
(2018) 05 BOM CK 0057
In the Bombay High Court
Case No : Writ Petition No. 537 Of 2017

Gokuladas J. Shet Talaulikar (Dec) Through LRs	APPELLANT
Vs	
Narayan @ Santosh S. Sinai Usgaonkar & 4 Others	RESPONDENT

Date of Decision : 02-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 26 Rule 9
Goa Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules 1969 — Rule 9(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 05 BOM CK 0057

Hon'ble Judges : C. V. Bhadang, J

Bench : Single Bench

Advocate : Nigel Da Costa Frias, Ajit R. Kantak, Rajas A. Kantak

Final Decision : Dismissed

Judgement

1. Rule made returnable forthwith.Â Shri Kantak, the learned Counsel for the contesting respondent nos. 1 and 2 waives service.Â Heard finally by consent of parties.

2. The challenge in this petition is to the concurrent orders of the Courts below, directing eviction of the petitioners from the suit premises.

3. The facts, necessary for the disposal of the petition, may be stated thus :

That the respondent nos.1 and 2 filed an application for eviction against now deceased Gokuldas Talaulikar, before the Additional Rent Controller at

Panaji, seeking his eviction from the suit premises on various grounds.Â However, in the present petition, the learned Counsel for the petitioners has

restricted the claim for eviction on the ground of arrears of rent, subletting, the tenant having committed such acts of damage as are likely to impair

materially the value or utility of the building and nuisance. The suit premises comprise of a block situated on the first floor of the building known as

â??Usgaonkar Buildingâ?, situated at Ponda, Goa, comprising of two rooms, one Verandah and WC.Â The suit premises were leased out to now

deceased Gokuldas Talaulikar under an Agreement of Lease dated 01/08/1969.Â According to respondent nos.1 and 2, the suit premises were aÂ residential block.Â

4. It was contended that the tenant, without any authorisation/ permission, started using the suit premises for nonresidential purpose. It was contended

that the tenant, without obtaining any consent from the landlord, has carried out modification to the suit premises, which comprised of removal of the

door, window frame, fixation of aluminum frames and doors and fixation of wash basin.Â It was contended that the tenant carried out major changes

in the suit premises.Â As a result of the same, there was percolation of water through the walls and the flooring on the ground floor shop premises.Â

It was contended that the alterations had the effect of impairing materially the value or the utility of the building and the same was causing nuisance to

the occupiers of the other portions of the building.Â It was also contended that the tenant has transferred his leasehold rights and/ or sublet the whole

or portion of the building for running a Beauty Parlor.Â The respondent no.1 also claimed that the suit premises are required for their bonafide

personal occupation.

5. The original tenant filed a reply and opposed the application. It was denied that he was in arrears of rent or had carried out any changes in the suit

premises.Â The allegations about any such changes having the effect of materially affecting the utility of the building or causing nuisance, have also

been denied.Â It was also denied that the tenant has sublet the premises for running a Beauty Parlor or otherwise.Â The claim of the landlord that

the suit premises were required for their personal occupation, was also traversed.

6. Before the Rent Controller, the parties led oral and documentary evidence.Â

7. The learned Rent Controller, by a judgment and order dated 20/11/2015, allowed the application, directing the original tenant to hand over vacant

possession of the suit premises. Original tenant Gokuldas Talaulikar challenged the same in appeal, being Rent Appeal No.18/2015, before the learned

Ad hoc District Judge at Panaji, Goa.Â The original tenant Gokuldas died during

the pendency of appeal.Â The petitioners are his successors. The learned District Judge, by an order dated 21/04/2017, has dismissed the appeal, which brings the petitioners to this Court.

8. I have heard Shri Costa Frias, the learned Counsel for the petitioners and Shri Kantak, the learned Counsel for the respondent nos.1 and 2, who are the contesting respondents.Â With the assistance of the learned Counsel for the parties, I have gone through the record.

9. It is submitted by Shri Costa Frias, the learned Counsel for the petitioner that the payment of Municipal Tax is not a condition of the Lease

Agreement and there was no agreement between the parties to pay the municipal tax and thus, it cannot form part of the rent.Â It is submitted that

the Lease Agreement does not contemplate payment or sharing of the house tax and merely because the tenant was paying half of the house tax for

some years, cannot imply that the same was part of the rent.Â It is submitted that the tenant has stated that he was paying half of the house tax, as

an 'amicable arrangement' and at the insistence of the landlord. There is no suggestion put to him in the cross-examination that the house tax was

included as a part of the rent. It is, thus, submitted that, in the first instance, it has not been established that there was any agreement to pay or share

the house tax and secondly, the same not being a part of the rent, no order under Section 22(2)(a) of the Act can ensue for non-payment of such

tax.Â The learned Counsel was at pains to point out that there has been no novation of the contract pleaded by the landlord and the application is

devoid of material particulars as are required by rule 9(1) of the GoaÂ Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules 1969 (the

Rules, for short).

10. It is next contended that the building was constructed around 1962, as per the construction licence dated 29/05/1962.Â It is submitted that the

Lease Agreement being executed on 01/08/1962, the provisions of the Act were not applicable to the building at the relevant time as per Section 3(c)

of the Act.

Therefore, if the house tax was to be included in the stipulated rent, post Lease Agreement dated 01/08/1969, there had to be fresh agreement

between the parties to that effect or determination of fair rent under Section 12 of the Act.Â It is submitted that Section 16(1) of the Act prohibits the

landlord from claiming or recovering from the tenant, any sum, in excess of the stipulated / agreed rent, in the absence of fair rent, being fixed by the

Rent Controller. It is submitted that Section 16(3) provides that any stipulation in contravention of subsection (1) or (2) of Section 16, shall be void,

which implies that the claim or demand by the landlord of house tax in addition to rent, in this case, is void. It is submitted that continuous / regular

payment of house tax from inception i.e. from 01/08/1969 till filing of the application, has not been established. He, therefore, submits that the

ground as contemplated under Section 22(2)(a) of the Act is not established. Reliance, in this regard, is placed on the decision of this Court in the

case of Smt. Hanjabi Ratanchand Solanki and others Vs. Smt. Kanugabai Hansraj Jain and others, 2011(2) BOM C.R. 10.

11. In so far as the ground of subletting under Section 22(2)(b)(i) of the Act is concerned, it is submitted that the same is not established. It is

submitted that there is no averment in the application that the tenant has parted with the possession of the tenanted premises or any part thereof or the

tenant having inducted any third party in the premises. It is submitted that the record clearly discloses that the petitioners have always been in

possession and occupation of the tenanted premises and mere change of user, does not ipso facto imply that there has been subletting or that the

tenant has parted with possession of the tenanted premises. Reliance, in this regard, is placed on the decision of the Supreme Court in the case of

Ms. Celina Coelho Pereira and others Vs. Ulhas Mahabaleshwar Kholkar and others, 2010 (2) Goa LR 68.

12. In so far as the grounds under Sections 22(2)(c) and 22(2)(d) of the Act are concerned, the learned Counsel has referred to the evidence of AW2

Shri Jayant Mandurkar and AW3 Mr. Satish Nagarsenkar, in order to submit that the evidence is insufficient to establish that the tenant has committed

such acts of damage as are likely to impair materially the value or utility of the building. It is submitted that AW3 Satish is an interested witness, he

being a tenant of the applicants and as such, no reliance can be placed on his evidence. It is submitted the evidence of AW3 Satish is not sufficient

to establish that the tenant has been guilty of such acts and conducts, which are a nuisance to the occupiers of the other portions of the same

building or of the buildings in the neighbourhood. The learned Counsel has taken exception to the site inspection report of the Rent Controller which

according to the learned Counsel, does not attribute any act of commission or omission to the tenant and is, thus, insufficient to establish material

alterations of the premises or causing damage to the building, impairing its utility or value.Â The learned Counsel was at pains to point out that the

findings in this regard by the Rent Controller as well as the learned District Judge are based on no evidence and are completely de hors the record.Â

It is submitted that the approved plan of the building has not been produced and has been suppressed.Â It is pointed out that the Lease Agreement

mentions that the premises has a WC and a case made out by the landlord is that bathroom was constructed in addition to this WC, which has not

been proved.Â The leakage from the pipe cannot be solely attributed to the petitioners.Â It is submitted that in any case, the petitioners are ready

and willing to bear any proportionate costs of repairs, if so ascertained.

13. It is next contended that the Rent Controller and or the Appellate Court ought to have appointed an expert commissioner such as Civil Engineer or

an Architect to ascertain whether there are any material alterations done and whether there is seepage of water in the walls as alleged by the

landlord, which are attributable to any such alterations made.Â It is submitted that such power is available to the Rent Controller or the Appellate

Court under Section 53 of the Act read with Order XXVI, Rule 9 of CPC and by failing to appoint a Commissioner, the Appellate Court has failed to

exercise jurisdiction vested in it, which has caused prejudice to the petitioners.Â Reliance, in this regard, is placed on the decision of the Supreme

Court in the case of Hari Rao Vs. N. Govindachari and others, 2005 SAR (Civil) 812.Â Lastly, reliance is placed on the decision of the Supreme

Court in the case of Surya Dev Rai Vs. Ram Chander Rai and others, 2003 (5) SC 390, in order to submit that the jurisdiction under Article 226 of the

Constitution, has to be exercised for correcting gross errors of jurisdiction and under the supervisory jurisdiction under Article 227 of the Constitution,

this Court is expected to keep the subordinate Courts within the bounds of their authority.Â It is submitted that, this is a case where this Court should

exercise the jurisdiction.Â On behalf of the petitioner, reliance is also placed on the decision in the case of Abdul Kader Vs. G.D. Govindaraj (D) by

LRs, (2002) 5 SCC 51.

14. On the contrary, it is submitted by Shri Kantak, the learned Counsel for the

respondent nos. 1 and 2 that although the lease deed does not contain a term for payment of house tax, an agreement to pay the same can be inferred as the tenant had paid the tax for certain period, which is reflected in the receipts.Â It is submitted that there is no lack of pleadings, in as much as, under Rule 9 of the Rules only limited pleadings are contemplated and the Rent Controller is required to adopt the procedure under the Mamlatdar's Courts Act.Â It is submitted that the pleadings of the respondents are sufficient.Â It is submitted that both the Courts below have given valid and cogent reasons while holding that the ground under Section 22(2)(a) of the Act is established.Â Reliance is placed on the decision of the Supreme Court in the case of Shamshad Ahmad and others Vs. Tilak Raj Bajaj (deceased) through LRs and others, (2008) 9 SCC 1, in order to submit that tax can be a part of the rent.Â It is submitted that there is no perversity in so far as the finding recorded by the Courts below, in the absence of which no interference is called for.Â Reliance is placed on the yet another decision of the Supreme Court in the case of Damodar Lal Vs. Sohan Devi and Others, (2016) 3 SCC 78.Â It is submitted that there was a notice demanding tax and the tenant has also paid such tax for a considerable period of time.

15. In so far as the ground of subletting is concerned, it is submitted that the same is sufficiently established on the basis of the inspection report of the Rent Controller, which is referable to Section 53 of the Act.Â The learned Counsel was at pains to point out that there was no objection raised to the inspection report by either of the parties at any time.Â It is submitted that in so far as the aspect of appointment of Commissioner by the learned District Judge is concerned, the same has been dealt with by the learned District Judge, in para 18 to 23 of the judgment.Â It is submitted that the act of subletting is always of a surreptitious nature of which direct evidence is seldom available and the Court is required to draw a reasonable inference on the basis of the evidence available on record.Â It is submitted that in the inspection report, the Rent Controller had found that there was a wash basin affixed and there were also chairs found in the tenanted premises, which are used in a beauty parlour and as such, the Courts below have rightly come to the conclusion that there is subletting.

16. In so far as the grounds under Section 22(2)(b)(i) and 22(2)(c) are

concerned, it is submitted that the tenant has admitted the damage and from the evidence on record, including the complaint of Mr. Nagarsenkar and Mr. Sawkar, it is sufficiently established that the tenant has committed such acts

of damage, as are likely to impair, materially the value or utility of the building and the tenant has been guilty of such acts and conducts, which are a

nuisance to the occupier of the other portion of the building.Â He submits that the Courts below have given cogent reasons and the view taken is

plausible, which cannot be interfered with in exercise of jurisdiction under Article 226 and 227 of the Constitution of India.Â Reliance, in this regard,

is placed on the decision reported in the case of M/s Bharat Sales Ltd. Vs. Life Insurance Corporation of India, AIR 1998 SC 1240 and Mrs. Anelia

Abreu Pinti Vs. Ms. Olinda de Menezes 9since deceased) and others, 1997(4) BCR 125.

17. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

18. At the outset, it is necessary to mention that before the Rent Controller, eviction was sought on six grounds, out of which the learned Counsel for

the respondent has restricted the claim for eviction only on four grounds i.e. under Section 22(2)(a), 22(2)(b) (i), 22(2)(c) and 22(2)(d) of the Act.Â

Therefore, the order of eviction as confirmed by the learned District Judge, is being examined only on these four grounds.

19. Before considering the individual grounds, it is necessary to deal with the submission based on the year of the construction of the building and

Section 16 of the Act.Â The record does not disclose that any such ground was raised either before the Rent Controller or before the learned District

Judge.Â Thus, this ground is being raised for the first time before this Court. Normally, this Court would be slow to entertain any such new ground.Â

However, looking to the fact that the ground is based on the provisions of the Act, the year of construction of the building is not in dispute, I propose to

briefly examine the same.Â

20. It is contended that the building was constructed somewhere in the year 1962 and, therefore, in terms of Section 3(1)(c) of the Act, the provisions

of the Act were not applicable to the building in the year 1969, when the lease was executed.Â It is contended that therefore, a fresh lease was

required to be executed, if at all the landlord wanted to claim that the municipal

taxes were part of the rent. It is also contended that under Section 16 of the Act any such additional amount by way of Municipal Taxes, could not have been claimed.

21. The contention, in my considered view, cannot be accepted. Section 3(1)(c) of the Act provides that the act will not apply to any newly

constructed building for a period of 15 years from the date of its completion. This is, all that Section 3(1)(c) provides, which nowhere provides that

in respect of such building, a fresh lease has to be executed after the date on which the provisions of the Act would apply to such a building.

Indisputably, the lease deed was executed in the year 1969. However, when the application for eviction was filed in the year 2010, it is not disputed

that the provisions of the Act were applicable to the tenanted premises. It is also an admitted position that the tenant was paying 50% of the

municipal taxes although according to him, it was by way of an amicable arrangement. I would propose to examine the said contention while

dealing with the ground under Section 22(2)(a) of the Act. However, for the present purpose, it cannot be accepted that because in the year 1969,

the provisions of the Act were not applicable (as the building had not completed 15 years from the date of its completion). Now coming to Section

16 of the Act, all that Section 16 prohibits is receipt of premium and nothing else. This would be apparent from the heading of Section 16 itself.

The claim of municipal taxes cannot be equated with premium. This Court in the case of Joao Xavier Pinto Vs. Oswald J.C. Velho and others, 1987

(1) BOM C.R. 113 has held that the only prohibition under Section 16 is for the landlord accepting premium. For the aforesaid reason, the

contention as raised above, cannot be accepted.

22. Now coming to the ground of arrears of rent under Section 22(2)(a) of the Act, admittedly, the lease deed does not contain any stipulation for

sharing of house tax. However, it is an admitted position that the tenant had reimbursed 50% of the house tax for certain period. In para 9 of the

written statement, the respondent claims that the house tax was paid by the owners as per the agreement with the respondent and that the

respondent had reimbursed the house tax to the applicant in respect of the tenanted premises by way of an amicable arrangement. It has also

come on record that the house tax for the period from 2003-2009 was not paid

by the tenant.Â There is a letter dated 11/05/1999 on record by which a demand for house tax was made and a rent receipt dated 05/10/1999 for the years 1997-98, 1998-99, 1999-2000 also makes a mention about the house tax.Â In the legal notice dated 03/04/2010, a claim regarding non-payment of house tax was made and it was a demand for payment of outstanding rent after which the payment of rent and municipal tax for the year 2010-11 was made.Â The question is whether on such basis of non-payment of house tax, an eviction under Section 22(2)(a) of the Act can be ordered.Â The Hon'ble Supreme Court in the case of Abdul Kader (supra) has held that the term 'rent' is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord.Â It has been held that the amount of taxes, which are agreed by the tenant to be paid to the landlord, was part of the rent and the word 'rent' under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, has to be construed accordingly.Â While holding so, the Supreme Court has noticed that the term 'rent' has not been defined in the Act and, therefore, the Supreme Court went by the dictionary meaning of the rent and held as aforesaid. It was contended by Shri Costa Frias, the learned Counsel for the petitioner that the case is distinguishable on facts in as much as there was a specific agreement in that case to pay half of the annual proper tax.Â For this reason alone, the decision cannot be said to be distinguishable.Â The principle as deduced, is essentially about the construction, which can be placed on the term 'rent'.

23. Coming to the present case, the term 'rent' has also not been defined under the Act and, therefore, going by the ordinary dictionary meaning, as has been done by the Supreme Court, it will have to be held that the term 'rent' would include amount of taxes, which are agreed to be paid.Â Some assistance in this regard can also be drawn from Section 12 of the Act, which provides for determination of fair rent by the Rent Tribunal. Subsection (2) of Section 12 of the Act would show that 50 % of the taxes or cesses levied by the local authority and payable per annum by the landlord, are to be included in the fair rent as may be determined by the Rent Controller.Â It is true that thereÂ is no express agreement to pay the taxes in the lease deed of the year 1969.Â However, from para 9 of the written statement and the evidence on record, it can clearly be gathered that there was an

implied oral agreement to pay such taxes by the tenant.Â Both the Courts have concurrently held that this would amount to the tenant being in arrears of rent and which is a plausible view.

24. It was contended by the learned Counsel for the petitioner that unless there is novation of the contract, such an agreement to pay the municipal taxes cannot be gathered.Â The contention cannot be accepted.Â Section 62 of the Contract Act, provides for effect of novation, rescission or alteration of contract. Section 62 is one of the instances of contracts/ which need not be performed.Â In essence, if the parties to a contract agree to substitute a new contract or to rescind or alter it, the original contract need not be performed.Â It is difficult to understand how this principle would be attracted in the present case.Â There is sufficient evidence on record in the present case to infer that there was an implied oral agreement to pay 50% of municipal taxes in respect of the tenanted premises.Â Â Such an agreement would only be supplemental to the original terms of the lease deed and cannot be by way of substitution, rescission or alteration of the original contract.Â The contention, therefore, has to be rejected.

25. Reliance on behalf of the petitioner on the decision of this Court in the case of Smt. Hanjabi Ratanchand Solanki (supra) is equally misplaced.Â In that case, a Court Receiver was appointed initially in respect of the suit property, which was purchased by the respondent in a Court auction.Â The Court Receiver had issued a demand notice claiming taxes.Â Before the Trial Court, the petitioners contended that there is a dispute regarding ownership and also claimed that the petitioners had paid certain amount of taxes to the municipal corporation, Pune to prevent the property being auctioned and had also deposited certain taxes in a previous litigation in respect of which they were entitled to get credit in the rent.Â The Trial Court accepting the defence, dismissed the suit for eviction. The Appellate Court reversed the order of the Trial Court and decreed the suit.Â The Appellate Court held that the tenant did not deposit the amount within one month of the notice, thus, the respondent landlord is entitled to decree of possession under Section 12(3)(a) of the Bombay Rent Act.Â Before this Court, it was contended on behalf of the petitioners, that even if it is held that the amount, which was paid by the petitioners to the Corporation, was required to be ignored and could not be adjusted towards the rent, still the

respondent was not entitled to a decree for possession.Â It was contended that the Appellate Court was in error in holding that the case fell under

Section 12(3)(a) of Bombay Rent Act.Â This Court relying upon a decision of the Supreme Court in the case of Raju Kakara Shetty Vs. Ramesh

Prataprao Shirole and another, (1191) 1 SCC 570 held that where the tenant was obliged under the terms of the tenancy or by virtue of the Statute to

pay any taxes to the landlord, since such taxes, which form part of the rent are payable annually, the case ceases to be governed by Section 12(3)(a)

of Bombay Rent Act and would fall within the purview of Section 12(3)(b) of Bombay Rent Act.Â Ultimately it was found on fact that as there was

no agreement to pay education cess â??monthly along with the rentâ?, the Appellate Court was in error in coming to the conclusion that the case fell

under Section 12(3)(a) of the Act.Â In the present case, even assuming that the taxes are payable annually, the taxes from the year 2003-2009 are

unpaid.

26. This takes me to the ground under Section 22(2)(b)(i) of the Act.Â As per the said Section, the tenant is liable to eviction, where the tenant has

without written consent of the landlord transferred his right under the lease or sublet the entire building or any portion thereof.Â It is now well settled

that the agreement or arrangement, in which tenant parts with the possession of the tenanted premises or sublets it, are conducted in a surreptitious or

clandestine manner, behind the back of the landlord and, therefore, direct evidence of such parting or subletting is seldom available and cannot be

insisted upon.Â The matter is essentially of a reasonable inference on the basis of facts, which are properly brought on record.Â The Supreme Court

in the case of M/s Bharat Sales Ltd. (supra) has held thus :

â??4. Sub-tenancy or subletting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts

another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement of understanding between the

tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out the scene. Rather, the scene is enacted behind

the back of the landlord, concealing the overtacts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the

sense that the landlord had not let out the premises to that person nor had he

allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the subtenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sublease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sublet or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sublet.

It can, thus, be seen that it would be difficult for the landlord to prove by direct evidence, contract or agreement or understanding between the tenant and the subtenant and that the person to whom the property has been sublet has paid monthly consideration to the tenant.

It has come on record that the petitioner was running a Typing Institute in the suit premises under the name and style as Indian Institute of Commerce.

The case made out in the application is that it was sublet for running a Beauty Parlour under the name and style as Aroma Beauty Parlour.

The Courts below, after threadbare consideration of the evidence on record, have upheld the ground under Section 22(2) (b)(i) of the Act.

It is necessary to mention that apart from the oral and the documentary evidence in the form of certain photographs, there is an inspection report dated 27/01/2011, which shows that there were two mirrors fitted in the room to the wall.

There was one table, freeze, two chairs, one folding massage chair used for the beauty parlour.

It has also come on record that there was one wash basin with hand shower, which is used in a Beauty Parlour.

There are photographs to show that there was a board of Aroma Beauty Parlour affixed to the

premises.Â It was contended on behalf of the petitioners that somebody had fixed the board only to obtain the photograph to create evidence, which has been refused to be accepted by the Courts below as no such plea was raised in the reply and no complaint was lodged.

27. After carefully going through the evidence on record, I find that the Courts below are justified in holding that there was a set up of a Beauty

Parlour in the suit premises.Â The question is whether this would be sufficient to hold that the petitioner has transferred his right under the lease or

sublet it within the meaning of Section 22(2)(b)(i) of the Act. Â As noticed earlier, direct evidence of such subletting or parting or transfer of the

tenancy rights, is seldom available.Â Once it is established that there was a set up of a Beauty Parlour in the suit premises, the question is one of

inference.Â It may not be out of place to mention that the inspection report by the Rent Controller was not disputed at any time.Â It is not the case

made out that anybody from the tenant's family were holding expertise to run a Beauty Parlour or were running the same.Â In fact it was denied that

there was any such change effected.Â

In the case of Celina Coelho Pereira (supra), on which reliance is placed on behalf of the petitioner, there was a case made out of subtenancy.Â The

specific case made out was that the partnership firm namely Mandovi Tours and Travels was formed, which was not a genuine partnership and it was

formed to cover up, subletting of the suit premises.Â The Additional Rent Controller and the Administrative Tribunal concurrently found that the

partnership was not a genuine partnership and further found that it was difficult to hold that the tenant continued to have a control over the suit

premises.Â In writ, the High Court set aside the concurrent orders of the Courts below.Â The Hon'ble Supreme Court held that the High Court was

not justified in interfering with the concurrent findings, which were based on consideration of the evidence on record and in any case, it cannot be said

that the view of the Rent Controller was not a plausible view.Â Even in that case, once it was found that the partnership was not a genuine

partnership, it was held that the tenant could not be said to have continued to have a control over the suit premises.Â Coming to the present case, the

inference drawn and the findings recorded by the Courts below, in my considered view, cannot be said to be perverse and it appears to be a plausible

view.

28. Now coming to the grounds under Sections 22(2)(c) and 22(2)(d), which can be taken up together.

29. The case made out by the respondent is that the petitioner without consent has carried out modification by fixation of wash basin and doing

construction of bathroom without proper water proofing, as a result of which, there was percolation of water through the walls and flooring.Â AW1

Narayan Usgaonkar has stated in his evidence about the alterations and the resultant percolation of water and the same having materially impaired the

value or the utility of the building.Â It was contended that the tenanted portion was not originally having a bathroom existing therein. It was

constructed illegally subsequently.Â AW2 Jayant Mandurkar, who had conducted an inspection has also spoken about the same.

30. Both the Courts below have accepted the evidence and have upheld the grounds under Sections 22(2)(c) and 22(2)(d) of the Act.

31. The learned Counsel for the petitioner has referred to certain part of the evidence of AW2 Jayant and AW3 Satish, in order to submit that their

evidence is not sufficient to establish the aforesaid grounds.Â For instance, the learned Counsel for the petitioner has referred to the cross-

examination of AW2 Jayant in which he has stated that his report dated 31/10/2010 was prepared with a view to explain any measures that have to be

taken for repairs of the building and for the purpose of verification of the municipal engineer, in case any action has to be taken.Â It is contended that

he has nowhere stated in his report or deposed that there has been structural damage caused to the building or there has been impairment as to utility

or value of the building due to any acts committed by the petitioner.Â Similarly, AW3 Satish, who is said to be a tenant on the ground floor and is

running Pharmacy, has stated that the seepage was noticed around 2 to 3 years, when he had written a letter to Gurudas Usgaonkar, complaining

about the same and presently he has no complaint regarding seepage of water, but still there is dampness on the walls.Â Apart from the evidence of

AW2 and AW3, there is a report of inspection carried out by the learned Rent Controller (which the learned Rent Controller is authorised to carry out

as per Section 53 of the Act and the report has not been objected to) which not only shows the alterations for running a Beauty Parlour as noticed

earlier, but also of fitting of Aluminium windows, grills and airconditioner for which there was a hole drilled in the wall for putting pipe of split AC.Â

Fixing of an Aluminium door after removing the original door.Â The Rent Controller has also noticed about the dampness on the wall and a bathroom.

There are photographs showing the affected walls of the ceiling of the WC. The learned District Judge, after considering the inspection report, the

evidence of RW1 Gokuldas and the report of AW2 Mr. Jayant Mandurkar as well as complaint by Dr. Sawkar and AW3 Satish Nagarsenkar has

held both these grounds to be proved.Â A reappraisal of the evidence is neither necessary nor contemplated in exercise of jurisdiction under

Article 226 and/or 227 of the Constitution of India.Â It is only when the finding is based on no evidence, that this Court can interfere.

32. The Supreme Court in the case of Samshad and others (supra) has held that under Article 226 and 227 of the Constitution of India, the High Court

does not act as Court of appeal or the Court ofÂ error.Â It can neither review nor reappraise nor reweigh the evidence upon which the

determination of subordinate Court or inferior Tribunal purports to be based or to correct the errors of fact or even of law and to substitute its own

decision for that of the inferior Court or Tribunal.Â The powers are required to be exercised sparingly and only in appropriate cases, in order to keep

the subordinate Courts and inferior Tribunal within the limits of law.Â It is not necessary to multiply the authorities on the point.Â However, a similar

view has been expressed in a recent decision in the case of Radhey Shyam Vs. Chhabi Nath and Others, AIR 2015 SC 329.Â On carefully going

through the evidence and the findings recorded by the learned Rent Controller as well as the District Judge, I am unable to persuade myself to hold

that the finding so recorded is either perverse or is based on no evidence.Â I do not find that evidence of AW2 and AW3 can be discarded, on the

grounds as urged on behalf of the petitioners.Â Â

33. On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in the case of Hari Rao (supra) and in particular para 9

thereof.Â In that case, the landlord had claimed that the tenant had put up new sign boards and fixed two additional racks and drilled holes in the wall

and in the beam and had taken independent electric connection and this amounted to commission of act of waste as are likely to impair the value and

utility of the Building.Â It was contended that this has also increased the electric load causing constant blocking out of the fuse in the building.Â In

that case, the Hon'ble Supreme Court has held that mere fixation of sign board etc of the shop and by taking support of parapet wall cannot be

considered as an act of waste, which has materially impaired the value or utility of the building. On facts, it was found that there was no sufficient

evidence in support of the assertion that the parapet wall was likely to collapse.Â More significantly, there was a letter by the landlord giving

permission to the tenant to fix the boards which the Hon'ble Supreme Court found cannot be ignored.Â It can, thus, be seen that in the facts of that

case, it was found that there was no sufficient evidence and the changes were not sufficient to hold that they had materially impaired the value or

utility of the building.Â

34. In the case of Gurbachan Singh and another Vs. Shivalak Rubber Industries and others, (1996) 2 SCC 626, the Hon'ble Supreme Court has held

that the impairment of the value or utility of the building must be determined from the point of view of the landlord and no one else. It is evident that

whether the construction or the alteration is of such a nature so as to materially impair the value or utility of the building, would a question of fact

peculiar to each case.Â

35. It was contended by Shri Costa Frias, the learned Counsel for the petitioner that the respondent has not produced sanctioned plan in order to show

that there was no bathroom originally existing in the premises.Â This by itself, in my considered view, would not be sufficient to discard the other

evidence on the basis of which the Courts below have concurrently come to the conclusion about the construction of a bathroom and the nuisance

caused by percolation of water. The continued dampness even in the absence of actual percolation is bound to materially affect the building.

36. This takes me to the last submission about the Appellate Court not having appointed a Commissioner.Â There was an application made to that

effect by the petitioner, which the learned District Judge had taken up for disposal, along with the appeal.Â The learned District Judge had framed

three points for determination, of which point no.1 was about the necessity to appoint the Commissioner.Â The learned District Judge has dealt with

this aspect from paragraphs 14 to 23 and had found that no case for

appointment of the Commissioner was made out.Â In particular, the learned District Judge has considered that already there was a report of inspection by the Rent Controller available on record, to which there was no objection and there was other evidence both oral as well documentary led by the respondent and if at all the petitioner found it necessary, he could have independently led evidence and nothing barred the petitioner from adducing evidence on these aspects, namely construction of the toilet and the seepage.Â I do not find that this can be said to be a case where the learned District Judge has refused to exercise jurisdiction vested in him under Section 53 of the Rent Act or Order XXVI, Rule 9 of CPC.Â At the cost of repetition, it may be mentioned that there was already a report relatable to Section 53, to which there was no objection and in so far as Order XXVI, Rule 9 of CPC is concerned, this is for the concerned Court to find that local investigation is requisite or proper for the purposes of â??elucidating any matter in dispute.â?Â If sufficient evidence is available on record, the Court may not find it necessary to appoint the Commissioner, so as to â??elucidate the matter in disputeâ?.Â On either counts, it cannot be accepted that there was any refusal on the part of the learned District Judge to exercise jurisdiction vested in him.Â

37. On carefully going through the order passed by the learned Rent Controller and the District Judge, I do not find that any case for interference is made out.Â In the result, the petition is dismissed.

Rule is discharged with no order as to costs.