

(1972) 08 GUJ CK 0015
In the Gujarat High Court

Kantilal Ishwerlal Shah

APPELLANT

Vs

Dr. Mukundrai Keshavlal Parikh and Others

RESPONDENT

Date of Decision : 09-08-1972

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29(2)
Common Law Procedure Act, 1852 — Section 212
Conveyancing Act, 1881 — Section 14
Transfer of Property Act, 1882 — Section 114A, 114A, 12, 12(i), 13

Citation : (1973) 14 GLR 227

Hon'ble Judges : J.M. Sheth, J

Bench : Single Bench

Judgement

J.M. Sheth, J.—This revision petition is filed by the original defendant (tenant) u/s 29(2) of the Bombay Rents, Hotel and Lodging House Rate Control Act, 1947 (which will be hereinafter referred to as "the Act") against the judgment and decree passed by the appellate Bench of the Small Causes Court at Ahmedabad in Civil Appeal No. 316 of 1963. The appellate Bench passed a decree for eviction and allowed the appeal on the ground that the defendant-tenant has committed a breach of a term of the tenancy, viz. using particular spacemen for common passage by putting articles, etc. thereon, and for other purposes. Possession was sought on other grounds also. But both the Courts below found that those grounds were not established.

2. The trial Court, in Civil Suit No. 2453 of 1960, against which the aforesaid appeal was filed, had also held that this breach of the tenancy was established, but according to it, the landlords cannot get a decree for eviction on that ground in the absence of a notice given as contemplated by Section 114-A of the Transfer of Property Act. Both the Courts below have found that the notice to quit was valid and legal and contractual tenancy was validly determined. The appellate Court found that Section 114-A of the Transfer of Property Act cannot have any application as the landlords are entitled to possession as the contractual tenancy has been validly determined by a valid and legal notice to

quit and the tenant having committed a breach of the other term of the tenancy, he is not entitled to statutory protection under the Act.

3. Mr. B. R. Shah had, at one stage of the arguments, challenged the validity and legality of the notice. Ultimately, when it was found that the period of lease was to start from 1st December, 1953 and not from 1st January, 1954, he gave up the contention which he had raised on the basis of the provisions of Section 110 of the Transfer of Property Act. Furthermore, in the instant case, in suit notice as well as in the plaint, landlords had in terms stated that "the tenancy commenced from the first of every month and admittedly, the tenancy for the last several years was a monthly tenancy. This averment made in the plaint as well as in the notice was not challenged by the defendant-tenant in his reply. Ex. 49 to the suit notice. Ex. 34 and in the written statement. On the contrary, in the reply, Ex. 49, he had stated about the payment of rent for the period from 1-5-1962 to 31-5-1962, which supports also the landlords' version that the tenancy commenced from the first of English month and ended on the expiry of that month. Mr. Shah has, therefore, rightly not challenged the validity and legality of that notice ultimately.

4. Mr. Shah has submitted that the rent-note contained a term that in the common passage kept for the tenants, no articles or goods are to be placed. The two Courts below, on consideration of the evidence, have recorded a finding that the petitioner-tenant has committed a breach of this term of the tenancy. Mr. Shah has submitted that in the rent-note itself, there is a provision that if there is a breach of any of the terms of the tenancy committed by the tenant, the landlords would be entitled to get that condition specifically performed. He has, therefore contended that in case there was any such breach committed, a remedy was provided in the rent-note itself, viz. that condition could be specifically enforced. It could be done, Mr. Shah submitted, by getting an injunction directing the tenant to remove such obstruction caused and by restraining him from placing any such article in such common passage. He has, therefore, contended that if there was a breach of such condition of the tenancy, the landlords have to adopt the remedy provided under the rent note and they cannot claim a decree for eviction on that ground. In my opinion, this submission is not well founded. In the instant case, the landlords have already got a right to possession as the contractual tenancy has been validly determined by a valid and legal notice to quit, in view of the provisions of Section 12 of the Act, embargo has been placed upon that right of theirs and the tenant has been given a protection by the statute on certain conditions. Section 12(1) of the Act, which is material for our purposes, reads:

A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

It is thus evident that the tenant whose contractual tenancy has been determined is entitled to a statutory protection, if he satisfies the condition, that he observes and performs the other conditions of the tenancy, provided they are consistent with the provisions of the Act. In the instant case, the two Courts of facts have found that the tenant has not observed and performed this other condition or the term of the tenancy. It, therefore, means that by his own action, he has disentitled himself to the protection under the Act and the embargo placed upon the landlords' right to recover possession does not survive.

5. Mr. B.R. Shah has submitted that admittedly, in the instant case, no notice as contemplated by Section 114-A of the Transfer of Property Act, was given and consequently, the landlords were not entitled to get a decree for eviction on the ground of breach of a term of the tenancy. If we refer to Section 114-A of the Transfer of Property Act, it is clear that those provisions will not be attracted in the instant case. That Section 114-A of the Transfer of Property Act reads:

Where a lease of Immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lesser may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing:

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy....

It is significant to note that in the instant case, the lease in question has not been determined on account of forfeiture for a breach of an express condition as contemplated by Section 114-A of the Transfer of Property Act. Contractual tenancy can be determined by adopting any of the modes referred to, in Section 111 of the Transfer of Property Act, In the instant case, the mode adopted is not one contemplated by Clause (g) of Section 111 but is one contemplated by Clause (h) of Section 111 of the Transfer of Property Act. It reads:

111. A lease of Immovable property determines:

- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit the property leased, duly given by one party to the other.

Contractual tenancy has thus been determined by adopting the mode contemplated by Clause (h) of Section 111 of the Transfer of Property Act. Under the general law, therefore, the landlords are entitled to get possession from the tenant.

6. One has, therefore, to see whether the tenant who has committed such a breach is entitled to protection under the Act. Before I advert to the argument advanced in that behalf by Mr. B. R. Shah, I first propose to refer to his submission that such a breach could not be said to be a breach of a condition of

the tenancy. He has urged that breach must be in respect of the subject-matter of the lease itself. He has urged that the subject matter of lease in the instant case was one room let to the petitioner-tenant. In respect of that very room, there was no breach of a condition of the tenancy. The breach was in respect of a common passage which could not be said to be the subject-matter of the lease, Mr. Shah submitted, and consequently, such a breach could not be said to be a breach of a term of the tenancy.

7. It is significant to note that such common passage was meant for the passage of the tenants including the present petitioner. It was not meant for storing his goods. There was express condition that he had not to store or place any goods then on and he has committed a breach of that term. In my opinion, such a covenant is touching the mode of enjoyment of the premises and hence the condition of the tenancy and not a personal obligation. The condition of the tenancy referred to in Section 12(i) of the Act refers to condition of the tenancy existing between the parties before the agreement between the landlord and the tenant is terminated, and statutory tenancy commenced. That includes observance and performance of negative and positive covenants. In the instant case, after the period of the lease, there was tenancy by holding over and the same conditions would govern. It is not suggested by either party that there was any change in the conditions of the tenancy. The change was only in respect of rent and for which, writing was passed by the tenant on 2-5-1960 which has been brought on the record by the landlords.

8. In *R.M.R. Housing Society, Ltd. V. Comds* 1951 All ER 16 Sir Raymond Evershed, MR, has made the following relevant observations:

The relevant term of the lease here in suit is expressed so as to consist of a condition, an obligation, and a limitation. In so far as it is a limitation (i.e., in so far as it provides that the tenancy is to determine on the happening of a particular event) that is something outside para (a) of Schedule I altogether. It would wholly defeat the object" of the Rent Acts if it were otherwise, for it is of the essence of the Rent Acts that, on the happening of the event which determines the contractual tenancy, nevertheless in certain circumstances the tenant is entitled to remain in possession. In so far as the clause consists of a condition or obligation, it is at least open to doubt whether such an obligation is enforceable at law at all, for it appears on the face of it to be an obligation to continue to serve a particular individual. Whatever be the answer to that question, however, for reasons which have already been stated and with which I agree, I think that the clause, in so far as it is a condition or obligation, is not within para (a) because it is not "an , obligation of the tenancy agree with counsel for the landlords that those words "obligation of the tenancy" must not be given a restricted or narrow meaning. They should be construed according to their ordinary sense, but, so construed, I take the phrase "obligation of the tenancy" to mean something binding on the tenant as such, i.e., in his capacity as tenant as distinct from an obligation purely personal and collateral to the

contract of tenancy. I think the matter may be usefully tested-and it is a legitimate method of testing this particular form of lease by considering what the position would be in the event of an assignment of the term during its contractual subsistence.

I also agree with SINGLETON, L.J., that if this obligation were an "obligation of the tenancy"- and I add that for present purposes I think no useful distinction can be made between the phrase in para (a) and the phrase "terms and conditions of the original contract of tenancy" in Section 15 of the Act of 1920-I still think it is not an obligation consistent with the provisions of the principal Acts.

In the instant case, the tenant had undertake an obligation not to use the common passage for any other purposes by storing goods, etc. That place was meant for common passage for the tenants including the present petitioner. It is connected with the subject-matter of the demise. It is not a personal obligation as was the case in the aforesaid English decision. In my opinion, it is in respect of a particular mode of enjoyment in connection with the subject-matter of premise. I therefore, hold that such a breach will be a breach of the other condition of the tenancy contemplated by Section 12(1) of the Act. The two Courts below have, therefore, rightly recorded a finding against the tenant in that behalf.

9. Mr. Shah has submitted that merely because the tenant committed such a breach of a term of the tenancy, the landlords will not be entitled to possession. Mr. Shah has submitted that the landlords will be entitled to possession only if they are able to show that their case is covered by any of the grounds mentioned in Clauses (a) to (L) of Sub-section (1) of Section 13 of the Act. Admittedly, the landlords' case does not fall within any of those clauses of Section 13 of the Act. It is, therefore, submitted by Mr. Shah that the appellate Court has committed an error of law in passing the decree for eviction, against the petitioner on this ground for breach of a term or other condition of the tenancy.

10. In my opinion, this argument is devoid of any merits. The landlords get a right to possession on account of the determination of the contractual tenancy. They are not entitled to the remedy of recovering possession in view of the embargo placed upon their right by Section 12 of the Act. A tenant is entitled to protection and to continue in possession of the leased premises even after the determination of the contractual tenancy, provided he satisfies the conditions referred to in Section 12 of the Act. It is significant to note that in Section 12(i) of the Act, the legislature has advisedly made distinction in case of payment of rent as well as readiness and willingness to pay the amount of the standard rent and permitted increases and in case of observing and performing the other conditions of the tenancy, provided they are consistent with provisions of the Act. The obvious reason is that so far as non-payment of rent is concerned, merely because the tenant has not paid the rent as contemplated by the said provisions

of the Act, or he has not shown readiness and willingness to pay it, he does not lose the protection. The legislature has given him further opportunities and the right of the landlord to recover possession has been restricted. Sub-section (2) of Section 12 of the Act reads:

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882.

It is thus evident that the landlord has to satisfy the conditions laid down therein before he can institute a suit for recovery of possession on the ground of non-payment of rent. In case, the case does not fall within Sub-section (3)(a) of Section 12 of the Act, the tenant has been given a further opportunity by the legislature. It is thus evident that so far as the nonpayment of rent is concerned, the legislature has placed further restrictions upon the rights of the landlord to file a suit for recovery of possession.

11. Mr. B.R. Shah, in support of his arguments, has invited my attention to certain observations made by a Division Bench of the Bombay High Court in *Mahalinga Bandappa Lakhannavar v. Venkatesh Woman Karnataki* 59 BLR 226., in the last para it is observed:

Mr. Virkar's next contention is that Section 12 of the Act restricts the right of a landlord to recover possession of his premises from his tenant and that the restrictions are mentioned in Section 13 of the Act. In other words, Mr. Virkar contends that Sections 12 and 13 of the Act must be read together and that, upon a proper construction of these sections, even if a tenant pays or is ready and willing to pay rent, the landlord would be entitled to recover possession of his premises from the tenants, his right in that respect being limited by the restrictions specified in Section 13, but if a tenant refuses to pay rent or is not ready and willing to pay rent, the landlord's right to recover possession of his premises from him would be immune from the restrictions imposed by Section 13. This, as I have just stated, is the construction which Mr. Virkar puts upon Sections 12 and 13 of the Act. Mr. Virkar's construction of Sections 12 and 13 in effect is that if a tenant has fallen in arrears of rent or refuses to pay rent, the circumstance by itself would entitle the landlord straightaway under this Act to ask for possession. Such a contention is plainly against the scheme of Sections 12 and 13 of the Act. If the legislature in enacting this Act, had intended that non-payment of rent by a tenant to his landlord should by itself entitle the landlord to ask for possession, they would have stated so in terms in Section 13 and would not have enacted Sub-section (2) of Section 12. Section 13, which consists of several clauses, does not contain a clause saying that nonpayment of rent by a tenant or unwillingness on the part of a tenant to pay rent shall entitle the landlord to ask for possession of his premises from him. On the contrary, Sub-

section (2) of Section 12 of the Act lays down that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882. Thus, Sub-section (2) of Section 12 makes it perfectly clear that non-payment of rent by a tenant to his landlord shall not by itself entitle the landlord, under the provisions of this Act, to ask for possession of his premises from the tenant.

Mr. Virkar's construction of Section 12 is this : If a tenant pays rent or is ready and willing to pay rent, the landlord shall not be entitled to ask for possession of his premises from him. Conversely, says Mr. Virkar, if a tenant does not pay rent, the landlord would, upon that ground by itself, be entitled to ask for possession. Then Mr. Virkar goes one step further and says that Section 13 should be read subject to the provisions of Section 12 and that upon that construction the restrictions imposed by Section 13 would not apply to a case where a tenant does not pay rent to his landlord or is unwilling to pay rent to him. In our view this contention of Mr. Virkar is based upon wrong assumptions. The first incorrect assumption which Mr. Virkar has made is about what he calls a converse of the, legal position laid down by Sub-section (1) of Section 12, the said converse being that if a tenant does not pay rent or is not ready and willing to pay rent, the landlord shall be entitled to ask for possession straightaway. This assumption is wholly untenable it is clear from the provisions of Sub-section (2) of Section 12. Sub-section (2) provides that even if a tenant is guilty of nonpayment of rent, the landlord is not entitled, under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, to ask for possession of his premises from the tenant straightaway. He is required to give a notice of demand of rent to the tenant and wait thereafter for a month before instituting a suit. Even if a suit is thereafter filed upon the tenant's failure to pay rent demanded of him by the landlord by a notice of demand, even so no decree for eviction shall be passed against a tenant provided that on the first day of the hearing of the suit the tenant pays or tenders in Court the amount of the rent due from him. So, under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, a landlord is not entitled to recover possession of his premises from his tenant as soon as the tenant commits an act of non-payment of rent. He has to follow the provisions of Sub-section (2) of Section 12.

The second incorrect assumption which Mr. Virkar makes is when he contends that Section 13 of the Act is to be read subject to Section 12. Section 13 is an independent section entitling a landlord to recover possession of his premises from his tenant upon his satisfying the court as to the existence of certain conditions. The provisions of Section 13 are independent of anything contained in the Act, save that they are subject to the provisions of Section 15 only.

Mr. Shah has laid considerable emphasis on these observations and has also laid

considerable emphasis on the observations made in first paragraph at page 233. Those observations are:

It is important to bear in mind that Section 12 provides that in certain circumstances the landlord shall not be entitled to recover possession, whereas, Section 13 says that the landlord shall be entitled to recover possession upon his satisfying the court as to certain matters. The language of Section 12 is negative and it negatives the right of a landlord to claim possession so long as the tenant fulfils certain conditions, while the language of Section 13 is positive and it affirms the right of a landlord to ask for possession provided he fulfils certain conditions to the satisfaction of the court. That being so, we are of the view that the absence of grounds disentitling the landlord from claiming possession would be no ground entitling him to ask for possession. If he wants to ask for possession, his case must fall u/s 13, and it would not be enough to base it upon the absence of grounds which would disentitle him u/s 12 from claiming possession.

These observations are made in context of the non-payment of rent. It is significant to note that in Section 13 of the Act, there is non-obstante clause. It is stated in Section 13(1) that notwithstanding anything contained in this Act, but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises, if the Court is satisfied that case falls within any of the Clauses (a) to (L) of that section. It is evident that despite the provisions of Section 12 of the Act, giving protection to the tenant, who pays the rent or is ready and willing to pay the rent and observes and performs other conditions of the tenancy, a landlord is entitled to get possession from him if he satisfies the court that his case falls within any of these clauses of Section 13 of the Act. It does not mean that even if a tenant is not in a position to claim protection u/s 12 of the Act in view of his breach of the terms of other conditions of the tenancy, the landlord's right to recover possession accrues only if he is able to bring his case within one of the Clauses (a) to (L) of Section 13 of the Act. The landlord's right, as said earlier, to possession flows from the provisions of general law on account of the determination of contractual tenancy. Tenant was entitled to remain in possession as a statutory tenant after the determination of the contractual tenancy provided he satisfies the conditions referred to in Section 12 of the Act. As regards the case of non-payment of rent and that of other conditions of the tenancy, as said by me earlier, the legislature has made a clear distinction and the reason was that in case of non-payment of rent there were further restrictions placed upon the right of the landlord to file a suit. The landlord had to file a suit after giving a notice making demand for the arrears of rent, etc., and only if the tenant fails to comply with it within one month after the receipt of that notice, or to raise a dispute regarding the standard rent, etc., the landlord is entitled to file a suit as contemplated by that subsection. Furthermore, even though there is non-payment of rent, a tenant is further given an opportunity in a case not falling within the purview of Sub-section (3)(a) of Section 12 of the Act, but falling within the purview of Clause (b) of Sub-section

(3) of Section 12 of the Act.

12. Mr. Shah has invited my attention to the decision of a single Judge of the Bombay High Court in *Kalidas Bhavan V. Bhagvandas Sakalchand* 60 BLR 1359. That decision has no application. It only states at page 1360, that Section 12(i) is a bar or an impediment in the way of a landlord recovering possession of his premises, but that bar or impediment only subsists so long as (he tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of this Act. In other words, the court is debarred from passing a decree in favour of the landlord so long as the tenant satisfies these conditions. In my opinion, these observations do not support the submission made by Mr. B. R. Shah. On the contrary, they support the conclusion that I have reached.

13. Mr. Shah has also invited my attention to the decision of the Supreme Court in *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad*, . It is observed:

The provisions of Section 12 of the Bombay Act 57 of 1947 will operate against the landlord after the determination of the tenancy by any of the modes referred to in Section III of the transfer of Property Act. What this section of the Act provides is that even after the determination of the tenancy, a landlord will not be entitled to recover possession, though a right to recover possession gets vested in him, so long as the tenant complies with what he is required to do by this section. It is this extra protection given by this section which will be useful to the tenant after his tenancy has been determined. The section does not create a new right in the landlord to evict the tenant when the tenant does not pay his rent. A landlord's right to evict the tenant for default in payment of rent will arise only after the tenancy is determined and the continued possession of the tenant is not on account of the contractual terms but on account of the statutory right conferred on him to continue in possession so long as he complies with what Sub-section (1) requires of him. Hence, where a tenant is in possession under a lease from the landlord, he is not to be evicted for a cause which would give rise to a suit for recovery of possession u/s 12 if his tenancy has not been determined already, It follows that whenever a tenant acts in a way which would remove the bar on the landlord's right to evict him, it is necessary for the landlord to serve him with a notice determining his tenancy and also serve him with a notice under Sub-section (2) of Section 12 of the Act.

In my opinion, this decision clearly indicates the object of Section 12 of the Act and its real consequence. In the instant case, contractual tenancy has been validly determined. If the contractual tenancy had not been validly determined and the landlords relying upon the breach of a term of the tenancy, and relying upon the provisions of Section 12(1) of the Act, had filed a suit for recovery of possession, they would not have been entitled to a decree for eviction, as this Act does not create a new right in favour of the landlord to recover possession

for a breach of a term of the tenancy.

14. Mr. B. R. Shah has invited my attention to the decision of the Supreme Court in *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, . It is observed

Section 12(1) of the Act 57 of 1947 merely recognises his right to remain in possession so long as he pays or is ready and willing to pay the standard rent and permitted increases and performs the other Conditions of the tenancy, but not the right to enforce the terms and conditions of the original tenancy after it is determined." This decision has, therefore, no relevance.

15. None of the decisions cited and relied upon by Mr. B.R. Shah lays down any ratio that even if the contractual tenancy is determined by a valid notice to quit and the landlord is entitled to a right to recover possession under the provisions of the general law, and the tenant has lost protection under the Act on account of his not performing the conditions for claiming statutory protection, viz. observing and performing the other conditions of the tenancy, the landlord will be entitled to recover possession only if his case falls within any of the clauses of Section 13(1) of the Act.

16. In *Brewer v. Jacobs* 1923 (1) KB D 528, the facts were as under:

The plaintiff let a dwelling house to the defendant for five years. At the expiration of the term the defendant remained in possession as statutory tenant. He subsequently became in arrear with rent and also committed a breach of covenant. The plaintiff issued a summons for possession on these grounds. Subsequent to the summons but before trial the defendant paid the rent and costs into court. No notice of breach of covenant was served on the defendant u/s 14 of the Conveyancing Act, 1881. The county Court Judge made an order for possession:

Held, on appeal, that as a statutory tenant the plaintiff could not claim relief u/s 212 of the Common Law Procedure Act, 1852, which enacts that proceedings shall cease on payment of rent and costs into court, or u/s 14 of the Conveyancing Act, 1881, which enacts that as a condition precedent to reentry notice specifying the breach must be served on the defendant, and that as he was only entitled to remain as statutory tenant on condition of observing the conditions of the tenancy, which he had broken, the county Court Judge was entitled, in the exercise of his discretion, to make the order for possession.

In the instant case, there was a breach of other term of the tenancy, as found by the two courts below. The appellate court was therefore, entitled to pass a decree for eviction on that ground.

17. Mr. D. U. Shah, appearing for the successors-in-title of the landlords (opponents Nos. 7 and 8), has invited my attention to the decision of the Bombay High Court in *Ismail Dada Bhamani v. Bai Zuleikhabai* 46 Bombay Law Reporter 244, wherein similar wording of Section 11 of the Bombay Rent

Restriction Act (Bombay XVI of 1939) came to be interpreted. The phrase used therein, was, "Performs the other conditions of the tenancy". At page 258, it is observed:

In the present case the breach of the covenant against underletting has subsisted in the case of the premises demised by one of the leases since the inception of the lease, and in the other for at least six years. There is no evidence as to whether the breach was ever brought to the attention of the bank who by its receiver has been collecting the rents. I do not propose to lay down what the position would be if waiver of the forfeiture caused by the breach had been proved. That has not occurred in this case, and, in my judgment, the breach itself was still continuing, and was in existence on the date when the suit was filed. Therefore, if the covenant against underletting is a covenant which comes within the words "and performs the other conditions of the tenancy," the breach of it would be, in my opinion, a fatal bar to the appellant relying on Section 11.

At page 259, it is observed:

In my judgment the words : "and performs the other conditions of the tenancy", in Section 11 of the Act means, fulfils all the other duties imposed by the lease on the lessee. In my opinion, there is no room for the application of the ejusdem generis doctrine. In the result, although the section applies to these premises, the appellant is not entitled in this suit to take advantage of it.

At page 261, Kania, J., (as he then was), after referring to a few English decisions, has observed:

That view was that the word "perform" covered a negative covenant also I respectfully agree with that line of reasoning, and, in my opinion, the contention of the appellant that the word "perform" in Section 11 does not cover a negative covenant is unsound.

It is significant to note that the condition in respect of which a breach has been committed by the petitioner-tenant, in the instant case, is not in any manner inconsistent with the provisions of the Act. The result is that the submission made by Mr. B. R. Shah in this behalf is not well founded.

18. All the submissions made by Mr. B. R. Shah for the petitioner, fail. The revision petition is, therefore, liable to be dismissed.

19. The revision petition is dismissed. The petitioner is directed to pay the costs of this revision petition to opponents Nos. 7 and 8 who are the successors-in-title of opponents Nos. 1 to 6. Rule is discharged. Opponents Nos. 1 to 6 to bear their own costs in this revision petition.

At the request of the petitioner's Advocate, the petitioner is given time to vacate and hand-over possession of the suit premises on or before 2nd October, 1972.