of action which is totally independent from the

cause of action on which the first suit is laid. In that view, we are unable to agree with the learned counsel for the appellants, who of course, lightly

argued this contention that O.2. R.2 would bar the institution of the second suit.

23. On this point, our learned Brother Ismail, J. felt a doubt and, when these appeals came up before him, in the first instance, he felt that the

question is bereft of authority and that it was desirable that the same should be decided by a Bench. It is in this context that the appeals have been

set before us. In light of our Judgment as above, the appellants are entitled to succeed.

24. The learned counsel for the Corporation was good enough to make a calculation memo in each of these cases on the footing that the appellants

would succeed in these appeals. No doubt, this was done under our directions. On the basis of the calculations, over which there is no dispute, it

is now brought to our notice that, in so far as O.S. No. 6659 of 1958 is concerned, the Corporation would be liable to refund a sum of Rs. 970

36 to the defendants and in OS. No. 3273 of 1968, the calculation memo says that the Corporation would be entitled to a sum of Rs. 1,328.47

and not the suit claim. Adjusting the credit and the debit as disclosed in the calculation memos, the net result is that in both the suits there will be a

common decree whereunder the defendants would be liable to pay a sum of Rs. 358.11 with proportionate costs throughout. There will be no

separate decree drawn in each of these suits.

25. We are thankful to Mr. Thillai Villalan for having given this calculation memo so promptly, when we requested him to do so. The appeals are partly allowed with proportionate costs.