
(1986) 11 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No's. 5391 and 5515 of 1985

Hemchand M. Singhania

APPELLANT

Vs

Shakuntala S. Tiwari (Smt.)

RESPONDENT

Date of Decision : 28-11-1986

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(1), 13, 13(1), 13(2)
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 113, 66, 67, 27
Transfer of Property Act, 1882 — Section 10, 106, 108, 111

Citation : (1987) 2 BomCR 428

Hon'ble Judges : V.S. Kotwal, J

Bench : Single Bench

Advocate : H.C. Tunara and A.G. Parekh, in W.P. 5391/85 and M.H. Shah, Aspi Chinoy, M.K. Shah, S.R. Chitnis and M.H. Munshi, in W.P. 5515/85, for the Appellant; H.C. Tunara and A.G. Parekh, in W.P. 5515/85 and M.H. Shah, Aspi Chinoy, M.K. Shah, S.R. Chitnis and M.H. Munshi, in W.P. 5391/85, for the Respondent

Judgement

V.S. Kotwal, J.—Ice-cream may be a delight for taste, but it has landed its manufacturer in hot waters and all the said delight has been practically evaporated when engulfed in blunt legal contest. This, though is yet another litigation between the landlord and tenant, it has assumed unusual dimensions not only on the basis of the allegations of the landlord about permanent alterations having been made by the tenant to such a large extent that according to him, it is misnomer to call those as mere alterations, but more on account of a challenge canvassed at the very foundation of the maintainability of the suit on the ground that it is barred by limitation.

2. The petitioner is the owner and landlord of the premises located on Municipal Street No. 16 in Fanaswadi area of this metropolis. The respondent was inducted as monthly tenant in the said premises on the monthly rental of Rs. 105.60, for the purpose of conducting ice-cream business which was being carried by her

husband who is holder of power of attorney on her behalf. The suit premises consisted of entire structure on the ground floor with a loft covering the entire area with corrugated iron sheets. This letting was under an agreement dated 29-12-1975, which was to become effective from January 1, 1976. It is alleged by the landlord that in breach of the agreement and terms of tenancy as also in violation of the prohibition as prescribed u/s 13(1) of the Bombay Rents, Hotel & Lodging House Rates (Control) Act (hereinafter referred to as the Rent Act), the respondent-defendant indulged in several acts of commission under which not only there has been permanent alterations of major nature but the entire structure was completely changed so much so that even the height of the structure was increased and thus, the loft lost its initial character and became almost as a first floor which was creation of the respondent-tenant. In addition, several other breaches have been committed vis-a-vis terms of tenancy. It was also alleged that the respondent indulged in the acts of waste and damage to the property, that further she changed the user of the premises when some of the employees started residing there. On the basis of these and other allied allegations the petitioner served the respondent with a notice to quit terminating the tenancy dated September 20, 1978, which was replied to by the respondent-defendant denying the said allegations, which necessitated a rejoinder being sent by the petitioner on October 16, 1978. Since the demand therein for possession of the premises was not complied with the petitioner-landlord was obliged to file ejectment suit in the Small Causes Court at Bombay being R.A.E. Suit No. 1326/4557 of 1979.

3. All the allegations came to be denied by the defendant in every respect. In effect, it was denied that she had made any alterations at all and if some alterations have been done those were certainly not permanent in nature but were essential for the beneficial user of the suit premises. It was also contended as an alternative that all those alterations, if at all were made, were so made with the consent and permission of the landlord and for which purpose reliance was placed on certain circumstances, including the letter dated December 29, 1978 given by the landlord to the tenant which was sought to be construed as containing the said permission. The allegations of acts of waste and damage to the property and change of user were also stoutly denied.

4. The learned trial Judge recorded a finding that the petitioner-plaintiff had proved that the respondent-defendant without his consent and in violation of terms of tenancy carried out permanent structural addition and alterations in the said premises and further proved that the respondent has committed acts of waste and damage and thereby violated the provisions of section 108(o) of the Transfer of Property Act. On these two counts, therefore, it was held that the petitioner-plaintiff was entitled to a decree for eviction. The third count of change of user is however, negatived. On the basis of these findings the learned trial Judge decreed the plaintiff's suit for possession on November 11, 1982.

5. The unsuccessful respondent defendant challenged that decree in Appeal No.

667 of 1982 before the Appellate Bench of the Small Causes Court at Bombay. On factual aspects even the Appellate Bench of the Small Causes Court endorsed the finding of the trial Court about the material structural alterations having been made by the tenant in breach of the terms of tenancy and clear finding was given that all this was done without permission or consent from the landlord. The letter on which reliance was placed by the tenant for spelling out any such permission on the part of the landlord has been construed by the lower Appellate Bench firmly against the tenant holding in terms that it does not even ostensibly justify such an inference. In fact the Appellate Bench has firmly styled the altered structure almost as the first floor which could hardly be stated as loft. The item of causing waste and damage was also held in favour of the landlord and against the tenant. Thus, on facts the lower Appellate Bench very firmly confirmed the finding of the trial Court on both these crucial aspects. The result normally, therefore, would have been as expected in confirming the decree for possession. However, this was not so, though entirely on a different plank even though on facts finding was confirmed in favour of the landlord and that plank has generated much controversy even on this forum. It was for the first time canvassed before the lower Appellate Bench on behalf of the tenant that the suit is wholly barred by limitation. Much argument was advanced on both sides, whether such a plea could be raised for the first time at the appellate stage and the learned Judges felt that it could be so done since all the necessary facts were available and it consisted essentially a question of law. The permission was thus granted and this matter was argued on merits at that time. The learned Judges however, persuaded themselves to uphold the validity of the contention raised on behalf of the tenant on the plea of limitation. They held that the residuary Article 113 of the Limitation Act is the only article that would be applicable to filing of such a suit for ejectment and once that premise was reached then conclusion followed that the suit was barred by limitation because the period prescribed under the said article was three years from the date of cause of action and that the suit was not filed within that prescribed period. The contention raised on behalf of the landlord about the non-applicability of that article and the applicability of either Article 66 or 67 or both was negated which would have expanded the period of limitation to the span of 12 years. Once that finding was reached the lower Appellate Bench obviously was constrained to allow the appeal and dismiss the plaintiff's suit, though on the facts the finding was in favour of the plaintiff.

6. It is this decree under which the plaintiff's suit was dismissed as the appeal was allowed on 28th September, 1985, that is being placed under challenge in Writ Petition No. 5391 of 1985 by the petitioner-landlord, who is original plaintiff, under Article 227 of the Constitution of India. The respondent-tenant did not lag behind and she filed a companion Writ Petition No. 5515 of 1985 taking exception to the finding on facts as recorded by the trial Court and confirmed by the lower Appellate Court about the permanent alteration and waste and damage having been caused by her. For obvious reasons these two petitions, which are

the outcome of the same proceeding are being disposed of by common judgment.

7. Though multifold contentions are canvassed on behalf of the petitioner, those can be placed in two major categories while the first category can well be subdivided into two and that category would pertain to the question of interpretation about the applicability of the provisions of the Limitation Act while the second long category would relate to factual aspect as to whether the tenant had incurred liability for being evicted on the ground as alleged by the landlord. As is evident from the narration of the events that occurred in the courts below a question was raised for the first time on behalf of the respondent-tenant about the bar of limitation for the maintainability of the suit before the Appellate Bench of the Small Cause Court when the decree for possession was assailed on that forum. It was specifically canvassed that Article 113 of the Limitation Act, which is residuary Article would apply and which would make computation of period of limitation to the extent of three years when the right to sue accrues and that the suit was not filed within that stipulated period. On the further premises as to when right to sue accrued it was contended that it came into existence at the point of time when the breach occurred. This contention was raised for the first time before the said Appellate Bench and since it involved a question of law and as the facts necessary to decide that question being available on record the Appellate Bench allowed the respondent-tenant to canvass the said point, though it was opposed on behalf of the petitioner-landlord. The Appellate Bench accepted the said contention holding that residuary Article under the Limitation Act would apply and that the suit was filed beyond three years after accruing of the cause of action and, therefore, it was not maintainable and it is on the short premise that plaintiff was non-suited, though even on that forum the finding of the fact arrived at by the trial Court about the permanent alteration having been made by the tenant without the landlord's consent and the tenant indulging in the act of waste and damage were confirmed and thus on merits the decree of the trial Court would have been confirmed but for the question of limitation and which question was admittedly not agitated before the trial Court. The petitioner-landlord does not lead behind since Shri Tunara, the learned Counsel for the petitioner-landlord, submitted that he wanted to raise an additional question which is of fundamental importance that the Limitation Act itself has no application whatsoever to the suits or applications under the Rent Act and if that contention is accepted, then there is no question of application of any of the Articles under the Limitation Act, much less residuary Article 113. He, however, as an alternate plank strenuously contended that if this premise is not accepted and if it is held that the Limitation Act applies to the proceedings under the Rent Act, then it would be the Articles 66 and 67 either individually or in combination that would be properly applied and both of which prescribe period of limitation of 12 years and, therefore, the suit would be obviously within time. It is thus apparent that on the appellate forum the question of limitation was argued for the first time on behalf of the respondent-tenant where whole consent was directed about the proper article of the Limitation Act being made applicable,

which was not even indicated before the Court of the first instance. In the third round an additional point about the non-application of provisions of Limitation Act to the proceedings under the Rent Act is being canvassed though for the first time as it was not even indicated on the two forums below. Since the question of limitation was allowed to be agitated before the lower Appellate Bench and since the necessary material to decide even both these questions is available on record and since it predominantly involves the question of law, the said permission was granted and that is how the said aspect is agitated on this forum.

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26. I have already indicated the general contentions raised by Shri Tunara, the learned Counsel, on the basis of the provisions of Rent Act in the context of the provisions of Limitation Act and then considered the various ratios relied upon by him to substantiate those contentions. For the reasons already assigned those ratios hardly bolster his contentions on any count. Even those contentions on their own merits are misconceived. To high-light this infirmity and deficiency in those contentions it can well be stated that the reliance on certain provisions under the Rent Act suggesting certain period in which a certain remedy is to be pursued is tantamount of not only prescribing the period of limitation but amounts to displacing the Limitation Act itself and thereby suggesting that even the Rent Act contained provisions of Limitation and it is in that context that it is a self contained Code misconceived containing a fundamental fallacy. Basically the concept of special law and it being a self contained Code flows out of an unsustainable foundation. The preamble which is very much relied upon only suggests that the said law consolidates all the laws pertaining to matters between the landlord and the tenant and also includes amending Act. It does not travel beyond that. Further it does not expressly or by necessary implication excludes the application of Limitation Act and even otherwise on the touch-stone of guide-lines as suggested by the Supreme Court in *Hukumdev Yadav*'s case in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, (cited supra) on an enquiry contemplated by the Court to find out whether the applicability or inapplicability of the provisions of Limitation Act are enforceable to the provisions under the special or local law it can be safely concluded that on all these counts and on proper determination of issue involved the Limitation Act is obviously applicable to any proceeding under the Rent Act. The fallacy in the contention raised by Shri Tunara is apparent. Thus, one of the limbs adopted by him to suggest that period of limitation has been expressly provided for by the Rent Act itself and thereby artificially engrafting the provisions of Limitation Act is excluded is wholly unsustainable, as it very much overlooks a formidable snag therein. To recapitulate, it was canvassed that u/s 12 of the Rent Act application for fixation of standard rent is to be made within one month from the receipt of demand notice, section 17 and 17-A as also 17-B and 17-C relate to restoration of possession by the tenant and tenant's right to demand possession, section 18 provides period under which the application for refund of illegal charges paid or amount over-paid and so on. The undercurrent of all these provisions, however,

very firmly indicates that those are not as if prescribing limitation in general to all proceedings under the Rent Act but those prescribe an in-built machinery embracing certain special contingencies and for that purpose to achieve harmonious result prescribing a certain period under which the said machinery can be invoked to achieve the remedy and reason therefore is manifest, but it is placed only in the restricted field of those peculiar situation and can by no stretch of imagination be expanded or bloated disproportionately to engulf within its sweep specious contention that the Rent Act itself provides limitation for all possible contingencies and therefore, the Limitation Act is excluded from its application. If one goes to the scheme of section 12 it will be clear that the landlord would not normally be entitled to recover possession of any premises so long as the tenant is ready and willing to pay the amount of standard rent and permitted increases and observes and performs all other conditions of tenancy which are consistent with the provisions of the Act. Therefore, the embargo is placed against the landlord furnishing corresponding protection on the tenant from the rigour of eviction provided the tenant is ready and willing to pay regularly and observes the conditions of tenancy. Sub-section (2) does not prescribe a limitation as such but attaches condition of issuance of notice preceding filing of the suit for eviction on the ground of non-payment of standard rent and it stipulates that it should be one month's notice in the manner as provided u/s 106 of the Transfer of Property Act. This has nothing to do with the period of limitation as such. Sub-clause (a) of Clause (3) however, is relevant which stipulates that when the rent is payable every month and if there is no dispute regarding the standard rent and if the tenant is in arrears of more than six months of rental amount and if on this count eviction notice is issued by the landlord then as on the receipt of such a notice certain obligation is cast on the tenant to go out of the rigour thereof to make the payment as demanded in the notice within a period of one month from the receipt of the notice and in case of his default in either not raising a dispute regarding standard rent or not transmitting the entire rental amount within one month after the receipt of the notice then a decree for eviction would follow. Sub-clause (b) carves out another category not covered by Clause (a) and suggests that in wither contingency decree for eviction would not be passed provided the tenant deposits in the Court rental amount due on the first day of hearing or as directed by the Court and continues to make regular payment thereafter. Shri Tunara, the learned Counsel wants to import in sub-clause (a) the concept of limitation to the effect that a period of one month is prescribed for fixation of standard rent or for payment of all rental arrears as demanded. However, that argument confuses the main issue as to whether this provision is to be made tantamount to saying that the Rent Act itself prescribes period of limitation and thereby excluded application of Limitation Act. As indicated the special machinery is provided for where the tenant is in arrears for more than six months and an opportunity is given to the tenant to ward off the rigour of a prospective decree of eviction by making payment within one month from the receipt of the notice. It is obvious that some such time limit was necessary to be placed so as to get the tenant out of the

rigour of being called as a chronic defaulter but to establish his readiness and willingness to pay rent or otherwise a lethargic tenant would further be encouraged to continue in the persistent default and thereafter claim protection in the suit filed by the landlord for eviction. This also answers reasonableness, first because the arrears are to mount for six months or more, then notice is to be issued with an opportunity to the tenant to comply with the said demand within one month and till then no suit could be entertained. This machinery is therefore, a check and counter check only in that restricted field for that peculiar situation in the interest of both the parties and harmoniously further the object of the Act. This, however, has nothing to do with the issue involved herein.

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28. It would, therefore, be apparent that these provisions have their own peculiarity arising out of the special machinery embracing those particular contingencies or eventualities and their purpose cannot be expanded disproportionately to displace the applicability of Limitation Act or to hold that by those provisions the Rent Act becomes a self contained Code even in the matter of limitation. Further that the Act is a self contained Code has a restrictive meaning in the sense that it takes care of all possible eventualities which could be contemplated as arising between the landlord and the tenant and the premises in question, so as to further the legislative intent behind enacting the said Act. However, it stops at that and does not travel beyond that. Providing different machineries to meet certain contingencies is far distinct from saying that those also provide for a period of limitation or even to suggest that the Limitation Act is excluded therefrom. Providing machinery for the appeals and also prescribing period of 30 days which synchronizes with the period prescribed by the Limitation Act in that behalf does not carry the petitioner's case any further in that field. The appellate forum is prescribed which was necessary because special jurisdiction was bestowed on certain courts of the first instance and therefore, it was equally necessary to prescribe the forums for appeals. This again is neither here nor there regarding controversy in the instant case. The historical part as to how the Act devolved and amended from time to time does not answer the controversy, not even in the periphery. On the contrary, on the correct reading of all the provisions in the context of the scheme and legislative object and intent behind enacting the said Act, it would be manifest that it was never even intended to suggest that the said Act even covers the question of limitation regarding all the proceedings thereunder and thereby excluded application of Limitation Act. The provisions of section 13, Clause (1) which prescribes grounds for eviction also do not furnish any clue because the suits could be founded on any such ground provided the Court is satisfied about its existence. The examination of this and other provisions does not even impliedly make the Limitation Act inapplicable. The second limb that the Rent Act is a special Act and therefore, ipso facto the provisions of the procedural law in the shape of Limitation Act would not be applicable is also wholly unsustainable. The concept of special law has also to be assessed in the context of real nature of the

controversy as to whether legislature really intended to exclude the applicability of Limitation Act, because the mere and bare fact of the Act being special one does not necessarily entail into the consequence as suggested by Shri Tunara, the learned Counsel.

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35. This controversy, however, is practically set at rest by the clear dictum of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, and which would go a long way to wipe out the argument advanced by Shri Tunara, the learned Counsel, on the assumed basis under the concept of all self contained Code and the special law. In that case, the Kerala State Electricity Board cut and removed some trees standing on the property of the respondent for the purpose of laying electric line from Calicut to Cannore. The Board assessed the compensation at Rs. 1619.90. The respondent land-holder filed petition before the District Judge u/s 16(3) of the Indian Telegraphs Act claiming enhanced compensation of Rs. 19,367.60. Amongst other contentions, an objection was taken that the petition was barred by time under Article 137 of the Limitation Act, though the respondent countered that Article 137 does not apply. The District Judge held that the application was Governed by Article 137 of the Limitation Act and, therefore, the petition was barred by time. In Revision, the High Court set aside the impugned order and remitted the matter back to the Court for disposal in accordance with law. A question also arose as to whether the provisions of the Limitation Act are at all applicable to any such petition under the special law. In that behalf certain observations were made holding that the Limitation Act applies even to such petition or applications. The Supreme Court differed from the view taken in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, where contrary view was taken that Limitation Act was not applicable and so on which Shri Tunara, the learned Counsel, had very much placed reliance. Some of the observations can well be reproduced which are made after analysis of the relevant provisions of the Limitation Act in the context of various ratios about applicability or otherwise of the Limitation Act to the proceedings under the special law :---

""....Alteration of the Division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between the applications in specified cases and other application as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of *ejusdem generis* to be applications under the CPC other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a Court for the reason that the sections 4 and 5 of the 1963 Limitation Act speak of expiry of

prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the Court that he had sufficient cause for not referring the appeal or making the application during such period.... The changed definition of the words ""applicant"" and ""application"" contained in sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petition, original or other wise under special laws.""

The Supreme Court ultimately concluded as :---

""The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a Civil Court. With respect we differ from the view taken by the two Judge Bench of this Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure....""

36. Shri Mahendra Shah, the learned Counsel, therefore, rightly submit that this authority overrules the earlier ratios making it clear covering applications under Article 137 in any proceeding of any nature in a Court as those are not restricted to the applications under only CPC and it further makes it clear that the Limitation Act would apply even to special Act or special laws which even may be a self contained Code.

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43. Some of the salient features relating to the need to apply the law of limitation to such proceedings cannot be lightly brushed aside. The law of limitation owes its origin to the need of questioning the disputes after a long time. The proclivity to agitate the claims after passage of time, when the evidence was lost or destroyed or could not be easily available, led to the evolution of this law. It is aptly said that the time is limitless but the time for instituting a legal proceeding is fixed by the provisions of the Limitation Act. A Debtor no doubt remains a debtor even after the expiry of limitation but the recovery of debt through the Court proceedings is barred by the Act. It is well known that the Limitation Act with regard to the personal actions bars remedy without extinguishing the rights. The utility of statute of limitation has never been a matter of serious doubt or dispute. It has been said that the statute of limitation is a statute of ""repose piece and justice"". It is one of repose because it extinguishes stale demands and quiets title. It is appropriately remarked that the controversies are restricted to a fixed period of time ""lest they should become immortal while men are mortal."" It secures piece as it ensures security of right and it secures justice as by lapse of time the evidence in support of rights may be destroyed. Therefore, there can be doubt that it rests on sound principle that law of limitation is an adjective law. Rules of limitation are rules of procedure, it is thus a procedural law. This branch of procedural law, therefore, is founded on sound public policy which would really subserve the public interest whereas its non-applicability, unless it is expressly or atleast impliedly excluded

under a particular law, would be obviously against the public interest and would lead to irrational consequences creating complications instead of creating harmony and the litigation also would tend to get a distorted twist. Consequently, therefore, unless the statute expressly or atleast impliedly exclude the applicability of Limitation Act, its applicability would not only be presumed but it should be insisted upon and enforced in the larger interest.

44. In view of this discussion, the contention raised by Shri Tunara, the learned Counsel for the petitioner, about the non-applicability of Limitation Act to any proceeding under the Rent Act deserves to be rejected.

45. Once this larger issue is decided, it leads us to embark on the enquiry on the next point in chronological order which would fall in inner circle and which has been expressly decided by the lower Appellate Court against the petitioner-landlord. In effect, the question posed is whether since it is held that the Limitation Act applies to the Rent Act, which Article of the Limitation Act would be the appropriate Article applicable to ejectment suit under the Rent Act. According to Shri Tunara, the learned Counsel for the petitioner, it would be either Article 67 or Article 66 or both of them, which would be applicable and no other Article, whereas according to Shri Mahendra Shah, the learned Counsel for the respondent, it would be only residuary Article 113 of the Limitation Act that would be attracted, since no provision is made in any other Article vis-a-vis such suits. The lower Appellate Bench uphold the validity of the contention about the applicability of residuary Article 113 to the ejectment suit under the Rent Act and thereby negated the contention of Shri Tunara, the learned Counsel about the applicability of Articles 67 and 66 of the Limitation Act. The learned Judges of the lower Appellate Bench addressed themselves to some of the allied questions in that behalf, which included the consideration as to what is the cause of action for suit in ejectment under the Rent Act. The judgment predominantly proceeds on the basis of the ratio of the Supreme Court in case of V. Dhanapal Chettiar Vs. Yesodai Ammal, wherein it has been held on the survey of all other decisions and provisions of the Rent Act and the Transfer of Property Act, that the notice of demand determining the tenancy is not a condition precedent for filing a suit for eviction, though the landlord may as a matter of caution determine such tenancy which would serve only as a surplusage. It was held that the tenancy under the Rent Act is determined only by a decree of Court and not by merely issuing notice as it affords protection under the Rent Act and if that be so, then it was held by the lower Appellate Bench that such a mode of determination only by a decree cannot be the starting point and therefore cannot be the suit as contemplated by Article 67 of the Limitation Act. It is, therefore, held that determination of contractual tenancy does not afford any cause of action on the happening of that event but the landlord does not become entitled to recover possession and right to recover possession arises only on the tenant's acting in such a manner as would afford some ground in ejectment provided by the Rent Act. The question was also posed as to what would happen if the landlord does not determine the tenancy at all in which case the applicability of Article 67 is

obviously ruled out and according to the learned Judges of the Appellate Bench no satisfactory answer could be furnished to that question. Mere termination of contractual tenancy by itself cannot afford any cause of action. As to what would be the cause of action in a suit for eviction against the tenant who is protected under the Rent Act, it was held that the ground of ejectment provided by sections 12 and 13 of the Rent Act afford cause of action to the landlord and the tenant committing any act which entails liability to be evicted from the premises affords cause of action to the landlord. The learned Judges were of the view that complexion of the situation is completely changed after decision in *Dhanapal Chettiar's* case (cited supra). It was further indicated that the earlier view and other ratios are expressly over-ruled by the said decision. In fact that is the most dominant plank on which the entire judgment is founded. It was also held that in view of this position and extra protection having been given under the Rent Act the forfeiture of lease or determination of tenancy has become irrelevant and, therefore, application of Articles 66 or 67 of the Limitation Act has equally become irrelevant. It was further observed in the context of Article 66 that the said Article will not have any application as section 111 of the Transfer of Property Act itself will have no application. It was further indicated that the tenancy agreement in the instant case does not contain any condition which provides that on breach thereof the plaintiff may re-enter. According to the learned Judges, this clause is not a condition as contemplated by the first clause of sub-clause (g) of section 111 of the Transfer of Property Act. It was expressly held that the eviction suit against the tenant who is protected under the Rent Act has to be founded upon any of the grounds provided for eviction under the Rent Act. Thus the requirements of Articles 67 and 66 are considered by the learned Judges and on the touch-stone of various authorities and especially in view of ratio in *Dhanapal Chettiar's* case (cited supra) their applicability has been completely discarded. The learned Judge, therefore, ultimately held that since no period of limitation is prescribed specifically under any of the Articles it would be the residuary Article 113 that would be applicable to such an ejectment suit. Consequently, applying that ratio it was held that since the said Article provides for a period of three years with the starting point when the right to sue accrues and as it is held that the grounds contemplated under sections 12 or 13(1) provide cause of action, the suit is filed beyond three years from the starting point and, therefore, the suit was barred by limitation.

46. Obviously, therefore, only three articles of the Limitation Act prominently remain in the field. Article 66 in the Limitation Act of 1963 to some extent corresponds to Article 143 of the Limitation Act, 1908 which prescribes as :---

""In a suit for possession of immovable property, when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition, the period of limitation would be 12 years beginning from the point of time when the forfeiture is incurred or condition is broken.""

47. Article 67 of Limitation Act of 1963, which to some extent correspondence to

section 139 of the old Act which prescribes as :---

""In a suit by the landlord to recover possession from a tenant the period of limitation would be 12 years starting from the point of time when the tenancy is determined.""

48. Article 113 of the new Act corresponds to Article 120 of the Old Act, both of which are residuary Articles which prescribes as :--

""In any suit for which no period of limitation is provided elsewhere in this schedule, then the period of limitation would be three years beginning to run from the point of time when the right to sue accrues.""

All these three articles fall in the first division of the schedule relating to the suits; Articles 66 and 67 falling in Part V under the heading ""Suits relating to immovable property"", while Article 113 falling in part X under the heading ""Suits for which there is not prescribed period."" The other two divisions make the provision for appeals or applications.

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53. I have already indicated the tenor of the reasoning assigned by the lower Appellate Court in accepting the soundness of the contention raised on behalf of the respondent-tenant in applying Article 113 of the Limitation Act prescribing the period of three years from the point of time when the right to sue accrue and in negating application of Articles 66 and 67 of the Limitation Act, which would provide 12 years" period of limitation for filing suit. The reading of that judgment makes it clear that the learned Judges very much placed reliance on the ratio in Dhanapal Chettiar's case (cited supra) and according to them the complexion is changed since under that ratio it is held that the notice to determine the tenancy is not necessary at all for lodging an ejectment suit more so because it is a point of time when the decree is passed that would determine the tenancy and thus it cannot be a starting point. This is more in the context of Article 67 of the Limitation Act whereas the starting point for the period of limitation is when the tenancy is determined. Before offering my comments on rival contentions in this field it would be worthwhile to consider the decision and ratio as also various observations in V. Dhanapal Chettiar Vs. Yesodai Ammal, in some details, which process was adopted even by the power Appellate Court.

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59. It would be proper first to refer to the rival contentions vis-a-vis Article 67 of the Limitation Act. It may however, be observed at the threshold itself that it is Article 66 which is more dominant and equally generalised to cover all such suits and, therefore, discussion and decision vis-a-vis Article 67 may not conclude the fate of every such proceeding as in any event Article 66 would always come into play. Both may even overlap and for both the articles the same period of limitation is prescribed. It falls in part V in respect of suits in respect of immovable property. It prescribes the period of limitation as 12 years in a suit by

the landlord to recover possession from the tenant, further prescribing that the time from which the period begins to run would be when the tenancy is determined. To recapitulate it is mainly contended by Shri Mahendra Shah, the learned Counsel for the respondent-tenant, the validity of which has been upheld by the lower Appellate Court, that such a suit is required to be instituted after the relationship of landlord and the tenant has come to an end and further in the case of protected tenant as has been held in *Uttam Fancy Cloth Store v. Dayachand Hazarimal Jain*, 1983 Mh.L.J. 449 the tenancy continues till the passing of the decree for eviction by the Court and as such this article is inherently inapplicable to such a suit against the protected tenant, where the landlord cannot terminate the tenancy of his own act without the intervention of the Court. Extending this argument it is further submitted that since the article prescribes that the landlord's right to sue for possession can arise only on the determination of the tenancy. In the very nature of things the suit for eviction of a protected tenant cannot be said to be a suit for recovery of possession and at any rate such a suit cannot lie. The learned Judges also accepted this contention and expanded that argument by observing that the cause of action arises when the tenancy is determined and this event can happen on the determination of the tenancy protected by the Rent Act and which can be done only by passing of the decree for possession by the Court and not by any of the modes as contemplated by section 111 of the Transfer of Property Act. The learned Judges then further observed that if the tenancy is determined by decree of a competent Court ""then it cannot be the starting point of the suit as contemplated by Article 67"" and the interpretation of this kind was styled by the learned Judge as ""absurd"". In that event, it was ultimately held that mere termination of contractual tenancy by itself cannot afford any cause of action. Shri Tunara, the learned Counsel for the petitioner-landlord, has obviously countered all these contentions and in my opinion, rightly so. There is apparent fallacy in this argument advanced on behalf of the tenant and accepted by the power Appellate Court and it also becomes manifest that the ratio in *Dhanapal's* case and the observations thereunder are either read out of context or not in proper perspectives and it is really this erroneous footing that has entailed into an equally erroneous finding in that behalf. In short, therefore, the foundation of this entire argument and finding is contrary to the ratio in *Dhanapal's* case.

60. However, at the threshold it must be observed that one of the basic fallacies lies in the fact that the learned Counsel for the tenant as also the learned Judges of the Appellate Bench have tried to squarely apply the ratio and observations in *Dhanapal's* case for the purpose of construing the provisions and Articles under the Limitation Act, little realising that in the first instance the Supreme Court was exclusively concerned with the provisions of the Rent Act unconnected with the provisions of the Limitation Act, examined either on the same tract or on the parallel track and it is wholly in that context restricting to the said provisions of the Rent Act and also concentrating on the questions as to whether a notice determining the tenancy is a must as a condition precedent for filing an

ejectment suit. Obviously, therefore, the ratio and the observations as to what is the concept of ""determination of tenancy"" vis-a-vis the provisions of the Rent Act were the outcome strictly restricting to the provisions of the Rent Act, and this obviously cannot be permitted to be engrafted in the provisions of the Limitation Act for the purpose of construing the terminology used in Article 67 of the said Act, in the context of the concept of determination of tenancy. This is also apparent on the broader premise of well settled canons of interpretation that the construction of provisions of the one Act or one statute cannot be utilised for construing the provisions of another statute on the same lines, the distinction many times would exist though in a subtle manner, which cannot be allowed to be wiped out by such process, because these provisions of different statutes may proceed in different field. Consequently, therefore, it would not be proper to construe the provisions of Article 67 of the Limitation Act on the premise of the ratio in Dhanapal's case. However, even otherwise the interpretation sought to be placed on behalf of the tenant is not available even on the basis of the said ratio in Dhanapal's case and even if it is sought to be examined and made applicable in construing the provisions of the Article 67 of the Limitation Act. Some of the propositions relevant to the contrary can be catalogued as:-

(i) The provisions of section 106 of the Transfer of Property Act are very much in force and these are not abrogated.

(ii) The landlord would be well advised by way of abundant precaution and in order to lend additional support to his case to give notice to his tenant intimating of his intention to file suit for eviction on the grounds mentioned therein, though giving of such notice is not compulsory or obligatory.

(iii) Action of the landlord in instituting the suit for eviction would itself tantamount to an expression of his intention that he does not want the tenant to continue as his lessee though jural relationship between them as lessor and lessee will come to an end on the passing of an order or decree for eviction.

(iv) Giving of the notice is a mere ""surplus age"" though unlike the law under the Transfer of Property Act it by itself does not entitle the landlord to evict the tenant.

(v) The landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided therein as otherwise not.

(vi) Though the Rent Act is intended to restrict the rights of the landlord for eviction of the tenant, still if within the ambit of those restricted rights he makes out his case then it may be a mere empty formality to ask him to determine the contractual tenancy before instituting the suit.

(vii) The protection from eviction is claimable by the tenant even after determination of contractual tenancy and if that be so then why import the contractual law engrafted in Transfer of Property Act for seeking eviction of the

tenant.

(viii) Termination of contractual relationship by notice is not necessary. Such termination comes into effect when a case is successfully made out for eviction of the tenant under the Rent Act.

(ix) While considering the provisions of Tikka Tenancy Act it appears that an extra protection of getting six months' notice to vacate the premises is given, which is over and above the protection under that Act. In such an event the said clause of the lease deed cannot be deemed to be unlawful whereas giving of extra protection must always be adhered to.

(x) Even if the lease is determined by forfeiture under the Transfer of Property Act the tenant continues to be the tenant and as such there may not be forfeiture in the eye of law. He becomes liable to be evicted and the forfeiture comes into play only if he has incurred liability for eviction under the Rent Act.

(xi) Consequently, therefore, in the final analysis it was laid down that the determination of lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because even after such determination the landlord cannot get eviction of the tenant. Consequently, therefore, making out a case under the Rent Act for eviction of tenant by itself is sufficient and it is not obligatory to initiate the proceeding on the basis of determination of the lease by issuance of the notice in accordance with section 106 of the Transfer of Property Act.

61. The relevant features on the question of issuance of notice to quit can harmoniously be summarised as ---

Issuance of notice to quit preceding the suit for eviction is not necessary, though it would not be unlawful. It may merely serve as surplusage, though a default in that behalf would be inconsequential not affecting the validity of the suit. However, such a notice can be issued by the landlord by way of abundant precaution. Similarly, issuance by such notice would afford an extra protection to the tenant and granting of such an extra protection can well be adopted. Consequently, therefore, its permissibility is accepted though not its necessity. The basic feature therefore, would be that issuance of notice may not be deemed to be necessary, but the termination of tenancy by such notice does not become impermissible, much less unlawful.

62. Once the permissibility of issuance of such notice is accepted and even its issuance has also been accepted in the interest of landlord as also the tenant as enunciated in the said decision then certain consequence must logically follow. The foremost of the same is that in the first instance, the notice contemplated is obviously a notice to quit and under which tenancy is sought to be determined, as the landlord wants to put an end to the relationship. Though its necessity is not accepted under the provisions of the Rent Act in the context of the concept of determination of tenancy still the same basis cannot be extended to construe the

provisions of Article 67. It also follows that the notice contemplated by the Supreme Court as being permissible and may be in some cases desirable has obviously something to do with the termination of tenancy and thereby to determine the tenancy itself. As to at what exact point of time the tenancy can be determined within the purview of Rent Act cannot be the identical point of time to answer the concept of determining the tenancy under Article 67 of the Limitation Act. If that be so then even the permissibility and also desirability of issuance of such a notice preceding the filing of the suit could not have been enunciated by the Supreme Court in the said decision. Implicit therein, therefore, is the acceptability that such a notice would obviously be for termination of tenancy and thereby for the purpose of determining the tenancy or otherwise giving of such a notice before filing of the suit would not have been accepted by the Supreme Court if it was really construing the provisions of Article 67 of the Limitation Act in the same vein. This on the contrary is a pointer, first to suggest that Supreme Court therein was concerned wholly with the provisions of the Rent Act and it is in that context the question of necessity of notice was considered because it is under those provisions that by legal fiction even issuance of notice by itself may not serve the purpose of destroying jural relation of landlord and tenant which could be done on the passing of the decree, as the tenant even thereafter continues to be the statutory tenant in possession of the suit premises and the provisions of the Limitation Act were not at issue in that proceeding in that discussion and secondly, the observations and reasons while construing the provisions of the Rent Act while holding that notice was not necessary the same including the concept of determining the tenancy under those provisions need not be transplanted in the Limitation Act while construing the provisions of Article 67 the said Act. In other words, once the permissibility of such notice is fully accepted then the said notice could not be short of terminating the tenancy or otherwise there is no propriety of issuing the notice if that was not the object and notice could not be for any other purpose and it would be futile to create an artificial restriction in that field while construing the provisions of Article 67 of the Limitation Act between the concept of the termination and determination. As stated, the provisions of section 106 of the Transfer of Property Act are not abrogated even under that ratio. It may be observed as a relevant feature that during the course of discussion as to why the notice is not compulsory or obligatory the Supreme Court indicated that the action of the landlord in instituting the suit for eviction on the ground mentioned in any Rent Act will be tantamount to an expression of his intention that he does want the tenant to continue as his lessee and the jural relationship or lessor and lessee will come to an end on the passing of the decree for eviction. It is further observed that until then under the extended definition of word "tenant" under various Rent Acts, the tenant continues to be a tenant "even though the contractual tenancy has been determined by giving a valid notice u/s 106 of the Transfer of Property Act". This indicates that the dominant purpose of issuing such a notice and its effect on the contractual tenancy would be to "determine" the tenancy and this again is an indication about the purpose of issuing such a notice, its impact and

the concept of "determining the tenancy", in that field. The Supreme Court further indicated in the same context that unlike under the Transfer of property Act, the landlord becomes entitled to recover possession under the State Rent Act only on the fulfilment of the rigour of law provided therein and he cannot recover the possession "merely by determination of tenancy" nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. The Supreme Court further observed that under the Rent Control Act it becomes unnecessary technicality to insist that the landlord must "determine" the contractual tenancy as it is of no practical use. These observations read in the proper context would also high-light the concept of determining the tenancy in the restricted field under the provisions of the Rent Act though even thereunder the dominant purpose of notice, issuance of which has been made permissible, would be to "determine the tenancy". The effect, however, would be that the tenant may continue even after contractual tenancy is determined by giving such a notice whereas inspite of such a notice the landlord would become entitled to recover possession only on the fulfilment of requirement of law and as such he cannot recover possession merely by determination of tenancy. The distinction between these two aspects is implicit in all these observations. Consequently, therefore, even though inspite of the notice, the landlord may not be able to recover possession by itself still the notice would be for determining the tenancy. Consequently, therefore, one will have to bear in mind the said restriction in moving court by filing an eviction suit and recovering possession of the suit premises. The landlord being not able to recover the possession unless the rigour of law is established is not tantamount to say that the notice to determine the tenancy is capable of being issued only on the passing of the decree in the context of determining the tenancy under the provisions of the Rent Act, which could happen only after passing of the decree. A further distinction also becomes apparent that at the final stage the jural relationship of landlord and tenant would come to an end when the landlord can recover the possession but nonetheless notice issued at the threshold before filing of the suit would still be a notice to determine the tenancy. The process of initiating the proceeding and the termination and resultant consequence of that proceeding should not be mixed up. Even at the cost of re-petition I may observe that there is further indication in the observations in the said ratio itself in support of this inference about the nature of notice in the context of determining the tenancy. Thus, the Supreme Court expressly observed while disagreeing with the observations in yet another decisions where the provisions of the Transfer of Property Act were considered, that "determination of a lease" in accordance with the Transfer of Property Act is not necessary and is a mere surplusage. It was in that context further observed that in that view of the matter making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to form the proceeding on the basis of "determination of lease by issue of notice" in accordance with section 106 of the Transfer of Property Act. Thus, though it has been held that issuance of such a notice need not be accepted as a condition precedent nor as an obligation to initiate the proceeding

still those observations further high-light that such a notice which was contemplated in that discussion was obviously a notice to ""determine the lease"" in accordance with section 106 of the Transfer of Property Act and, therefore, it follows that though not obligatory, permissibility of such a notice once is accepted then the said notice even those provisions would be nothing short of determining the tenancy.

63. Apart from the permissibility of issuing notice the Supreme Court in the said case has fairly laid down that the landlord may well be advised by way of abundant precaution to give a notice as also if the tenant is entitled to extra protection of being served with the notice then such protection should not be denied to him and both these features qua the landlord and tenant impliedly accept that the said notice would obviously be for termination of tenancy. Otherwise, if the reasoning adopted by the lower Appellate Court is to be accepted then it would mean that since the determination of tenancy would accrue at the conclusion of the proceeding on passing of the decree, in no case a notice to quit can ever be issued because that situation would be non-existent at the threshold. The ratio in that case, therefore, would have been entirely different if this conclusion was to be accepted as it would have been held that in no event and in no case such a notice can ever be issued. On the contrary, therefore, when such stipulation is prescribed under the ratio of permissibility as also desirability of issuing such a notice before filing of the suit, then ipso facto the said reasoning adopted by the lower Appellate Court is destroyed exposing its hollowness. The ratio and observations thereunder are thus obviously misconstrued.

64. There is yet another shade to this aspect and there is a strong pointer in that behalf, in further observations in the same ratio by the Supreme Court when the provisions of Tamil Nadu Rent Act were being considered. The observation would squarely apply to the issue at hand and which reads as :

"The tenancy actually terminates on the passing of the order or decree of eviction and building falls vacant by its actual eviction. Giving of notice, therefore, is a mere surplusage and unlike the law under Transfer of Property Act it does not entitle the landlord to evict the tenant....."

65. The employment of the word "actually terminates" and " actual eviction" would have some relevance in the context of this controversy when the concept of determining the tenancy is under issue and it would furnish quite a relevant clue as to what was really stipulated under that ratio to the effect that the Tenancy may be terminated or determined actually only on the passing of the decree and the landlord may not be able to recover possession till then, but the notice preceding the suit if given would still be a notice determining the tenancy. Implicit in those observations is the distinction between the termination or determination of tenancy in contrast to actual termination or determination of tenancy in contrast to actual termination or actual determination of tenancy and it is this second category which would entitle the landlord to recover possession

though the first category would certainly embrace the valid notice.

66. As I have indicated at the outset, the basic fallacy lies in the fact that the provisions of Limitation Act are sought to be construed on the basis of the provisions of the Rent Act. Such an exercise can hardly be encouraged in view of the settled principles in that field. In *Lilavati Bai Vs. The State of Bombay*, it is observed as :---

"It is well settled that the observations made by the Court with reference to the construction of one statute cannot be applied with reference to the provisions of another statute, which is not in para materia with the statute which forms the subject matter of the previous decision....."

It is similarly held in *Union of India v. Sha Vastimal Harakchand*, AIR 1959 Mys 13 that the provisions of substantive Act cannot be considered or examined on the basis of the provisions of the Limitations Act and this principle would apply even if the position is otherwise. It is also held in *Damodar Mukherjee and Others Vs. Bonwarilal Agarwalla and Others*, that the statute not in pare materia need not be compared. In *Dayachand Hemchand v. Hamchand Dharamchand*, ILR IV Bombay 515 accepting this principle it was held that the provisions of Limitations Act and Court Fees Act cannot be compared for construing certain previous decision.

67. In view of this discussion, in my opinion, the reasons assigned by the lower Appellate Bench and which are sought to be adopted on behalf of the tenant in this proceeding are obviously unsustainable.

70. It would be an opportune point of time to place the provisions of Article 66 of the Limitation Act under discussion since the controversy is sought to be generated by both the parties about the applicability or otherwise thereof to an eviction suit. The article however is more germane to the controversy and is more generalised with a broad-based application to such suits and therefore de hors of applicability or otherwise of Article 67 in a given case, the provisions of Article 66 however, would squarely cover all such suits. This article thus assumes primary importance and relevance and in which there is hardly any scope for debate vis-a-vis its applicability. This article is placed in Part V in respect of the suits relating to immovable property and it describes that in a suit for possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition, the period of limitation would be 12 years commencing to run when the forfeiture is incurred or the condition is broken.

71. As indicated earlier, the lower Appellate Court felt the non application of Article 66 on the ground that section 111 of the Transfer of Property Act itself will have no application. It was further observed that the tenancy agreement in the instant case does not contain any provision that on breach of condition, the plaintiff has a right to re-enter and this clause is not a condition as contemplated by the first part of sub-clause (g) of section 111 of the Transfer of Property Act.

It was thus held that the eviction suit protected under the Rent Act has to be founded on any of the grounds provided under the Rent Act. The learned Judges were of the opinion that forfeiture mentioned in Article 66 should be read in conformity with the forfeiture of the lease u/s 111 of the Transfer of Property Act, Relying on the ratio in *Dinkar S. Vaidya Vs. Ganpat S. Gore and Others*, the Appellate Court held that forfeiture of lease or determination of tenancy really becomes irrelevant and therefore, Article 66 would not apply. For this purpose some support was sought to be extracted on the basis of some of the observations in *Pradesh Kumar Bajpai v. Binod Behari Sarkar*, (1980) 3 S.C.C. 343 that the tenant cannot claim relief against forfeiture of lease u/s 114 of the Transfer of Property Act and deed of lease becomes irrelevant and the landlord cannot rely on forfeiture clause of lease but has to seek eviction under the Rent Act as there is no double protection given under the Rent Act and Transfer of Property Act or the terms of contract. Shri Tunara, the learned Counsel for the landlord has rightly submitted that the lower Appellate Court has obviously gone wrong in arriving at such a conclusion on an absolutely erroneous premise.

72. The most formidable feature, which is a strong pointer against the validity of the reasons assigned by the lower Appellate Court is that Article 66 of the Limitation Act does not refer to the forfeiture as contemplated only under the Transfer of Property Act. On the contrary it is of wide connotation and correspondingly the breach of conditions as stipulated are also of wide connotation.

73. In case of *K.S. Venkatarama Iyer and Others Vs. Ponnuswami Padayachi and Others*, it has been observed as :---

".....Forfeiture will not be produced merely by the unilateral act of ceasing to comply with the conditions upon which the property is held, but it must involve also some expression of intention to enforce the forfeiture on the part of the lessor and which could be done by giving of the notice..."

74. In *Namdeo Lokman Lodhi Vs. Narmadabai and Others*, though it was held that no notice was required and forfeiture was complete when there was a breach of conditions that was a case before the Transfer of Property Act came into force. To the same effect are the observations in *Shri Rattan Lal Vs. Shri Vardesh Chander and Others*, holding that forfeiture is not complete unless and until the landlord gives notice showing that he was exercised his option to determine the lease. It is relevant to note that *Ratanlal's* case (cited supra) has been referred to in the case of *Pradesh Kumar* (cited supra) when the later judgment has been pronounced after *Dhanpal's* case as it is referred to in *Dhanpal's* case. No doubt in *Pradesh Kumar's* case (supra) it is held that where the landlord has made out a case under the Rent Act for eviction on the ground of non-payment of rent the tenant cannot claim relief of forfeiture of lease u/s 114 of the Transfer of Property Act whereas the landlord also cannot rely on forfeiture clause of lease but has to seek eviction under the Rent Act and therefore, tenant cannot seek double protection under the Rent Act and Transfer

of Property Act or terms of contract. However, as indicated earlier Article 66 of the Limitation Act does not refer to the forfeiture as contemplated only under the Transfer of Property Act but it is more spacious and covers under its umbrella a wider connotation and so also breach of conditions contemplated thereunder is also of wider connotation.

75. It is worth nothing in that behalf Clause 10 of Tenancy agreement dated 28th December, 1975 which reads as :

"Tenant admits and hereby agrees that if she commits breach of any of the aforesaid terms and conditions, the landlord shall be at liberty and entitled to proceed against her to eject her".

Obviously, therefore, under this clause liberty is recovered by the landlord and giving of notice is expressing his intention to enforce the forfeiture on the part of the landlord and till then it cannot be said that the right to sue had accrued to attract the provisions of Article 66.

76. In Kantilal Ishwerlal Shah v. Dr. Mukundari Kishavlal Parikh & others, XIV Gujarat Law Reporter 227 it was indicated in case of breach of condition that the landlord gets a right and said breach is in consonance with section 13(1) which takes away the protection of the tenant and reading sections 12 and 13 the landlord gets a right to recover possession on his proving the case under Clauses (a) and (b) of section 13(1) of the Rent Act.

77. In Namdeo Lokman Lodhi Vs. Narmadabai and Others, some observations are relevant to quote as :---

"In English law the bringing of action which corresponds to the institution of suit in India it is an act which is definitely regarded, as commencing the intention on the part of the lessor to determining the lease with regard to which there has been a breach of covenant entitling the lessor to re-enter."

It is further observed as :---

".....bringing by landlord of a suit for ejectment is simply a mode of manifesting his election. The principle of this case rests on the ground that forfeiture is complete when the breach of condition or denial of title accrues but it is left to the lessor's option to take advantage of it or not, the election is not a condition precedent to the right of action and institution of action is sufficient manifestation of election....."

78. As observed in K.S. Venkataram's case, AIR 1935 Madras 918 (cited Supra) the forfeiture will not be produced merely by unilateral act and which takes place on termination of lease which is considered as an intelligible principle based on maxim of equity. However, since that was a case prior to the enforcement of Transfer of Property Act, it was held that notice was not proper.

79. It was contended on behalf of the respondent-tenant, by Shri Mahendra Shah, the learned Counsel, that Article 66 would apply only if it is a suit for

possession of immovable property, if the plaintiff has become entitled to recovery of possession and if such entitlement to possession is by reason of any forfeiture or breach of condition. However, it cannot be overlooked that the expression used in this Article is "entitled to possession" and not "entitled to recovery of possession", though both cannot be said to have any distinct or different meaning. Consequently the suit for possession as mentioned in Article 66 is synonymous with the suit for recovery of possession and no differentiation can be made in both the expressions.

80. Shri Mahendra Shah, the learned Counsel, then contended that Article 66 is inapplicable to a suit for eviction of protected tenant for various reasons. Firstly, when such a suit is filed before termination of tenancy it cannot be deemed to be a suit for possession of immovable property. This according to him, follows from the fact that protected tenancy cannot be terminated except by decree for eviction by Court, and landlord's right to sue for possession arises only on termination of the tenancy. However, that is an incorrect and equally incomplete reading of the situation. As has been specifically observed in Dhanpal Chettiar's case (cited supra) that termination is not necessary and as such even without termination of tenancy such a suit can be a suit for recovery of possession. The observations to the contrary in the case in Punjalal v. Bhagawatprasad, (1963) 3 S.C.C. 312 are disapproved and the said ratio has been expressly overruled. The ratio in Dhanpal's case which is discussed earlier, makes it clear that the landlord gets a right to sue without issuing a notice if he so chooses. Such right to sue for possession does not arise on the termination of tenancy but arises only on any of the events happening as prescribed and enumerated in section 13(1) of the Rent Act and consequently, therefore, protection given to a tenant being forfeited or on the forfeiture being incurred as observed in Dhanpal's case "the tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred liability to be evicted under the State Rent Act and not otherwise".

81. It was next contended by Shri Mahendra Shah, the learned Counsel, in this filed that the words "has become entitled to possession" clearly postulate that a suit could fall under Article 66 only if the tenancy has already come to an end and the plaintiff has as a consequence become entitled to possession before institution of the suit. According to him, whereas in the case of protected tenant the landlord is not entitled to possession or to sue for possession till the protected tenancy is terminated by order or decree of the Court for eviction and consequently, so contends the learned Counsel, Article 66 is not applicable to the present suit.

82. This again is an incorrect reading of the situation as rightly contended by Shri Tunara, the learned Counsel for the landlord. Article 66 in terms refer to landlord becoming entitled to possession by reason of forfeiture or breach of condition, but significantly does not refer to even inferentially of the landlord becoming so entitled to possession if the tenancy has come to an end. This situation would be covered under the provisions of Article 67 of the Limitation

Act, though it is not so under the Article 66. Therefore, it would not be permissible to add "only if tenancy has come to an end" in Article 66 of the Limitation Act. The plaintiff does not become entitled to possession before institution of suit only if tenancy has come to an end, as discussed earlier, Dhanpal's case expressly lays down that the plaintiff becomes entitled to possession before the institution of suit if any of the conditions prescribed in section 12 and 13(1) of the Rent Act comes into existence. As observed "is it not plain then that on the happening of events or on the fulfilment of the conditions mentioned in section 12 and 13 etc. the landlord becomes entitled to recover possession from the tenant, otherwise not".

83. It is rightly submitted by Shri Tunara, the learned Counsel, that if the argument sought to be advanced on behalf of the tenant is to be accepted and if it is to be stretched to its logical end then no suit can ever be filed in which event no decree can also be passed with the result that the protected tenant would continue to exist for ever and all this would make the provisions of sections 12 and 13 of the Rent Act wholly redundant and which obviously could not have been intended even remotely by the legislature.

84. Shri Mahendra Shah, the learned Counsel, also submitted expanding his earlier argument that in the case of tenant protected under the Rent Act, breach of condition does not automatically result in the tenancy coming to an end and landlord becoming entitled to possession. In fact, according to the learned Counsel, the landlord's entitlement to possession would only arise on his satisfying the Court and obtaining decree for eviction which would have the effect of terminating the tenancy. The argument which really is integral part of earlier submission has been already considered and discussed and has been negated and, therefore, the repetition is unnecessary. Suffice it is, however, to observe that section 13(1) of the Rent Act itself is explicit and prescribes that the landlord shall be entitled to recover possession which is the same as he being entitled to possession as contemplated in Article 66 of the Limitation Act, on the happening of any event mentioned therein. Obviously, it has nothing to do with the tenancy coming to an end.

85. Shri Mahendra Shah, the learned Counsel, further continued to argue that Article 66 has been repeatedly held to be applicable only if right to possession would have arisen automatically on breach of condition. According to him, for instance, even when the Transfer of Property Act is applicable the lessor does not become entitled to possession merely by virtue of breach of any condition unless he has first given notice of his intention to terminate the lease, secondly, right to possession does not flow ipso facto from the breach of condition but it flows from subsequent termination of tenancy based thereon and consequently, Article 66 would not apply. This submission has also been rightly countered by Shri Tunara, the learned Counsel for the landlord. It is apparent that right to possession flows in favour of the landlord and correspondingly the protection is lost to the tenant on the breach of condition as expressly laid down in Dhanpal Chettiar's case.

Consequently, therefore, the submission canvassed by Shri Mahendra Shah, the learned Counsel, in that behalf is obviously contrary to the express ratio laid down in dhanpal's case which is already discussed in extenso in other context making the repetition unnecessary.

86. The meaning and concept of ""forfeiture"" is hardly open for debate. In Amolak Banachand v. Dhondi Khandu Bhosle, ILR 30 Bom 466 forfeiture has been defined as ordinarily implying ""loss of legal right by reason of some breach of obligation.""

87. In Mary D" Souza Vs. Domnic John D"Souza, since deceased through his heir and legal representative Martinha D"Cruz, the learned Single Judge has observed that in order that particular provision in a lease should amount to a condition, it need not necessarily provide for a re-entry in case of any breach, and even if there is a provision in the agreement subject to which a person enters the demised premises it will amount to a condition of tenancy. It was further observed that an obligation which is to be discharged under the terms of tenancy is a condition of tenancy. It was also indicated no doubt that such terms would be consistent with the provisions of the Rent Act. It was indicated further that it is not necessary that there should be provision in the Rent Act corresponding to condition of tenancy and thereafter both must be consistent with each other. The learned Single Judge ultimately held that the petitioner therein was guilty of breach of condition, which was consistently with the provisions of Rent Act.

88. The ratio in K.S. Venkatarama Iyer and Others Vs. Ponnuswami Padayachi and Others, and Namdeo Lokman Lodhi Vs. Narmadabai and Others, (cited supra), also indicates two types of forfeiture and thus it cannot be restricted to concept of forfeiture as contemplated under the Transfer of Property Act.

89. The lower Appellate Bench was in error in observing that Article 66 will have no application as section 111 of the Transfer of Property Act itself will have no application. The learned Judges also proceeded on wrong footing in that filed when they observed that agreement between the parties does not contain any condition, which provides that on breach thereof the plaintiff may re-enter, though Clause (10) of the agreement provides that in case of breach of the terms and conditions, the landlord shall be at liberty to proceed against her to eject her and obviously, therefore, this clause is not a condition as contemplated by the first part of Clause (g) of section 111 of the Transfer of Property Act. Proceeding on that basis it was further held that a suit for eviction by the landlord against his tenant who is protected under the Rent Act, has to be founded upon any of the grounds provided for eviction under the Rent Act, though this ratio has been misconstrued while interpreting Article 66. The lower Appellate Bench was also impressed though quite erroneously by the argument on behalf of the tenant that as forfeiture of lease has become irrelevant, application of Article 66 also becomes irrelevant.

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93. u/s 12(1) of the Rent Act it is contemplated that the landlord shall not be entitled to recover possession so long as the tenant pays and is ready and willing to pay the amount of standard rent etc. and observe and performs other conditions of tenancy in so far as they are consistent with the provisions of this Act. It follows, therefore, that non-fulfilment and non-observance of these conditions entails into the consequence of tenant forfeiting his protection under the Rent Act from the consequence of getting himself evicted. The condition, the breach of which is alleged, obviously cannot be said to be inconsistent with the provisions of the Rent Act. Thus section 13(1) carves out several contingencies under which the landlord would be entitled to a decree for eviction if of course establishing all these contingencies is done to the satisfaction of the Court. Sub-clause (a) prescribes one of such contingency where tenant commits an act contrary to the provisions of Clause (o) of section 108 of the Transfer of Property Act. The agreement specifically prescribes a term in consonance with this provision of the Transfer of Property Act and alleges that the tenant has not used the premises in proper manner and has committed an act of waste. Sub-clause (b) of section 13(1) of the Rent Act carves out yet another contingency where the tenant has without landlord's consent given in writing erected on the premises any permanent structure. This precisely what has been asserted consistently by the landlord in the notice, correspondence and the plaint as also subsequently in his evidence. Thus, these conditions are obviously consistent with the provisions of the Rent Act and the allegations pertaining to their breach committed by the tenant. It is apparent, therefore, that section 13(1) of the Rent Act itself is explicit and stipulates that the landlord shall be entitled to recover possession under those contingencies established to the satisfaction of the Court, which entitlement to recover possession is the same as the landlord being entitled to possession as contemplated in Article 66 on happening of any of the events mentioned therein. It has nothing to do with the tenancy coming to an end. The plaintiff would be entitled to possession when any of the conditions prescribed u/s 13(1) of the rent Act are satisfied and not only after the decree is passed and, therefore, under sub-clause (1) the plaintiff still would be entitled to recover possession in a given case if there can be a breach of conditions by reason of forfeiture. The conditions prescribed under the Rent Act either could be contractual or statutory. The breach of contractual conditions may attract the provisions of section 13 while breach of statutory conditions the provisions of section 13. As already discussed and which is apparent, the forfeiture as contemplated under Article 66 is not the same as one contemplated under sub-clause (g) of section 111 of the Transfer of Property Act. The right of re-entry which is prescribed under the said provisions of Transfer of property Act is not contemplated under Article 66 of the Limitation Act. The prescription u/s 111(g) of the Transfer of Property Act contains a bundle of three items forfeiture, right to re-enter and notice by the landlord and it is after the notice that the tenancy is determined even as contemplated by Article 67 though the forfeiture has already preceded. Under Article 66, therefore, the date of forfeiture would be relevant while under Article 67 it would be the date of termination of tenancy.

The tenancy under the Transfer of Property Act u/s 111(g) would be validly determined as per the requirement when there is a forfeiture and issuance of notice by landlord, and thus under this provision as per section 111(g) the tenancy would be determined only after the notice, while under Article 66 it would be so on the date of forfeiture itself. The point of time in both these provisions viz. u/s 111(g) of the Transfer of Property Act and Article 67 would be different as under Article 66 the point of time would be when forfeiture is incurred whereas u/s 111(g) it would be after the forfeiture. Even as per the ratio in Dhanpal "s case the forfeiture would come into play only when the tenant is liable to be evicted as contemplated under Article 66. It is expressly observed in that case that when the Rent Act provides under what circumstances and on what grounds a tenant can be evicted, it does provide ""that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions."" A question is posed and answered effectively that on the happening of the events or on the fulfilment of the conditions mentioned in section 12 and 13, the landlord becomes entitled to recover possession from the tenant, otherwise not. It was further indicated that since the tenant continues to be a tenant even after determination of lease by forfeiture under Transfer of Property Act, which means that there is no forfeiture in the eye of law, the Supreme Court then observes as ""forfeiture comes into play only if tenant has incurred the liability to be evicted under the State Rent Act, not otherwise"". It would therefore, be manifest even on the touch-stone and guidelines of this ratio of the Supreme Court that it would be only Article 66 that would be squarely applicable making the period of limitation of 12 years from the date when the forfeiture is incurred by the tenant, that is, in other words the tenant incurs liability to be evicted under any of the grounds u/s 13, as also the suit for recovery of possession u/s 12(1) on the ground of breach of terms and conditions to tenancy would equally be governed by Article 66 making the same period of limitation of 12 years from the date when the condition is broken. The forfeiture of tenant's right to continue in possession is forfeiture as contemplated under Article 66. As already observed the forfeiture is loss of right to possess.

94. It is relevant to note the observations in Annamalai Pathar Vs. Sri-la-sri Vythilinga Pandara Sannadhi Avergal and Another, Though the decision is not under the Rent Act, it furnishes quite a relevant basis in this field. It clearly lays down that where the landlord becomes entitled to possession on the tenant committing breach of terms of tenancy, and where the tenancy is not required to be determined under the Transfer of Property Act, Article 66 also would be applicable. Applying the ratio in this judgment along with the ratio in Dhanpal Chettiar's case, there can hardly be any scope of doubt that Article 66 alone is applicable to such suits.

95. All these features taken in totality would make it clear that the agreement prescribes specifically certain terms and conditions of tenancy with a further prescription that breach of any of those conditions would entail into the landlord

getting a right to proceed against the tenant for eviction and tenant correspondingly losing and forfeiting the protection and the landlord asserts that there has been express breach of those terms and conditions by the tenant. This foundation has been firmly laid by the landlord and if that be so then it squarely covers the requirement of Article 66 since the plaintiff had become entitled to possession on account of forfeiture or breach of condition and the time being commenced to run when the forfeiture is incurred or the condition is broken. I have already discussed the other contention of Shri Tunara, the learned Counsel. The option thus fails in the lap of the landlord to on such forfeiture or breach of condition and it is for the landlord to exercise that option one way or the other. As observed in some of the ratios, such option can be manifested by filing or the suit itself, though the breach by itself without landlord exercising the option does not advance his case. In addition to the concept of forfeiture which is clear in this case, the second part of Article 66 is equally applied when there is a breach of condition.

96. On the analysis and assessment of all these features in the context of the relevant provisions and various ratios the case would squarely fall under the provisions of the Article 66 of the Limitation Act. This is nothing but a suit for possession of the immovable property wherein the plaintiff landlord has become entitled to possession which is both by reason of forfeiture incurred by the tenant as also by breach of condition. In other words, the existence of the tenancy agreement with the express condition therein makes the case fall also in the second part though even de hors thereof the case equally falls in the first part on the general principles when the entitlement of the landlord to get possession flows out of the forfeiture incurred by the tenant. Thus, the tenancy agreement is an additional feature though its absence would not have been any impediment in the way of landlord. Consequently, the period of limitation obviously be 12 years with the commencing point when the said forfeiture is incurred and or when the condition is broken by the tenant.

97. It may so happen in many cases that said articles of the Limitation Act may overlap. This, however, does not make the said articles inapplicable and make the residuary article applicable. It is worth noting that under both the articles viz. 66 and 67 the period of limitation is the same being 12 years and, therefore, applicability of either or both of them will not change the complexion, since the period of limitation would be 12 years, if the notice is issued when the period will commence when the tenancy is determined by such a notice whereas in other case which is based entirely on the concept of forfeiture or breach of condition, the period will commence when the forfeiture is incurred or condition is broken, or in a given case both these articles are squarely apply, though the resultant consequence of period of limitation being 12 years would remain intact.

98. Shri Mahendra Shah, the learned Counsel for the respondent-tenant sought to contend that the Articles 66 and 67 are inapplicable, which is manifested by the provisions of section 27 of the Limitation Act. This argument also proceeds

on the footing that such is not a suit for possession and which contention has also been negated. The learned Counsel also contends that if the suit is held to be a suit for possession then it must follow that the landlord does not institute the suit against the tenant within 12 years on happening of any of the events stipulated in section 12 or section 13 of the Rent Act, not only would the suit be barred but the landlord's right to the demised premises would itself be extinguished having regard to section 27. In other words, contends the learned Counsel, if the suit is held not to be a suit for possession and therefore, is governed by section 113 then even if particular suit is held as barred by limitation, the landlord's right to the demised property would not be extinguished and the landlord would be entitled to sue again if any of the condition of sections 12 and 13 are fulfilled in future. The whole argument proceeds on a fallacious footing that it is not a suit for possession. The suit by the landlord even against the protected tenant under sections 12 and 13 of the Rent Act, is in fact the suit for possession and the express wording of sections 12 and 13 speak of recovery of possession only. Even if Article 113 applies, the suit under sections 12 and 13 does not cease to be a suit for possession. In other words, it is and it always remains to be a suit for possession only. If that be so, which is inescapable, then the character of the suit whether Article 66, 67 or 113 applies remains the same viz., being the suit for possession. Therefore, the application of Article 113 will not take away such a suit from the purview of section 27 of the Limitation Act because section 27 applies to all suits for possession. Therefore, whether the period of limitation for suit for possession is 12 years or 3 years the consequence of extinguishing rights of the landlord u/s 27 will follow in the present case after 12 years and in other cases after three years. It cannot be overlooked that section 27 of the Limitation Act is of general application i.e. it will apply to every suit for recovery of possession. This view obviously finds favour in the ratio in *Dindayal and Another Vs. Rajaram*, *Vidya Datta Dyundi and Another Vs. Jagmandar Das and Others*, and *Baswant Motiram Gavri v. Ganpat Dhanaji Gavri* 1975 Mh.L.J. 9.

99. Two aspects are then converted on the border premise as general proposition, which is relevant in the context of this entire discussion on behalf of respondent-tenant. First relates to the cause of action and the second about the right to sue. In so far as the cause of action is concerned, *Shri Mahendra Shah*, the learned Counsel, submitted that all the items prescribed u/s 13(1) of the Rent Act by themselves form a cause of action and this could find favour with the lower Appellate Bench. The lower Appellate Bench considered both these aspects in composite manner and relied on certain decisions to formulate the view. They are of the opinion, relying on the commentary on the law of Limitation that where the suit falls within the first column of Article but the cause of action for the suit accrues after the time specified in third column as starting point of limitation, that article would not apply to the case. The time from which the limitation is directed to run under the various article either synchronizes with the accrual of cause of action or refers to the date subsequent to such accrual.

The learned Judges then observed that the cause of action briefly means ""right and infringement of right"" and where a party has undoubted right and if that right is infringed then ""cause of action at once accrues to him"". The learned Judges also commented that right to sue means ""right to bring a particular suit with reference to which the plea of limitation is raised and it signifies ordinarily the right to seek relief by means of legal procedure and it accrues when the cause of action accrues. The learned Judges then proceeded to rely on some ratios. Thus in *Harinder Singh v. Anant Ram*, AIR 1939 Lah. 6, it was held that right to sue accrues only when the cause of action arises and for a cause of action to arise it must be clear that the averments in the plaint, if held correct should lead to a successful result. Reliance was then placed on two decisions (i) *S.E. Mohamad Abdulla and Sons v. T.K. Dorai Araua* ILR 1956 Mad 846 and (ii) *Raj Behari Singh and Another Vs. Chandrika Singh and Others*, when it has been observed that the true tests to determine when a cause of action has accrued is to ascertain the time when the plaintiff could first have maintained his action to a successful result and if an infringement of right happens at a particular point of time, whole cause of action could be said to have arisen then and there only. Relying on this and other ratios the lower Appellate Court ultimately concluded that right to sue accrues when cause of action arises and support was sought to be extracted from these very ratios to ascertain the meaning of cause of action. In that behalf reliance was placed on *Musumunt Kaur and another v. Pratap Singh and others*, 15 Ind App 156 when it was held that cause of action has no relation to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint. On the basis of this ratio, the learned Judge concluded as :---

".....it has to be held that the grounds in ejectment provided by sections 12 and 13 afford cause of action to the landlord. A tenant committing any act which entails liability to be evicted from the premises affords cause of action to the landlord".

For obvious reasons I cannot persuade myself to accept this view and the proposition propagated by the lower Appellate Bench, which is obviously contrary to the reality of the situation. It would be worth considering some of the decisions in the field, which high-lights the concept of right to sue and when it accrues. In *Mt. Bolo v. Koklan*, 1930 P.C. 270 it has been observed as :---

"....there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted..."

100. In *Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others*, wherein one of the grounds of eviction was u/s 13(1)(e) of the Rent Act of unlawful sub-letting, it was indicated that the tenant's liability to eviction arises once the fact of unlawful sub-letting is proved at the date of the notice.

101. In *Sardar Balbir Singh Vs. Atma Ram Srivastava*, , the Full Bench of the Allahabad High Court considered the concept of cause of action. It was sought to be distinguished from the right of action as also from the remedy. It was observed that right of action is a right to presently enforce the cause of action and it does not arise until the performance of all the conditions precedent to the action. A remedy has been indicated as the means or method whereby the cause of action or corresponding obligation is effectuated and by which wrong is redressed and relief obtained. The concept of cause of action has been highlighted under the observations as :----

"The term" cause of action" means cause of action which gives action for and forms the foundations of the suit.....cause of action is the obligation from which springs the "action" defined as the right to enforce an obligation. A cause of action arises when that which ought to have been done is not done or that which ought not to have been done is done. The essential elements of a cause of action are thus the existence of a legal right in the plaintiff with a corresponding legal duty in the defendant, and a violation or breach of that "right or duty" with consequential injury or damage to the plaintiff for which he may maintain an action for appropriate relief or reliefs. The right to maintain an action depends upon the existence of a cause of action, which involves a combination of a right on the part of the plaintiff and the violation of such right by the defendant....A cause of action arises from the invasion of the plaintiff's right by violation of some duty imposed upon the defendant in favour of the plaintiff either by voluntary contract or by positive law.....On determination of lease, the law invests the lessor with a right to have vacant possession of the premises and imposes a duty in lessee to deliver vacant possession....breach of tenant's duty and violation of the landlord's right gives right to cause of action resulting in two reliefs, one for eviction and the other for mesne profit and damages....."

In *Gajanan Dattatraya's* case cited (supra) the provisions of unlawful sub-letting within the meaning of section 13(1)(e) of the Rent Act came under discussion and it was held that the provisions of the Rent Act indicates that tenant is disentitled to any protection under that if he is within the mischief of provisions of section 13(1)(e) of the Act viz., that he has sublet. But the language is that if the tenant has sublet the protection ceases and, therefore, it was observed that it cannot be contended that subletting must continue at the date of the suit for passing a decree for eviction and the tenant's liability to eviction arises once the fact of unlawful sub-letting is proved at the date of the notice and in that context it was further observed that to acced to the contention of the tenant could mean that he would not be within the mischief of sub-letting if after the landlord gives a notice of termination on the ground of unlawful sub-letting the sub-tenant vacates in which case the landlord will not be able to get relief against the tenant inspite of unlawful sub-letting and thereby the tenant can foil attempt of landlord to obtain possession every time by getting the sub-tenant vacated. It was ultimately held that the tenants liability to eviction arises once the fact of unlawful sub-letting is proved.

102. In Dhanpal Chettiar's case (supra) there is a pointer that items mentioned in section 13(1) of the Rent Act are the grounds but cannot be the cause of action and the grounds which stipulate happening of such events which are to be so established to the satisfaction of the Court, when it is observed as :---

".....the landlord will be well advised by way of abundant caution and in order to lend additional support to case to give notice to his tenant intimating that he intended to file a suit against him for his eviction on the grounds mentioned in the notice.... The action of the landlord instituting suit for eviction on the grounds mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee.....Section 13 provides that the landlord may recover possession on certain grounds. It is not plain then that on the happening of the events or on the fulfilment of the conditions mentioned in sections 12 and 13 etc. the landlord becomes entitled to recover possession from the tenant otherwise not.....a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of these conditionsSection 11 gives protection against the eviction providing further that he shall not be liable to eviction except in execution of a decree passed by the Court for one or more grounds mentioned in section 11. Does it stand to reason to say that a decree can be passed if one or more of the grounds exist and such a decree can be passed against the existing tenant within the meaning of State Rent Act....."

103. The ratio and eloquent observations in Hussainbhai Embrahim Bohri v. The Navyug Chitrapat Co., 70 Bom.L.R. 390, very much remains intact. The proceedings related to the petitioners application for amendment to the plaint which was rejected by the trial Court. The suit was initially filed for non-payment of rent and thus non-compliance with notice u/s 12(2) of the Rent Act. Through the amendment two grounds for ejectment were sought to be added. The first being that the respondent had not been using the suit premises for a period exceeding six months for the purpose for which it was let out and inclusion of permitted increases in the money claim was also brought for. One of the contentions raised by the respondent-tenant was that a ground stated in the claim for eviction of tenant is a part of cause of action and to add to the ground for eviction is adding another cause of action which would change the nature of the suit and would required fresh leave of winding up Court and therefore, the jurisdiction was challenged. The learned Single Judge in that behalf made the following apt observations as :----

"It is true that "cause of action" means every material fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to judgment.....Section 12 of the Rent Act provides a protection for tenant after determination of tenancy. It creates an impediment in the way of the landlord recovering possession. Section 13 of the Act provides certain conditions under which protection of the tenant is taken away and impediment in the way of the landlord recovering possession is removed. These conditions are termed as

"grounds of ejectment". It is not necessary for the landlord to set out these grounds in notice to quit as they are not part of the cause of action for the landlord. The landlord sets out these grounds in the plaint not because they constitute his cause of action but in anticipation of the tenant claiming protection provided in section 12 to show that conditions have arisen which have taken away the protection of tenant and removed the impediment in the way of the landlord recovering possession. In my opinion, grounds of ejectment are not a part of cause of action...."

The learned Single Judge then relied on unreported decision by another Single Judge in *Vaishnoo Ditti v. Avtar Singh*, in Special Civil Application No. 112 of 1967 decided on June 28/29, 1967 wherein it is observed as :---

".....It will thus be seen that section 12(1) of the Rent Act creates an obstacle in the way of the landlord in obtaining possession but the obstacle becomes ineffective if the requirement of one of the clauses of section 13(1) are fulfilled. The fulfilment of requirement of any of these clauses does not create a new cause of action". The cause of action is already there. The effect of the fulfilment of the requirements of one or more of the causes is to remove the obstacle and make it possible for the landlord to recover possession".

104. With respect, I am in full agreement with the observations and the ratio when it has been firmly laid down that the grounds of ejectment as provided for u/s 13(1) of the Rent Act are not a part of cause of action in a suit for possession. They have independent entity as also identity and have entirely different field of operation furnishing certain grounds on which eviction can be sought which grounds however, are to be established to the satisfaction of the Court. It cannot be confused as being cause of action. In other words the cause of action is not the ground but it is the forfeiture of protection of the Rent Act for the tenant for being continued to be a tenant in the premises. The grounds u/s 13(1) are the means to prove the forfeiture and significantly forfeiture of tenants right to continue in the premises is forfeiture contemplated by Article 66 which in some cases may be statutory forfeiture. The learned Single Judge in *Kamruddin Masjit Trust v. Abdul Rahiman Fakiruddin*, 1985(2) Bom.C.R. 121 observed as:---

"Sections 12 and 13 of the Rent Act places certain restrictions in the matter of recovery of possession even though right to possession has already accrued and makes such recovery of possession subject to certain conditions. However, once the restrictions are removed and the conditions fulfilled, the lesser can proceed to recover possession. Sections 12 and 13 do not extinguish a cause of action nor do these provisions create any new cause of action. These sections only regulate and control the right to recover possession already otherwise existing in the lessor under the general law".

As already discussed there is an inbuilt pointer in section 13(1) of the Rent Act itself when it is prescribed that the landlord may set one or other grounds as mentioned therein so as to make him entitled to possession, but that by itself is

not enough since it is the satisfaction of the Court about the existence of these grounds which would govern the fate of that proceedings in favour of the landlord. This would certainly high-light the proposition that these are really the grounds and could not be the cause of action. Shri Tunara's contention in that behalf will have to be upheld.

105. There is yet another inbuilt pointer in favour of this conclusion as furnished through the various grounds as prescribed u/s 13(1) of the Rent Act. Thus, Clause (1) covers the case where the tenant has built, acquired vacant possession, of or been allotted a suitable residence. It is obviously only an impediment but not the cause of action. By happening of that event only the impediment, for the landlord is lifted. Under Clause (g) the landlord's reasonable and bona fide requirement for occupation of the premises comes into play. It is certainly not an infringement of right by the defendant-tenant, but it is exclusively the right of plaintiff for his occupation. The tenant has obviously no nexus with the plaintiff's right. Such reasonable and bona fide requirement has to exist even on the date of the decree. That requirement has nothing to do with the right and infringement of right. Obviously it cannot constitute the cause of action, since its relevance is even on the date of decree and is thoroughly unconnected with any act of the tenant. Clause (k) stipulates the situation where the tenant has not used the premises without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. If, therefore, in a case the tenant does not use the premises for about four years, but if the suit is not filed for three years, it would be alleged to be barred, though the non-user is for six months prior to the suit. This would create an irrational result. Clause (e) covers the case of an unlawful subletting. As observed in Gajanan Dattatraya's case AIR 1976 S.C. 2155 (supra) subletting need not be necessarily on the date of the suit, once its liability is incurred initially. It cannot, therefore, be said that if the subtenant vacates the cause of action comes to an end on the date of filing of the suit. Clauses (h), (hh) and (hhh) which fall in one group also cannot furnish any cause of action. The situation is independent of any act on the part of the tenant and which lifts the embargo in the way of the landlord. Section 13(2) refers to relative hardship between the landlord and tenant in the context of the decree. It is to be exclusively decided by the Court and has nothing to do with the cause of action. If these grounds are to be equated with the cause of action, then all grounds must have the same period of limitation which would not be so on the plain reading of the various clauses. It is unnecessary to multiply the illustrations. As stated, mere existence of any or all such grounds is not enough, but it shall be so established to the satisfaction of the Court. Once it is so established then the Court also does not get any choice but to pass the decree. This itself is quite relevant in the context of the controversy. It is thus apparent that as soon as the impediment is removed, the right of landlord springs to file a suit. It is, therefore, manifest that all the items catalogued u/s 13(1) are grounds but certainly those do not constitute or formulate any cause of action.

106. Though reliance was sought to be placed on behalf of the respondent-tenant on the decision in *Maharaja of Jeypore v. Rukmini Pattamadevi Geru*, ILR 42 Mad 539, the said exercise does not go to the rescue of the tenant since the said ratio has no application. Therein the defendant had not rendered service during service tenure nor did he pay the proper amount of rent in particular year but on the contrary he asserted that it was not service tenure and actually set up the title in himself to a "parangana" as an independent "zamindar". Against that backdrop it was held that the denial of title to the suit would not work the forfeiture of which advantage could be taken in that suit, because the forfeiture must have accrued before the suit was instituted and there was no denial by matter of record previous to the institution of the suit; though the said ratio does enunciate that the forfeiture must accrue before the institution of the suit.

107. In *Parameshri and another v. Vittappa Shanbhaga*, ILR 26 Mad 157, the plaintiff had filed suit for evicting the defendants claiming that the alienation to them operated as forfeiture of the lease. However, the lease contained no express condition to that effect, nor did it provide that on breach of stipulation against the alienation the lessor might re-enter and it is on that count that it was held that alienation did not entitle the plaintiff to terminate the lease and re-enter upon the land. This also would have no application to the facts of the instant case.

108. As endeavour to rely on the decision in *Haji Suleman Haji Ayub Bhinwandiwalla v. Narayan Sadashiv Ogale*, 84 Bom.L.R. 122 also would not be available to the tenant for obvious reasons. On the contrary therein it was indicated that the condition of tenancy that part of the premises shall be kept as open space and forbidding its use in any other manner could not be said to be inconsistent with the provisions of the Rent Act. It was indicated further that sections 12 and 13 deal with different topics and have different objects. Section 12(1) creates a protection while u/s 13 in spite of such protection the landlord can sue for eviction provided "he establishes any one of the circumstances set out in that section". No doubt, it is indicated thereafter that it is not possible to say that it is only when the circumstances set out in section 13 arise that the landlord can evict the tenant and that the eviction on the ground of failure to perform the conditions of tenancy would not deprive the tenant of the protection u/s 12(1) of the Rent Act. Therein the tenant had lost the protection. These observations do not lend any support to the proposition canvassed on behalf of the respondent-tenant, though on the contrary those tend to indicate the meaning of various items prescribed u/s 13(1) of the Rent Act.

109. On the resume of all these features in proper perspective it will be clear that Article 66 and/or 67 of the Limitation Act would be squarely applicable to such a suit for possession under the Rent Act whereas Article 113 which is a residuary article under the Limitation Act has absolutely no application whatsoever. As discussed earlier, Article 66 is more dominant, relevant and of primary importance applicable normally to all such suits for possession whereas

Article 67 may be attracted in some cases, which could be independent and exclusive on its own or even be in addition as could itself fall within the outer fold of Article 66. Both the articles may even overlap in some cases. Both the articles, therefore, become fully relevant and specifically applicable to such suits. Some of the well recognized principles in interpreting and applying the Articles of Limitation Act can well be catalogued as :---

- (a) The interpretation which is penal should be avoided.
- (b) If possible the interpretation which does not bar the suit should be preferred to one which bars the suit.
- (c) If there is a specific article applicable to the facts of particular case, the residuary article should not be applied.
- (d) All the columns of the article be construed.

110. It has been observed in *Gannon Dunkerley & Co. v. Western India Theatre Limited* and another, 65 CWN 504 as :---

"".....It is well established rule of construction of the Limitation Act that if there be two articles which may cover a case, the one more general and the other more specific, as a principle of construction the more particular or specific Article ought to be regarded as the one governing the case.....If the claims against the defendant can be formulated, both as a claim for compensation under Article 115 with three years" limitation for breach of a contract and also as depository under Article 145, then the longer period which preserves the right and does not defeat the claim should be preferred as a principle of construction...if two articles limiting the period for bringing a suit are wide enough to include the same cause of action and neither of them can be said to apply more specifically than the other, that which keeps alive and not that which bars the suit should generally and apart from other equitable construction be preferred, the defendant cannot resist the plaintiff's on the ground of limitation.""

111. The Division Bench of this Court in *P.N. Films Limited v. Overseas Films Corporation Limited*, AIR 1953 Bom. 10, it has been observed as :---

""The Limitation Act must always be construed strictly against the party who sets up the plea of limitation. The Limitation Act deprives a party of a valuable right, and unless the provision in the Limitation Act is clear and beyond doubt, a benevolent construction, a construction favourable to the party whose valuable right is being taken away, must always be given.""

112. Applying these principles it would reinforce the conclusion that not Article 113 as residuary article but the specific article viz., Articles 66 and 67 only would be applicable. When such specific articles are expressly applicable then it would not be permissible to take resort to residuary article and thereby sealing down the period of limitation and thus short-circuiting maintainability of the suit, which

otherwise would be kept alive under the said specific articles. The endeavour should be to accept the article which does not bar the suit unless it is positively excluded have, therefore, not the slightest reservation to hold that the period of limitation would be 12 years running from the determination of the tenancy and/or from the time when the tenant has incurred forfeiture or has committed breach of condition in a suit for possession by the landlord under the Rent Act. Consequently, such a suit would not get a label as one for which no period of limitation would be prescribed elsewhere in the Limitation Act and, therefore, the period would be three years. The resultant consequences is that the suit as it is filed is well within the span of 12 years as contemplated by Articles 66 and 67 of the Limitation Act and it was an apparent error on the part of the lower Appellate Bench to non suit the plaintiff on the bar limitation. All the contentions raised by Shri Tunara, the learned Counsel on behalf of the landlord must therefore, be upheld while the counter contentions raised by Shri Mahendra Shah, the learned Counsel, for the respondent-tenant deserve to be negatived outright. It is rather surprising but equally unfortunate that the learned Judges of the Appellate Bench persuaded themselves to the superficial reading of the situation whereas a little more exercise and probe could have easily unmasked the deceptive gloss over that view. The decree of the lower Appellate Court on that count is not only vulnerable but is unsustainable.

x x x

115. At the threshold it must be observed without any scope for debate that significantly both the courts below have recorded a firm finding on facts against the tenant on both the counts expressly holding that there has been permanent alterations on huge scale erected by the tenant and that was without written consent of the landlord and the plea that it was with the knowledge of the landlord has also been expressly negatived. The evidence of the landlord has been fully accepted while that of the husband of the tenant, who is constituted power of attorney and who for all practical purpose is the real tenant, has been completely discarded on its own merits. It is quite interesting to note that even the lower Appellate Bench which held in favour of the tenant upholding this contention of bar of limitation endorsed the finding of the trial Court on facts on the issue u/s 13(1)(a) and (b) expressly holding that the tenant was guilty of committing acts of waste and also erecting structural alteration of permanent nature without the consent of the landlord. On the process of appreciation of evidence the lower Appellate Court observed as:

""Applying the principles and tests laid down in these decisions to the facts of the instant case, we are of the opinion that the defendant is guilty of erection of permanent structure and also of causing waste. Hence, had we given finding in favour of the plaintiff on the question of limitation we would have confirmed the decree and dismissed the appeal.""

It is no doubt because of this finding that the tenant was advised to file companion Writ Petition No. 5515 of 1985 directing challenge to this finding.

However, the fact remains that there is a concurrent finding of fact of both the courts below on this aspect, which does not contain any error apparent on the face of the record nor it is possible to trace any deficiency or error in the reasons assigned or in the process of appreciation of evidence or in applying the settled principles and consequently, it would not be permissible for this Court within this limited jurisdiction under Article 227 of the Constitution of India to upset that finding. In fact, the validity of that finding on its own merits is not open to challenge on any count as both the courts below have assigned cogent reasons and have properly assessed the material on record in that behalf. The respondent-tenant, therefore, obviously stumbles across this formidable hurdle at the threshold and in fact as also on law his petition is liable to be dismissed on that count alone. However, on the fresh assessment of the material I do not find any single reason to depart from that finding though on the contrary the finding and conclusion harmoniously flows out of the material on record and there is not even remote scope to reach the contrary finding. The material makes it very clear that the tenant has not even a semblance of case and he has indulged in act of erecting permanent alteration in such a bold and on the argument of Shri Tunara, the learned Counsel, in such an outrageous manner that he forfeits any claim whatsoever either in law or equity to get any relief. On the contrary his act must entail into the only consequence of suffering a decree for eviction.

x x x

127. He then made a material statement on an equally important aspect as :-

""External wall on the ground floor and external wall on the first floor are bounded by putting one over the other. The load on the first floor wall is on the ground floor external walls. Generally no foundation is required for small wall i.e. 1"-6"" wall. One can construct wall upto maximum 3" height without any foundation. Total height of the walls on the first floor and on the ground floor is 17" plus plinth of 1"-6"". This wall of 17" requires foundation. In case of no foundation, it will collapse...""

It is almost astonishing to find that this very material has practically gone unchallenged. The cross-examination is most scanty and does not touch any of the material features even inferentially. Thus, he stated in cross-examination that the plaintiff had told him that he had brought the keys of the suit premises and the plaintiff also told him that he would be required to go to the Court. He admitted that the plaintiff met him some time before 19th September, 1982 and then on 19th and 28th September, 1982 and on the date of his evidence i.e. 13th October, 1982. The next date being 20th October was not fixed on 19th October. He stated further that he had knowledge of the construction work and he had enough experience in that behalf and he has been in practice as an Architect for years together on account of which he has gained enough experience. This has been brought out in the cross-examination itself. He had taken measure tape, some papers and sketch pen when he visited the suit premises. In cross-examination he reiterated as :--

"The first floor is also premises and not a loft."

This is all the cross-examination of this very material witness. Even the learned Counsel for the defendant could not justify this deficiency in any manner in the above cross-examination of this witness. He is supported by the sketch Exhibit J and, therefore, the unchallenged evidence is corroborated by that document. He is absolutely an independent witness having enough knowledge and experience in that field which is not only not challenged but is confirmed in the cross examination. This evidence then makes it very clear as to what the situation of the tenement in the year 1982 i.e. after the tenant was inducted, and this clearly corroborates strongly the evidence of the plaintiff as to what material additions have been made by the tenant, which are already discussed making unnecessary the further repetition. Thus the evidence and the report of Architect Shri Daftari along with plaintiff's evidence and the recitals in the tenancy agreement depicts the tenements as it stood before the defendant was inducted in the suit premises while the plaintiff's evidence along with the notice, rejoinder, the plaint are fully corroborated by the evidence of the Architect Shri Kapadia and his sketch in that behalf read together making the situation vividly clear before and after the defendant was inducted in the tenement and thus leaves no manner of doubt that the material alterations of permanent nature have been made by the defendant. It is significant to note that this evidence makes it crystal clear that initially there was a loft which was completely replaced by the new construction forming first floor and that is precisely what both the courts below have given the correct nomenclature to the portion and significantly the defendant had also blurted out similarly that it was a first floor in reply to suit notice dated 4th October, 1978, though she had drawn on her imagination to put the blame on her Advocate suggesting that he gave a wrong reply. x x x

131. In the face of this state of evidence, and various circumstances including the documents, which already discussed in details, there is hardly any scope for debate that all these alterations were made by the defendant after she was inducted and many of the alterations were certainly of permanent nature, the windows, flooring, doors, the roof and the walls which have been materially changed clearly fall in that category. In so far as completely wiping out the identity of the loft and converting it into almost a first floor erecting brick masonry work of walls and thereby raising the height of the structure, these items are abundantly proved which conclusively establish that those certainly get the label of permanent alterations in fact not only the loft, but the entire tenement including the ground floor structure was so materially altered that the entire premises almost changed its identity. Even the learned Counsel for the defendant could not get out of this inconvenient situation and in fact as stated earlier, as regards this first floor this position was practically conceded though as I have stated independent of this concession the evidence establishes that position. No doubt at some stage of argument a feeble attempt was made to suggest that all these alterations were necessary for the better use and enjoyment of the premises and for that purpose reliance was sought to be placed

on certain decisions. Thus it was observed in *Suka Ishram Choudhari v. Ranchhoddas Manakchand Gujarathi*, 74 Bom.L.R. 220 that while determining the permanent character of the structure it is necessary to see the nature of the structure and mode and degree of annexation and it is also necessary to see the intention of the party who puts up the structure. The reliance was placed on some of the ratios on behalf of the landlord also. Thus for instance in *Patel Ishwarbhai Lallubhai v. Patel Parshottam Ranchodbhai & others*, 8 G.L.R. 665 it was observed that in order to determine the character of the structure whether it is a permanent or a temporary one the nature of the structure, the nature of the materials used in the structure, the manner in which the structure is erected, the purpose for which the structure is erected and the element of permanence will be the material consideration and those are considered to be the objective tests in *Manchand Das Shah v. Bishnu Das*, AIR 1967 S.C. 648 the structure therein was held to be a permanent alteration because those were structural alterations so as to give new face and form to the structure of the premises. Shri Mahendra Shah, the learned Counsel also wanted to rely on several other decisions, which are elaborately considered by the learned Single Judge in Special Civil Application No. 2731 of 1973 in the matter of *Premishan Mehta v. Kishanchand Chelaram & others*, where the learned Single Judge has taken resume of various decisions in that field which furnished the guide-lines as to when an alteration can be styled as a permanent structure. It has been observed that the question whether the structure is permanent or not always depends on facts and circumstances of each case. It was also indicated repeatedly that while determining the permanent character of structure it is always necessary to see the nature of the structure, mode of the annexure and intention of the party, who puts up the structure. This intention has to be gathered from the mode and degree of annexation and nature of structure and surrounding circumstances. Similarly the dimensions of the structure and its easy removability is also relevant feature and similarly the purpose of erecting the structure. It was also indicated that if structure is permanent or contains substantial improvement of the premises so that the person who had made it leaves the premises, such a structure amounts to a permanent gift to the owner and that would certainly be a circumstance for determining whether or not it is a permanent structure. But if the person who has done that structure has done it only for better use and to completely enjoy it permanently, such a structure cannot be a permanent structure. It is also necessary to consider whether the structure brings about the substantial change in the character of the premises and also to examine the nature and material used and also the durability of the structure. It was also indicated that it would not be a permanent structure if the work has been effected so as to enable the person using the premises for better enjoyment and beneficial user and if there is not change in the form of structure, then it cannot be said to be a permanent structure. It was further indicated that if the work which is done is so annexed to the existing premises then the annexed work cannot be removed without detriment or substantial detriment of the existing premises and causing injury to them then the work must be described as permanent structure. It is unnecessary

to multiply these ratios since the undercurrent of guide-lines is beyond any controversy.

x x x

140. Following features harmoniously flow out of this discussion and analysis of all the features :--

a) About the applicability of Limitation Act:---

i) The provisions of the Limitation Act apply to the proceedings under the Rent Act;

ii) Therefore, the provisions and articles under the Limitation Act squarely apply to a suit for possession under the Rent Act;

iii) Primarily and basically Articles 66 of the Limitation Act applies to such a suit for possession under the Rent Act;

iv) In some cases even Article 67 of the Limitation Act would also be applicable;

v) Consequently, therefore, residuary Article 113 of the Limitation Act has no applicable whatsoever to such a suit for possession;

(vi) It, therefore, follows that period of limitation for such a suit for possession under the Rent Act would be 12 years as prescribed under both these Articles.

b) On the factual aspect;

i) The present suit filed by the plaintiff is within time.

ii) The respondent-tenant has committed an act contrary to the provisions of Clause (o) of section 108 of the Transfer of Property Act and in particular committed act of waste and damage to the property within the meaning of section 13(1)(a) of the Rent Act and this aspect is established to the satisfaction of the Court.

iii) It is also established to the satisfaction of the Court that the tenant has without plaintiff's consent given in writing erected on the premises permanent structure within the meaning of Clause (b) of section 13(1) of the Rent Act.

iv) The plaintiff-landlord, therefore, is entitled to recover possession of the suit premises from the tenant on both these courts.

141. The net result of this discussion, therefore, would be that the decree non-suiting the plaintiff only on the ground of bar of limitation as per the lower Appellate Court will have to be set aside. Plaintiff landlord's petition in that behalf will have to be allowed. The finding recorded by both the courts below on the factual aspects about the tenant having incurred liability for eviction u/s 13(1) (a) and (b) of the Rent Act will have to be endorsed. The tenant's petition challenging that finding, therefore, will have to be dismissed. The resultant consequence would be that the decree for eviction recorded by the trial Court will

have to be restored and plaintiff's suit for possession will have to be decreed with costs.

Writ Petition No. 5515 of 1985

(Filed by the defendant-tenant challenging the finding of fact of both the courts below vis-a-vis section 13(1)(a) and 13(1)(b) of the Rent Act).

Rule discharged. The said finding is confirmed.

Writ Petition No. 5391 of 1985.

Filed by the original plaintiff-landlord against the decree passed by the Appellate Bench of the Small Causes Court, dismissing the suit)

Rule made absolute with costs.

The decree recorded by the Appellate Bench of the Small Causes Court non-suiting the plaintiff-landlord is set aside and that decree is substituted by the decree for possession recorded by the trial Court in favour of the landlord.

The net result is that the suit for possession filed by the plaintiff-landlord against the respondent tenant is decreed with costs.

x x x Rule made absolute.