
(1964) 06 GUJ CK 0002
In the Gujarat High Court

Hiralal Vallabhram

APPELLANT

Vs

Sheth Kasturbhai Lalbhai and Others

RESPONDENT

Date of Decision : 18-06-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1964) 5 GLR 941

Hon'ble Judges : P.N. Bhagwati, J;J.B. Mehta, J

Bench : Division Bench

Judgement

P.N. Bhagwati, J.—This Revision Application arises out of a suit originally filed by plaintiff No. 1 against defendants Nos. 1 to 4 for recovering possession of certain premises situate in the City of Ahmedabad. Plaintiff No. 1 was the owner of the premises and he had let them out to defendants Nos. 1 to 3 who were carrying on business in the firm name of Messrs. N.A. Brothers. The contractual rent was Rs. 26/per month. Some time prior to November 1956 plaintiff No. 1 found that defendant No. 4 was in possession of the premises. Plaintiff No. 1 therefore gave a notice dated 30th November 1956 terminating the tenancy of defendants Nos. 1 to 3 and calling upon them to hand over possession of the premises. It was alleged in the notice that defendants Nos. 1 to 3 had unlawfully sublet the premises to defendant No. 4 and had therefore forfeited the protection of the Rent Act. Defendants Nos. 1 to 3 were also in arrears of rent from 1st September 1956 and a demand for arrears of rent was also therefore made in the notice by plaintiff No. 1. Though the period of the notice expired on 30th December 1956 defendants Nos. 1 to 3 did not hand over possession of the premises to plaintiff No. 1 nor did they pay up the arrears of rent. Plaintiff No. 1 therefore filed the present suit on 1st March 1957 for recovering possession of the premises. Since defendant No. 4 was admittedly in possession of the premises plaintiff No. 1 impleaded him as a defendant to the suit in addition to defendants Nos. 1 to 3. There were two grounds on which possession of the premises was sought by plaintiff No. 1. The first ground was that defendants Nos. 1 to 3 were in arrears of rent at the date of the suit and were therefore not entitled to the protection of

the Rent Act. The second ground was that defendants Nos. 1 to 3 had unlawfully sublet the premises to defendant No. 4 and plaintiff No. 1 was therefore entitled to recover possession of the premises u/s 13(1)(e) of the Rent Act. Now curiously enough each one of the defendants put forward a different defense and the defendants put forward by them were contradictory of one another. Defendant No. 1 alleged that he had ceased to be a partner of defendants Nos. 2 and 3 since Samvat Year 2001 and that he had therefore nothing to do with the premises. Defendants Nos. 2 and 3 agreed that defendant No. 1 had ceased to be their partner but they alleged that after defendant No. 1 left the partnership they had admitted defendant No. 4 as a partner in the business which they carried on in the firm name of Dineshchandra Kashinath and that defendant No. 4 was therefore not their subtenant but was carrying on business in the premises in partnership with them. Defendant No. 4 came forward with a totally different story. He denied that defendants Nos. 2 and 3 had sublet the suit premises to him. He also denied that he was taken as a partner by defendants Nos. 2 and 3 in the business carried on in the premises. He alleged that defendants Nos. 1 to 3 had sold the business carried on by them as a running concern together with the stock-in-trade and goodwill thereof and as incidental to that transaction they had assigned their interest as tenant in the premises to him and contended that such assignment being permissible under the proviso to Section 15(1) read with the Notification issued by the Government under that proviso plaintiff No. 1 was not entitled to recover possession of the premises from him. During the pendency to the suit plaintiff No. 1 sold the premises to plaintiff No. 2 and plaintiff No. 2 therefore applied for being joined as a party plaintiff to the suit. Plaintiff No. 2 also added a prayer in the application that he may be permitted to amend the plaint by introducing the additional ground that the premises were bona fide and reasonably required by him for occupation by himself. The application for adding plaintiff No. 2 as a party plaintiff to the suit was allowed but the amendment of the plaint for including the additional ground was rejected. The result was that the suit became a suit by two plaintiffs for recovery of possession of the premises against the defendants but the grounds for recovery to possession remained the same.

2. The suit came to be heard by the learned trial Judge on 18th February 1960 but an event happened before that which made a considerable impact on the legal issues involved in the suit. On 21st May 1959 Bombay Ordinance No. III of 1959 was promulgated and by it certain sections of the Rent Act were amended. Prior to the amendment Section 15(1) made all sub-lettings unlawful by providing that notwithstanding anything contained in any law it shall not be lawful after the coming into operation of the Rent Act for any tenant to sublet the whole or any part of the premises let to him. If therefore any subletting was made by a tenant after the coming into operation of the Rent Act it was unlawful by reason of Section 15(1) and it furnished a ground for eviction to the landlord u/s 13(1)(e). But by the amendment Section 15(2) was introduced which removed the bar imposed by Section 15(1) with retrospective effect and legalized

all subletting made prior to 21st May 1959 provided that the sub-tenants had entered into possession despite the bar before the commencement of the Ordinance and continued in possession at such commencement. The result was that even if it was established that defendants Nos. 1 to 3 had sublet the premises to defendant No. 4 such subletting could not be said to be unlawful if defendant No. 4 continued to be in possession of the premises at the date of the commencement of the Ordinance i.e. 21 May 1959 and if such subletting was not unlawful then obviously the plaintiffs were not entitled to recover possession of the premises u/s 13(1)(e) and the ground based on Section 13 could not avail the plaintiffs.

3. The plaintiffs however persisted in their stand that defendants Nos. 1 to 3 had sublet the premises to defendant No. 4 and one of the issues framed by the learned trial Judge therefore was-

Is it proved that defendants Nos. 1 to 3 have sublet the suit premises to defendant No. 4? If so what is its effect on the suit?

Another issue framed by the learned trial Judge related to the question whether defendants Nos. 1 to 3 were tenants in arrears so as not to be entitled to the protection of the Rent Act. The standard rent of the premises was also put in dispute on behalf of the defendants and an issue was also therefore raised in regard to that question. Defendant No. 1 did not appear at the hearing of the suit but defendants Nos. 2 to 4 were represented by advocates. The plaintiffs examined one Manubhai Somnath who gave evidence to the effect that defendants Nos. 1 to 3 had sublet the premises to defendant No. 4. This witness was cross-examined on behalf of defendants Nos. 2 and 3 but defendant No. 4 did not choose to cross-examine him. The son of defendant No. 2 thereafter gave evidence on behalf of defendants Nos. 2 and 3. No evidence was led on behalf of defendant No. 4 and on the evidence of Manubhai Somnath and the son of defendant No. 2 the arguments were heard. The learned trial Judge fixed the standard rent of the premises at Rs. 26/per month being the same as the contractual rent. So far as the ground of arrears of rent was concerned the learned trial Judge took the view that the case was not covered by Section 12(3) (a) and on that view he rejected that ground. Since defendant No. 4 did not lead any evidence to show that the business carried on by defendants Nos. 1 to 3 was sold to him as a going concern together with the stock-in-trade and goodwill thereof and as incidental to that transaction the tenancy of the premises was assigned to him that case was not accepted by the learned trial Judge. The learned trial Judge on the evidence on record came to the conclusion that defendants No. 2 and 3 had sublet the premises to defendant No. 4 but since such subletting was legalized by the amendment made by the Ordinance the plaintiffs were not entitled to recover possession of the premises from defendant No. 4. The claim for possession was accordingly dismissed and the only decree which the plaintiffs obtained was a decree for arrears of rent from 1st October 1956 at the rate of Rs. 26/- per month.

4. The plaintiffs being aggrieved by the dismissal of their claim for possession of the suit premises preferred an appeal to the District Court Ahmedabad. The appeal was heard by the learned Assistant Judge. Two contentions in the main were advanced before the learned Assistant Judge in support of the appeal. The first contention was that though the plaintiffs had alleged in the plaint that defendants Nos. 1 to 3 had sublet the premises to defendant No. 4 defendant No. 4 had denied that he was a sub-tenant of defendants Nos. 1 to 3 and he was therefore not entitled to invoke the protection of Section 15(2) introduced by the Ordinance. It was also contended that in any event defendants Nos. 1 to 3 were in arrears of rent and were therefore not entitled to the protection of the Rent Act and a decree for eviction was therefore bound to go against the defendants. The learned Assistant Judge accepted the first contention relying on a decision given by Shelat J. as he then was on 2nd November 1960 in Civil Revision Application No. 945 of 1960 The learned Assistant Judge took the view that the true ratio of that decision was that where a landlord alleges that the premises have been sublet by the tenant to a sub-tenant but the subtenant denies the subletting the subtenant cannot claim the protection of Section 15(2) of the Rent Act. On this view of the matter the learned Assistant Judge did not consider the evidence on record for the purpose of finding whether the subletting of the premises by defendants Nos. 1 to 3 to defendant No. 4 could be said to have been established but held without examining the evidence that defendant No. 4 was not protected u/s 15(2) of the Rent Act. The learned Assistant Judge held that since defendant No 4 was not protected u/s 15(2) of the Rent Act as a lawful sub-tenant nor had he succeeded in establishing that the tenancy of the premises was assigned to him as incidental to the sale of the business as a going concern together with the stock-in-trade and goodwill of the business defendant No. 4 was a trespasser and the plaintiffs were therefore entitled to recover possession of the premises from defendant No. 4. The learned Assistant Judge also proceeded to consider the second contention namely -whether defendants Nos. 1 to 3 were tenants in arrears and he came to the conclusion that though defendants Nos. 1 to 3 were in arrears of rent at the date of the suit the entire amount of arrears had been paid into Court and at the date when the appeal was heard no rent was in arrears, here being no arrears of rent payable by defendants Nos. 1 to 3 to the plaintiffs at the date of the hearing of the appeal the learned Assistant Judge took the view that the plaintiffs were not entitled to base their claim for possession on the ground of arrears of rent. Since however in the opinion of the learned Assistant Judge defendant No. 4 was a trespasser not entitled to claim the protection of the Rent Act the learned Assistant Judge allowed the appeal and passed a decree for eviction against defendant No. 4. Defendant No. 4 thereupon preferred the present Revision Application in this Court. The Revision Application originally came up for hearing before Miabhoy J. but since a question was raised before him whether the decision of Shelat J on which the judgment of the learned Assistant Judge was based was correct the matter was referred to a Division Bench. Hence the present Revision Application before us.

5. The finding of the learned Assistant Judge that there was no assignment of the tenancy of the premises by defendants Nos. 1 to 3 to defendant No. 4 as incidental to the sale of the business as a going concern being a finding of fact based on appreciation of evidence and therefore not assailable in revision the main attack of Mr. Nanavati learned advocate appearing on behalf of defendant No. 4 against the judgment of the learned Assistant Judge was directed to that part of the judgment which held that defendant No. 4 having denied sub-tenancy was not entitled to take advantage of the provision enacted in Section 15(2) for the purpose of defeating the claim of the plaintiffs for possession based on Section 13(1)(e). Mr. Nanavati contended that the decision of Shelat J. did not lay down any such absolute proposition and that if it did it did not represent correct law. Mr. Nanavati urged that subletting being established on the evidence on record-there being actually a finding of the learned trial Judge on that point which was not assailed before the learned Assistant Judge-defendant No. 4 was entitled to rely on Section 15 for the purpose of contending that he was a lawful sub-tenant and that the ground specified in Section 13(1)(e) did not therefore avail the plaintiffs. The learned Advocate General appearing on behalf of the plaintiffs however raised a preliminary objection namely that the plea based on Section 15(2) which Mr. Nanavati wished to raise by advancing this argument was not taken in the written statement of defendant No. 4 and should not therefore be allowed to be raised. This plea argued the learned Advocate General involved determination of facts and in order to sustain this plea it was not enough for defendant No. 4 to establish that he was a sub-tenant let into possession prior to the commencement of the Ordinance but that it was also necessary to show that he continued in possession at the date of such commencement and unless these facts were pleaded in the written statement of defendant No. 4 defendant No. 4 could not be permitted to raise the plea based on Section 15(2). The argument was that to allow defendant No, 4 to raise this plea without an appropriate pleading in the written statement would be to take the plaintiffs by surprise. The learned Advocate General also combated the argument of Mr. Nanavati on merits and contended that the decision of Shelat J was rightly construed by the learned Assistant Judge and having regard to that decision the learned Assistant Judge was right in not considering the evidence on record and arriving at a finding on the question whether the premises were sublet by defendants Nos. 1 to 3 to defendant No. 4 but proceeding on the basis that by reason of the denial of sub-tenancy simpliciter defendant No 4 was not entitled to claim the benefit of the provision enacted in Section 15(2).

6. Turning first to the preliminary objection raised by the learned Advocate General it is undoubtedly true that if defendant No. 4 wanted to rely on Section 15(2) he should have pleaded in his written statement the necessary facts bringing him within the terms of Section 15(2) since Section 15(2) made lawful sub-tenancies which were unlawful u/s 15(1) and was thus in the nature of an exception to the general rule embodied in Section 15. The written statement of defendant No 4 having been file before the introduction of Section 15(2) the plea

based on Section 15(2) obviously could not be taken in the written statement when filed but after the introduction of Section 15(2) defendant No. 4 could have applied for leave to amend the written statement by pleading the necessary facts raising this plea. Defendant No. 4 however did not apply for any such amendment and originally therefore this would have constituted sufficient ground for us to refuse to entertain the plea based on Section 15(2) but we find from the judgment of the learned trial Judge that the plea based on Section 15(2) was actually put forward at the hearing of the suit and the learned trial Judge in fact considered the validity of that plea and accepted it as affording a complete answer to the suit. It is therefore clear that at the hearing of the suit before the learned trial Judge the attention of the parties was focused on the plea based on Section 15(2) and whatever they wished to say in regard to that plea was said by them. This is also evident from the fact that no complaint was made by the plaintiffs either in the memorandum of appeal before the District Court or at the hearing of the appeal before the District Court that the plea based on Section 15(2) was not argued before the learned trial Judge or that the learned trial Judge should not have entertained that plea since it was not taken in the written statement of defendant No. 4 or that by reason of the absence of proper pleading in regard to that plea the plaintiffs were prejudiced before the learned trial Judge. It is also clear from the judgment of the learned trial Judge that the only question in reference to the plea based on Section 15(2) which was argued before him was whether there was subletting of the premises by defendants Nos. 1 to 3 to defendant No. 4 and this question was answered in the affirmative by the learned trial Judge. It was an admitted position between the parties that defendant No. 4 was in possession of the premises at the date of the suit and continued in such possession at the date of the commencement of the Ordinance. The learned Advocate General of course disputed that this position was admitted between the parties but this dispute is clearly not well-founded. If this was not the admitted position between the parties and the plaintiffs had disputed that defendant No. 4 continued in possession of the premises at the date of the commencement of the Ordinance the learned trial Judge would have certainly decided that question before coming to the conclusion that defendant No. 4 was a lawful sub-tenant u/s 15(2). If the learned trial Judge failed to decide that question and wrongly gave the benefit of Section 15(2) to defendant No. 4 without deciding that question the plaintiffs would have certainly made a complaint about it in the memorandum of appeal before the District Court or at any rate at the hearing of the appeal before the learned Assistant Judge but no such complaint was made by them. It was not even contended by the plaintiffs in the memorandum of appeal before the District Court that Section 15(2) did not apply because defendant No. 4 was not in possession of the premises at the date of the commencement of the Ordinance nor was any such contention put forward even at the time of the hearing of the appeal before the learned Assistant Judge. The only contention urged before the learned Assistant Judge was that defendant No. 4 having denied the sub-tenancy was not entitled to invoke the aid of Section 15(2). That defendant No. 4 continued in possession of the premises throughout

the pendency of the suit and the appeal was not disputed on behalf of the plaintiffs and as a matter of fact even before the learned Assistant Judge the plaintiffs sought a decree for eviction against defendant No. 4. The judgment of the learned Assistant Judge also clearly shows that it was an admitted position before him that defendant No. 4 was in possession of the premises at the date of the suit and continued in such possession not only at the date of the commencement of the Ordinance but right up to the date of the hearing of the appeal and it was on the basis of that admitted position that the learned Assistant Judge passed a decree for eviction against defendant No. 4. We do not therefore see any reason why defendant No. 4 should not be permitted to raise before us the plea based on Section 15(2) and the preliminary objection of the learned Advocate General must be rejected.

7. The only question which therefore requires to be considered in regard to the plea based on Section 15(2) is whether the learned Assistant Judge was right in taking the view that inasmuch as defendant No. 4 had denied sub-tenancy he was not entitled to invoke the aid of Section 15(2). We will first consider the question on principle apart from authority. The plaintiffs alleged in the plaint that defendants Nos. 1 to 3 had sublet the premises to defendant No. 4. This allegation was denied by defendants Nos. 2 to 4. An issue was therefore raised by the learned trial Judge whether defendants Nos. 1 to 3 had sublet the premises to defendant No. 4. On this issue evidence was recorded and on the evidence on record the learned trial Judge reached the finding that subletting was established. When the matter went in appeal before the learned Assistant Judge there was this finding of the learned trial Judge and so long as this finding stood defendant No. 4 was entitled to claim the benefit of Section 15(2). Now this finding being a finding in favour of the plaintiffs the plaintiffs obviously could not attack it and no attempt to attack it was also made on behalf of the plaintiffs. The defendants also did not attack this finding for though the finding was adverse to the respective positions adopted by them in the trial Court they were not interested in challenging the correctness of the finding since having regard to the introduction of Section 15(2) it did not hurt them. The result was that the finding of subletting stood unchallenged and in view of that finding defendant No. 4 was entitled to contend that he was a lawful sub-tenant u/s 15(2). In any event it is difficult to appreciate how the learned Assistant Judge could deny the protection of Section 15(2) to defendant No. 4 without considering the evidence and reaching the conclusion that the finding of subletting was incorrect. It is only if the finding of subletting was incorrect that defendant No. 4 could be held to be disentitled to the protection of Section 15(2). The learned Assistant Judge therefore clearly acted illegally in the exercise of his jurisdiction in rejecting the claim of defendant No. 4 on the ground that by reason of denial of sub-tenancy defendant No. 4 was not entitled to place any reliance on Section 15(2).

8. Turning now to the decision of Shelat J on which considerable reliance was placed by the learned Assistant Judge and which formed the sheet-anchor of the argument of the learned Advocate General it is clear on a reading of this decision

that it does not lay down any general proposition that wherever it is alleged by the landlord that the premises have been sublet by the tenant but the alleged sub-tenant denies the sub-letting the alleged sub-tenant can never set up the protection of Section 15 (2). If the alleged sub-tenant concedes that the case of the landlord is true namely that the premises have been sublet to him or if on the evidence it is found that subletting is established there is no reason why the alleged sub-tenant cannot say that he is a lawful sub-tenant u/s 15(2). It is no doubt true that in deciding the case before him Shelat J. relied on the tact that the subletting was denied by the person who was alleged to be a sub-tenant by the landlord but that was for the purpose of holding that there was no subletting. The landlord in that case alleged that the premises were sublet by the tenant to subtenant but did not lead any evidence to prove subletting and the learned Judge therefore held that inasmuch as subletting was denied by the alleged sub-tenant it could not be regarded as established. The decision of the learned Judge was thus based on the finding that subletting was not established and not on the fact that there was denial of subletting by the alleged sub-tenant. If subletting was not established obviously the alleged sub-tenant could not claim to fall within Section 15(2) and the learned Judge was therefore in the circumstances right in negating the claim of the alleged sub-tenant for protection u/s 15(2). This decision therefore far from supporting the contention of the learned Advocate General actually goes to negative it and shows that the learned Assistant Judge fell into an error in proceeding on the basis that a mere denial of sub-tenancy was enough to deprive defendant No. 4 of the benefit of Section 15(2) irrespective of the evidence on record and irrespective of the finding of subletting recorded by the learned trial Judge.

9. This being the position defendant No 4 was entitled to contend that he was a lawful sub-tenant u/s 15(2) and if he was such lawful subtenant the ground set out in Section 13(1)(e) could not avail the plaintiffs. On this view defendant No 4 would have been entitled to succeed in this Revision Application but the learned Advocate General contended that the decree for eviction passed by the learned Assistant Judge was supportable on the ground of arrears of rent. This ground was found against the plaintiffs by the learned Assistant Judge but argued the learned Advocate General the decision of the learned Assistant Judge was wrong and the decree for eviction could be justifiably passed on this ground. The contention of the learned Advocate General was that even if it be taken as established that premises were sublet by defendant Nos. 1 to 3 to defendant No. 4 and defendant No. 4 was lawful sub-tenant u/s 15(2) defendant No. 4 was not yet entitled to resist eviction inasmuch as defendants Nos. 1 to 3 were in arrears of rent at the date of the suit and were therefore not entitled to the protection of the Rent Act and if they were not entitled to any protection equally defendant No. 4 was not entitled to any protection for his title was merely a derivative one. Now it is undoubtedly true that the title of defendant No. 4 being a title derived under defendants Nos. 1 to 3 if defendants Nos. 1 to 3 could not claim protection from eviction under the provisions of the Rent Act - defendant No. 4 also would

not be entitled to protection unless some provision of the Rent Act conferred such protection on defendant No. 4 independently of defendants Nos. 1 to 3. Mr. Nanavati therefore advanced a two-fold argument to meet the contention of the learned Advocate General First he contended that the requirements of Section 12(3)(b) were complied with and defendants Nos. 1 to 3 along with defendant No. 4 were therefore entitled to claim protection against eviction. Secondly he urged that in any event even if defendants Nos. 1 to 3 had forfeited the protection of the Rent Act defendant No. 4 was yet entitled to be protected independently of defendants Nos. 1 to 3 by reason of Section 14. This was the answer given on merits but a preliminary objection was also raised on behalf of defendant No. 4 and the preliminary objection was that the contention of the learned Advocate General that the defendants were not entitled to protection under the provisions of the Rent Act was a contention which could not be agitated in revision. I he argument was that the view taken by the learned Assistant Judge that though defendants Nos. 1 to 3 were in arrears of rent at the date of the suit they were still entitled to be protected inasmuch as they had paid off all arrears of rent at the date of hearing of the appeal was a view which it was within his jurisdiction to take and however erroneous that view might be - it was not open to this Court in revision to interfere with that view and to set aside the protection granted to the defendants. We will first examine this preliminary objection and then turn to the merits of the controversy on this point.

10. Now having regard to several pronouncements of the Judicial Committee of the Privy Council and the Supreme Court and particularly the latest pronouncement of the Supreme Court in *Vora Abbasbhai v. Haji Gulamnabi* (1964) 5 G.L.R. 55 it cannot be disputed that the jurisdiction of the High Court in revision is severely restricted by the terms of Section 115 of the Code of Civil Procedure. That section applies to jurisdiction alone the irregular exercise or non-exercise of it or the illegal assumption of it and is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. If the subordinate Court has jurisdiction to decide a question it may decide it wrongly as well as rightly and merely because the decision is erroneous - the High Court cannot in exercise of its revisional jurisdiction interfere with that decision. We are quite conscious of this limitation on our power as a Court of revision but this limitation does not we think preclude us from entertaining the contention raised by the learned Advocate General. Defendants Nos. 1 to 3 were admittedly in arrears of rent at the date of the suit and notice u/s 12(2) was also given by plaintiff No. 1 to defendants Nos. 1 to 3 before the institution of the suit. Defendants Nos. 1 to 3 were therefore not entitled to protection unless they could bring their case within Section 12(3)(b). What the learned Assistant Judge should have therefore considered was whether the requirements of Section 12(3)(b) were complied with and only if those requirements were complied with that defendants Nos. 1 to 3 could claim to be protected against eviction The learned Assistant Judge however instead of considering whether the requirements of Section 12(3)(b) were fulfilled applied an altogether extraneous consideration

which is not to be found in any provision of the Rent Act and gave protection to the defendants on the ground that the arrears of rent had been paid off at the date of hearing of the appeal. This was not a case of misconstruction of a section or of a wrong decision as regards the applicability of a section. It was a case of deciding the rights of the parties on the basis of an extraneous consideration not founded on any provision of law and that clearly constituted illegality in the exercise of jurisdiction which even with the severely restricted jurisdiction which we possess in revision we are entitled to set right. We must therefore hold that the learned Assistant Judge was wrong in taking the view that the defendants were entitled to be protected inasmuch as the arrears of rent had been paid off at the date of hearing of the appeal and we must proceed to consider whether the requirements of Section 12(3)(b) were complied with so as to entitle defendants Nos. 1 to 3 and along with them defendant No. 4 to claim protection against eviction.

11. Now it must be made clear at the outset that the burden of proving that the requirements of Section 12(3)(b) were complied with would be on defendant No. 4 since it would be for defendant No. 4 to show that despite default in payment of rent at the date of the suit resulting in forfeiture of protection u/s 12(1) he was still entitled to protection u/s 12(3)(b). Mr. I.M. Nanavati on behalf of defendant No. 4 contended that the question whether the requirements of Section 12 were complied with or not was a question of fact and the case should therefore be remanded to the lower appellate Court for determination of that question. But we do not think it is necessary to adopt such a course for it is apparent from the record of the case and this was not disputed by Mr. Nanavati that the amounts deposited by defendants Nos. 2 and 3 in the suit from time to time fell far short of the arrears of rent due and payable by defendants Nos. 1 to 3 to the plaintiffs up to the date of disposal of the suit. Apart from the amounts deposited by defendants Nos. 2 and 3 in the suit no other amounts were paid or deposited by any of the defendants. The requirements of Section 12 were therefore clearly not complied with and consequently defendants Nos. 1 to 3 were not entitled to the protection of the Rent Act and defendant No 4 was also therefore not entitled to claim protection against eviction in the right of defendants Nos. 1 to 3.

12. The question which then arises is whether even if defendants Nos. 1 to 3 were not entitled to the protection of the Rent Act defendant No. 4 could yet claim protection against eviction independently of defendants Nos. 1 to 3. Now under the ordinary law of landlord and tenant the interest of a sub-tenant being a subordinate interest ceases on the determination of the interest of the tenant and neither the tenant nor the sub-tenant has any right to continue in possession of the premises against the will of the landlord. But the Rent Act makes a departure from this rule and confers protection of irremovability on the tenant so long as the tenant obeys the requirements of Section 12. Notwithstanding the determination of the contractual tenancy the tenant can continue as a statutory tenant by complying with the requirements of Section 12. So long as the tenant

continues as a statutory tenant entitled to the protection of the Rent Act the sub-tenant would also be protected but if the tenant loses the protection of the Act either by reason of non-compliance with the requirements of Section 12 or by reason of the landlord becoming entitled to recover possession of the premises under the provisions of Section 13 the sub-tenant would not have any protection and would have to go with the tenant. The Legislature therefore enacted Section 14 for the purpose of protecting the sub-tenant so that the sub-tenant would have protection independently of the tenant. We shall presently examine the scope and ambit of this protection conferred on the subtenant but one thing is clear that where the tenant loses the protection of the Rent Act the sub-tenant cannot have any protection unless he can bring his case within the terms of Section 14. Having regard to this undoubted position in law it is apparent that in the present case defendants Nos. 1 to 3 having forfeited the protection of the Rent Act defendant No. 4 could not resist eviction unless he could show that he was entitled to the protection of Section 14. Mr. Nanavati was therefore constrained to argue that the case of defendant No. 4 was covered by Section 14 and that defendant No. 4 was entitled to the protection of that section. The question is whether this contention of Mr. Nanavati is well-founded and that requires a consideration of the provisions of Section 14.

13. Now it must be noted that Section 14 has not always been the same as we find it to-day. At the time when Section 15(2) was introduced in the Rent Act by Bombay Ordinance 3 of 1959 Section 14 was also amended by the substitution of certain words. Prior to the amendment Section 14 was in the following terms:

14. Where the interest of a tenant of any premises is determined for any reason any sub-tenant to whom the premises or any part thereof have been lawfully sublet before the coming into operation of this Act shall subject to the provisions of this Act be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the Rent if the tenancy had continued.

As a result of the amendment Section 14 assumed the following form and that is the form in which we find it to-day:

14. Where the interest of a tenant of any premises is determined for any reason any sub-tenant to whom the premises or any part thereof have been lawfully sublet before the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance 1959 shall subject to the provisions of this Act be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

The argument of Mr. Nanavati based on Section 14 was a twofold argument. The first head of the argument was that on a true construction of Section 14 a sub-tenant becomes a direct tenant of the landlord when the interest of the tenant is determined by the passing of a decree for eviction and consequently on the passing of a decree for eviction against defendants Nos. 1 to 3 defendant No. 4 who is a lawful sub-tenant would become the direct tenant of the plaintiffs and in

that event no decree for eviction would be liable to be passed against defendant No. 4 unless the ground on which the decree for eviction is sought is a ground set out in one of the clauses of Section 13(1). This contention was based on the premise that when Section 14 determination of the interest of a tenant what was meant was the determination of statutory tenancy and it was only when the statutory tenancy of the tenant came to an end by the passing of a decree for eviction that the right of the sub-tenant to become a direct tenant of the landlord came into existence. This premise is in our opinion not well-founded and there are several reasons for taking this view.

14. In the first instance the section speaks of the interest of the tenant and determination of that interest. Now it is well-settled that a statutory tenant has no interest in the premises occupied by him. Vide *Anand Nivas Ltd. v. Anandji Kalyanji* (1964) V. G.L.R. 111. The interest which is referred to in the section must therefore be the interest of a contractual tenant and the interest of a contractual tenant would be determined when the contractual tenancy comes to an end. The condition denoted by the words - where the interest of any tenant is determined for any reason must therefore refer to the point of time when the contractual tenancy is determined and not when the statutory tenancy comes to an end on the passing of decree for possession. The words for any reason also emphasize this view. These words have obviously been used because there are several modes of determination of contractual tenancy and contractual tenancy may be determined by any one of those modes. The object of the enactment of the section and the scheme and policy underlying the Bent Act also support this conclusion. The section was obviously enacted for the purpose of giving protection to the sub-tenant. Where a contractual tenancy is determined the interest of the sub-tenant would also come to an end and if the tenant has forfeited the protection of Section 12 the sub-tenant would have no protection. The Legislature therefore wanted to confer protection on the sub-tenant and this the Legislature did by providing that on the determination of the contractual tenancy the sub-tenant shall be deemed to have become the direct tenant of the landlord. This tenancy would be statutory tenancy so that instead of the tenant becoming the statutory tenant of the landlord the sub-tenant would become the direct statutory tenant of the landlord. The tenant would not be in need of protection because he would not be in possession of the premises and the policy of the Bent Act being to protect Possession the Legislature took away the protection of the tenant and conferred it on the sub-tenant who would be in possession of the premises and who would therefore need protection. The sub-tenant could thereafter claim to retain possession of the premises so long as he complied with the requirements of Section 12 unless of course any of the grounds specified in Section 13 became available to the landlord for recovering possession from the sub-tenant. This view which we are inclined to take is supported by the decision of the Supreme Court in *Anand Nivas Ltd. v. Anandji Kalyanji* (supra) where Shah J. delivering the majority judgment observed in regard to Section 14 :

There is abundant indication in the section that it applies to contractual tenancies alone. In the first instance it speaks of the interest of the tenant and determination of that interest....

Of course a contrary view was taken by a Division Bench of the Bombay High Court consisting of Chagla C.J. and Gajendragadkar J. in Civil Revision Applications Nos. 351 to 399 of 1948 decided on 16th August 1948 but in view of the decision of the Supreme Court that decision must be regarded as overruled and has no binding authority on us. We are therefore of the opinion that on a true construction of Section 14 the point of time at which a sub-tenant would become direct tenant of the landlord is the determination of the contractual tenancy and not the determination of the statutory tenancy of the tenant.

15. Mr. Nanavati then contended that even if that was the true construction of Section 14 defendant No. 4 was yet entitled to claim the protection of that section. The contractual tenancy of defendants Nos. 1 to 3 determined on 30th November 1956 on the expiration of the notice to quit dated 13th November 1956 given by plaintiff No. 1 to defendants Nos. 1 to 3. On that date defendant No. 4 was a lawful sub-tenant by reason of the retrospective legalization of the sub-tenancy u/s 15(2). He was however a sub-tenant to whom the premises were lawfully sublet after the coming into operation of the Rent Act and not before. If therefore the unamended Section 14 governed the rights and liabilities of the parties defendant No. 4 could not claim to have become the direct tenant of the plaintiffs on the determination of the contractual tenancy of defendants Nos. 1 to 3. But if on the other hand the amended Section 14 applied defendant No. 4 being a subtenant to whom the premises were lawfully sublet before the commencement of the Ordinance could contend that he became the direct tenant of the plaintiffs on the contractual tenancy of defendants Nos. 1 to 3 coming to an end. Mr. Nanavati therefore contended that it was the amended Section 14 which applies and it was with reference to the amended section that the rights and liabilities of the parties fell to be decided. It is this contention which now requires to be considered.

16. It is clear on a plain grammatical construction that the point of time at which the sub-tenant is deemed to become the direct tenant of the landlord is the determination of the contractual tenancy of the tenant and it is at that point of time that it must therefore be seen whether the sub-tenant who claims to have become the direct tenant of the landlord falls within the terms of Section 14. It is only if the sub-tenant falls within the terms of Section 14 at the date when the contractual tenancy of the tenant is determined that he is deemed to become the direct tenant of the landlord. The applicability of Section 14 is therefore to be determined at the date of determination of the contractual tenancy of the tenant and the section in force at that date is the section with reference to which the question whether the sub-tenant is deemed to become the direct tenant of the landlord has to be decided. Now in the present case the contractual tenancy of defendants Nos. 1 to 3 came to an end on 30th November 1956 and at that date

the unamended Section 14 was in force. It was therefore with reference to the unamended Section 14 that the question whether defendant No. 4 became the direct tenant of the plaintiffs on the determination of the contractual tenancy of defendants Nos. 1 to 3 was required to be decided. Now according to the unamended Section 14 only a sub-tenant to whom the premises were lawfully sublet prior to the coming into operation of the Rent Act could be deemed to become the direct tenant of the landlord on the determination of the contractual tenancy of the tenant. Since defendant No. 4 though a lawful sub-tenant was not a sub-tenant to whom the premises were lawfully sublet prior to the coming into operation of the Rent Act he could not be deemed to become the direct tenant of the plaintiffs at the date when the contractual tenancy of defendants Nos. 1 to 3 came to an end. Defendant No. 4 could not therefore claim protection against eviction independently of defendants Nos. 1 to 3 and since defendants Nos. 1 to 3 had forfeited the protection of the Rent Act defendant No. 4 was also not entitled to resist eviction. The plaintiffs had thus the right to obtain possession of the premises from defendant No. 4. But argued Mr. Nanavati the amendment of Section 14 made a difference in this position. The amendment he submitted had a retrospective operation and even though under the unamended section defendant No. 4 did not become the direct tenant of the plaintiffs on the determination of the contractual tenancy of defendants Nos. 1 to 3 on 30th November 1956 he must by the force and effect of the amended section be retrospectively deemed to have become the direct tenant of the plaintiffs from the date of such determination since he was a sub-tenant to whom the premises were lawfully sublet before the commencement of the Ordinance as provided in the amended section. Mr. Nanavati thus pleaded for retrospective effect being given to the amendment in Section 14.

17. Now if there is one principle of construction clearer than any other it is this that while provisions of a statute dealing merely with matters of procedure may properly unless that construction be textually inadmissible have retrospective effect attributed to them provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Section 14 obviously does not deal with matters of procedure but enacts a provision affecting substantive rights and retrospective effect should not therefore be attributed to the amended Section 14 unless it appears clearly by express enactment or necessary implication that retrospective effect was intended to be given to it by the Legislature.

Mr. Nanavati contended that the amended Section 14 was expressly given retrospective operation by the substitution of the words "the commencement of the Bombay Rents Hotels and Lodging House Rates Control (Amendment) Ordinance 1959 for the words is the coming into operation of this Act. The contention was that by substituting these words the Legislature clearly expressed its intention that it wanted to benefit all sub-tenants to whom the premises were lawfully sublet prior to the coming into force of the Ordinance and gave retrospective operation to the amended section. This contention is however

without force for we find that these words have been substituted in the section as from the date when the Ordinance came into force and not with retrospective effect so that prior to the coming into force of the Ordinance the section which operated was the section in its unamended form. Mr. Nanavati then contended that in any event retrospective operation should be given to the amended Section 14 as a matter of necessary implication. He urged that the amendment to Section 14 coupled with the introduction of Section 15 and the extension of the definition of tenant in Section 5(11) clearly showed that the intention of the Legislature was that all sub-tenancies created after the coming into operation of the Rent Act up to the date of the amendment should be legalized where the sub-tenants continued in possession of the premises and all such sub-tenants should have the protection of Section 14 so that they are put in the same position as subtenants lawfully created prior to the coming into operation of the Rent Act. This intention the argument proceeded could be fully effectuated only if retrospective effect was attributed to the amended Section 14. If the amended Section 14 was not read as retrospective in operation the result would be that all sub-tenants to whom the premises were lawfully sublet after the coming into operation of the Rent Act and before the commencement of the Ordinance would not get the benefit of Section 14 but out of that class only those sub-tenants in whose case the contractual tenancy of the tenant comes to an end after the coming into force of the amended Section 14 would have the protection of Section 14 while other subtenants in whose case the contractual tenancy of the tenant came to an end prior to the coming into force of the amended Section 14 would not have such protection. Now this argument based on the presumed intention of the Legislature can never be a sound argument. Intention of the Legislature is a common but very slippery phrase which popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably intended to mean although there has been an omission to enact it. In a Court of Law what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implication. We must therefore examine the language of Section 14 before and after the amendment in order to ascertain the intention of the Legislature and not presume a certain intention on the part of the Legislature and then twist and bend the language of the section to make it conform to such intention. Now on a plain grammatical construction the point of time at which Section 14 operates is the determination of the contractual tenancy of the tenant and it is at that point of time that it must be seen whether the sub-tenant who claims the protection of the section falls within the four corners of the section. If the contractual tenancy of the tenant is determined prior to the amendment a sub-tenant to whom the premises are lawfully sublet after the coming into operation of the Rent Act would not become the direct tenant of the landlord on such determination for the unamended Section 14 being then applicable he would not come within the terms of the unamended Section 14. Such a sub-tenant who has not become the direct tenant of the

landlord on the determination of the contractual tenancy of the tenant under the unamended Section 14 cannot contend that by reason of the subsequent amendment of Section 14 he must be deemed to have become the direct tenant of the landlord with retrospective effect from the date of such determination. To give effect to such contention would be to destroy the statutory tenancy of the tenant and to substitute in its place the statutory tenancy of the sub-tenant with retrospective effect which would certainly affect vested rights of the landlord and the tenant and we would be slow to give such retrospectively to the amended Section 14 unless the language of the amended section clearly compels us to do so. We however do not find anything in the language of the amended section which indicates even remotely that the amended section was intended to have a retrospective operation. The words used in the amended Section 14 are shall...be deemed to become and not shall...be deemed to have become and these words in the context of the words where the interest of a tenant of any premises is determined clearly show that the amended Section 14 is prospective and not retrospective in operation. The amended Section 14 applies only where the contractual tenancy of the tenant is determined after the coming into force of the amendment and not where the contractual tenancy of the tenant is determined prior to the coming into force of the amendment. It is therefore clear that where the contractual tenancy of the tenant is determined prior to the coming into force of the amendment a sub-tenant to whom the premises are lawfully sublet after the coming into operation of the Rent Act cannot rely on the amended Section 14 for though the amendment enlarges the area of operation of the section by extending the protection to sub-tenants belonging to the same class the amended section cannot apply to him inasmuch as the amended section was not in force at the time when the contractual tenancy of the tenant was determined. The rights of such a sub-tenant would have to be tested by reference to the unamended Section 14 being the section in force at the date of determination of the contractual tenancy of the tenant and since he would not fall within the terms of The unamended section he would not be entitled to claim that to the determination of the contractual tenancy of the tenant he became direct tenant of the landlord. If this be the correct view of the law it is apparent that the contention of defendant No. 4 that on the determination of the contractual tenancy of defendants Nos. 1 to 3 on 30th November 1956 he became the direct tenant of the plaintiffs is not well-founded and must be rejected.

18. We must for these reasons reach the conclusion that defendant No. 4 was not entitled to any protection under the Rent Act and was liable to be evicted by the plaintiffs. We therefore confirm the decree for eviction passed by the learned Assistant Judge though for different reasons and grant time to defendant No. 4 to vacate the premises up to 15 August 1964. There will be no order as to costs of this Revision Application. Mr. Patel on behalf of defendant No. 4 applies for leave to appeal to the Supreme Court under Article 133 of the Constitution. The application is rejected.