
(2004) 12 BOM CK 0001

In the Bombay High Court

Case No : Second Appeal No's. 8 and 9 of 1997

Keith Nazareth

APPELLANT

Vs

Miriam Dossa

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 39, 46, 47, 59, 59(2)

Citation : (2005) 2 ALLMR 299 : (2005) 5 BomCR 832

Hon'ble Judges : Britto N.A., J

Bench : Single Bench

Advocate : Sudin Usgaonkar, for the Appellant; S.G. Dessai and Shivan Dessai, for the Respondent

Final Decision : Allowed

Judgement

Britto N.A., J.—These are plaintiffs second appeals.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the suits.

3. The plaintiff is the owner of a property known as "Maddem" having land registration No. 29031, Matriz No. 2290 surveyed under No. 114/5 with a house in it, situated in Umtawaddo of Calangute village.

4. The plaintiff by virtue of an agreement dated 24-9-1976 let out to defendant No. 1 the said house as per the plan attached with compound at the back of the house and a strip of land which went up to the seashore; on payment of a monthly rent of Rs. 775/-. The lease was for a period of 22 years from 1-4-1976, for the purpose of running a guest house. Considering the nature of the business, it was agreed between the parties that rent would be Rs. 425/- per month for the first year and with a proportionate increase of Rs. 50/- every subsequent year. Clause 9 of the said deed, which is most relevant, reads as

follows :-

"The lessee shall be allowed to carry on in the demised premises repairs and make such additions and alterations as shown in the plan hereto annexed as Exh. B. The lessee, however, at the time of handing over possession of the demised premises shall not be allowed to remove" from the demised premises any fixtures or fittings or any additions and alterations done in the demised premises, barring the sanitary fittings installed by the lessee in the toilets and bathrooms of the demised premises."

5. The next most important clause namely Clause No. 11 reads as follows:

"If the lessee commits breach of any of the terms of the tenancy, the lease shall automatically stand terminated and the lessor shall be allowed to take ? possession of the demised premises without any prior notice in writing which otherwise by law the lessor may be bound to give to the lessee."

6. The plaintiff filed the first Suit (R.C.S. No. 7.3/1980) with the allegations that on or about 13-9-1978 the defendant No. 1 and her husband had submitted to the Sarpanch of the village Panchayat of Calangute their application for permission for reconstruction of the residential house with a plan of construction which was altogether different from the plan consented and approved by the plaintiff and in this plan they showed a construction of 5 rooms with elevated first floor and many other things which were not approved and consented by the plaintiff. The case of the plaintiff was that the behaviour of the defendants amounted to breach of contract, as the defendant carried out in the building, without permission in writing from the plaintiff, works which altered its external structure and did internal work of its division which were not justified. The plaintiff, therefore, stated that the plaintiff was entitled to terminate the said tenancy and evict the defendant from the suit property as per the law in force and in terms of the said condition No. 11 of the said Lease Deed dated 24-9-1976.

7. The defendant/s contested the suit by stating that the improvements, additions and alterations mentioned in subsequent part of said Clause 9 were not restricted to the repairs, additions and alterations shown in the plan Exh. B of the said deed. The defendants denied that by virtue of the said condition No. 9 the first defendant was only allowed to make demolitions inside the house, to carry on some repairs and make some repairs of the portions marked in the plan by letters A and B. The defendant/s further stated that the plan appended to the said deed of lease only represented the repairs, additions and alterations as were necessary and/or envisaged on the date of the said deed of lease. The defendants stated that Article 49(B) of the Decree No. 43.525 dated 7-3-1961 was subject to the contract to the contrary and that the said deed of lease dated 24-9-1976 constituted a consent in writing within the meaning of the said Article 49(B) of the decree. The defendants stated that defendant No. 1 was entitled to retain the possession of the house and property till she was reimbursed of an

expenditure of Rs. 3,00,000/ spent for the improvement of the property in good faith before she could dispose of the property and house which was leased to her. The defendants also stated that the plan submitted to the village Panchayat was a construction plan which necessarily had to be different from the plan being a sketch plan annexed to the deed of lease.

8. The plaintiff filed the Second Suit (R.C.S. No. 74 of 1980) alleging that the defendant No. 1 was not allowed to enter the suit property in the portion beyond the compound wall or either to demolish or construct any extension to the house in its addition or to cut trees of the property. The plaintiff stated that the plaintiff was in possession of the property and plucking of 37 coconut trees was done by the plaintiff through his mundkar Alex Fernandes. The plaintiff stated that when he came along with his mother on or about 2-3-1980 he found that the defendants had entered and trespassed into the suit property beyond the limits of the leased property, having encroached a part of the suit property in possession with the plaintiff in an area of about 130 sq. meters by cutting 2 coconut, trees without permission and consent of the plaintiff. The plaintiff also stated that the plaintiff found the suit property devastated by dumping material of construction and excavation at the base of other coconut trees.

9. The defendants contested the suit by stating that they were not aware whether the plaintiff was in possession of the suit property or that the plaintiff was doing the plucking of 37 coconut trees through their said mundkar. The defendants denied that the constructions/alternations were to be done only upto the compound wall and that the said constructions/alternations were to be made upto the line shown in red on the eastern boundary of the demised premises. The defendants denied that they had encroached any part of the suit property in possession of the plaintiff in an area of 137 sq. meters.

10. The learned Civil Judge, Junior Division by common judgment/decreed dated 21-6-1991 dismissed both the suits but at the same time ordered that the defendants should not do any further construction in the suit property. The plaintiff having filed appeals against the said judgment/decreed, the learned Additional District Judge dismissed the said appeals, namely, R.C.S. Nos. 56/1991 and 2/1992 again by common judgment dated 2-2-1996.

11. Both the parties had examined 4 witnesses each. One of the issues framed by the learned Civil Judge, Junior Division was whether the defendants taking undue advantage of the lease deed dated 24-9-1976 had made some illegal extensions to the suit house. This issue has been answered in the negative by the learned Civil Judge, Junior Division by observing that as a whole the defendants had done the construction work with the consent of the plaintiff. That was not the case of the defendants in their Written Statement. On the other hand, learned Additional District Judge came to the conclusion that no illegal construction was done in the suit property and this finding was given despite the fact that the plaintiff had produced documents to show that the defendant had applied for reconstruction of the suit house; defendants reconstruction was

stopped by the Panchayat and not only that, the licence granted was also revoked. Both the courts below failed to address the issue whether the reconstruction/extension done by the defendant to the suit house was with written consent of the plaintiff as required under the decree. Perversity is writ large in the findings of both the courts below.

12. The plaintiff had examined an expert, namely, P.W. 3, Rui Ribeiro de Santana, whose evidence has been rejected by the learned first Appellate Court on the ground that he had not signed the plans (blue prints) prepared by him. In fact, P.W. 3, Rui Ribeiro, had stated that his services were engaged for drawing a plan of the existing house and that after visiting the site he had drawn the plan of the house. In fact, he produced 3 plans showing what was agreed by the lease deed, what was built and what was existed according to the plan shown in the lease deed. According to him, the letter "A" showed the new construction which had to be done within the existing space and letter "B" showed the portions to be demolished. He stated that the said plan Exh. P.W. 1 /D did not show any provision of staircase to go to the first floor. He had also stated that he had seen the plan submitted by the defendant No. 1 to the Panchayat and that there was a difference between the plan submitted to the Panchayat and the actual construction. He had clearly stated that the building was increased by 64 sq. meters having identical first floor. D.W. 1, Naren, husband/attorney of the defendant No. 1 had admitted that 8 rooms were newly constructed. At the same time he had agreed that the alterations and additions were to be done at places marked "A" and "B" on the sketch.

13. No serious dispute has been raised at the time of hearing of arguments that the defendant No. 1 had not extended the said house, as stated by P.W. 1, Keith Nazareth, as well as P.W. 3, Rui Ribeiro, but what is sought to be contended is that the said constructions/extensions were done with the consent of the Attorney of the plaintiff, namely, D.W. 4, M. Cordeiro. In fact no such plea was taken by the defendant in the written statement. P.W. 2, Camilo had stated that with the said construction, the complexion of the house was changed. D.W. 3, Joao Lobo, had not only admitted that there was no staircase earlier, obviously because there was not first floor, but the external shape and design had changed. In other words, the facts stated by the plaintiff and his witnesses and those admitted by the defendant and his witnesses were more than sufficient to conclude that the defendant No. 1 had not only extended the house horizontally but also vertically and had changed the shape, design and complexion of the entire house as was originally let out to defendant No. 1. As stated by P.W. 1, Keith Nazareth, as well as P.W. 3, Rui Ribeiro, what was allowed by the lease deed and explained with a plan annexed to it was that the defendant No. 1 was allowed to carry out only internal changes to the existing house by way of demolishing some portions constructing new portions. There was no clause in the lease deed which required the defendant No. 1 to extend the house either sideways or upwards.

14. Both the parties were heard on the question that there was perversity in the findings given by both the courts below. In fact, on behalf of the plaintiff, reliance was placed on the case of Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., wherein the Hon"ble Supreme Court observed that there are two situations in which interference with findings of fact is permissible. The first, one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion and this principle has been laid down in a series of judgments of this Court in relation to Section 100 C.P.C. after the 1976 amendment and the second where a finding has been arrived at by the Appellate Court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. As already stated, both the courts below have not at all considered the evidence of P.W. 4, Lotlikar, who was examined on behalf of the Panchayat and who had clearly stated that the licence given to defendant No. 1 was revoked when the Panchayat came to know that the said house did not belong to the defendant and earlier the defendant No. 1 was issued with a notice to stop the construction of the said house. The learned First Additional District Judge was wholly wrong to reject the evidence of Engineer P.W. 3, Rui Ribeiro only because he had not signed the plans, when otherwise he had stated that he had visited the site and prepared the same and the defendants had not disputed their accuracy, nor the facts stated by him.

15. That brings me first, to the second substantial question of law framed by this Court by order dated 27-3-1997 i.e. "Whether the appellant/plaintiff was entitled to terminate the deed of lease for the breach committed by the respondent in constructing the first floor?"

16. As already seen from Clause No. 9 of the lease deed between the parties, what the parties had stipulated was the construction in the demised premises (not out of it) and additions and alterations as shown on the plan annexed. D.W. 1 has admitted the construction by addition of eight rooms to the suit house. But according to him the said additions were to be made on the eastern side of the house. He also admitted that part of the compound wall on the rear side of the wall was demolished at the time of the said constructions. D.W. 1 Dosa also admitted, at the same time, that the alterations and additions were to be done at the places marked as "A" and "B" on the said plan/sketch (Exh. P.W. 1/D). At the time of arguments it is contended that the defendants did the said extensions or reconstruction with the consent of the plaintiff given in the lease deed and fortified by the Attorney. As already stated, the lease deed in terms of Clause No. 9 was quite clear that the repairs and additions by way of renovation of the house were to be done to make it suitable to run as a guest house and were confined within the house and not outside the house. D.W. 4, Jose Cordeiro, has not all supported the defendant No. 1 Dosa in many of the facts stated by him. For example D.W. 4, Cordeiro, admitted that the terms and conditions of the said lease were discussed between the plaintiff's mother and the said Narendra Dosa. In cross-examination he admitted that he was not looking after the house and the Power of Attorney was given to him only to sign the lease agreement

regarding which discussions had taken place between the plaintiffs attorney (said mother) and the defendants. He further conceded that the Power of Attorney executed in his favour did not allow him to look and authorise the constriction. He also conceded that he had not given any permission for construction on either side and that he had informed the defendants that it would be better to inform the plaintiff in case they were doing new construction within the compound wall. Admittedly, the defendants had discussions directly with the mother of the plaintiff and pursuant to the said discussions, the terms of agreement of lease were reduced in writing, and, as already stated by virtue of the said Clause No. 9 of the said lease deed read with the plan annexed to it, it was more than clear that the plaintiff had authorised the defendant/s only to carry out internal renovations to the existing house and not to extend it sideways or upwards in the manner done by the defendants and which reconstruction, as the other evidence shows, has also been done contrary to the plan submitted by the defendant No, 1 to the village Panchayat. The reconstruction of the house and its extension was done by the defendant contrary to the agreement and without consent either oral or in writing from the plaintiff.

17. The written statement of the defendant/s clearly showed that they well aware that the suit was filed under Clause (d) of Section 46 of the decree.

18. Section 46 of the said Decree reads as follows :-

"The leaser has only a right to the revision of the agreement when the lessee :

(a) ...

(b) ...

(c) ...

(d) carries out in the building, without written consent from the lesser, works for him to alter its external structure or internal arrangement of its division or may cause in respect of it reasonable deteriorations so also not permitted which cannot be justified in accordance with Section 39"

(emphasis supplied)

19. Admittedly, the defendant/s had not taken any written consent from the lesser-plaintiff in reconstructing the house by extending the same sideways and upwards thereby changing the entire complexion of the house and therefore the defendants having committed breach of the first part of Clause (d) of Section 46 of the Decree, the defendants were liable to be evicted by the plaintiff from the suit house.

20. The next substantial question to put it tersely, is regarding the impact of the G.D.D. (L.R.E.) Control Act, 1968 (Act, for short) on the suit filed by the plaintiff. In fact, the said question has been more elaborately formulated by order of this Court dated 27-3-1997.

21. R.C.S. No. 73-80 was filed on 10-4-80 at the time when the Decree No. 43525 dated 7-3-1961. was in force. The Act was enforced selectively in Urban and semi-urban areas with effect from 30-9-69. It was extended to the entire State (then Union Territory) from 23-12-1980. In other words, the Act was extended to Calangute village on 23-12-1980.

22. Section 59 of the Act deals with repeals and savings. In fact, Sub-section (1) of Section 59 provides that as from the date on which this Act is brought into force in that local area, the provisions of Decree No. 43525 dated 7-3-1961 and Leg. Diploma No. 1409 dated 14-2-1952 and the corresponding provisions of any other law for the time being in force shall stand repealed in that area. Sub-section (2) and the first proviso below it, which is far more important reads as follows :

"Notwithstanding the repeal of the laws by Sub-section (1), all suits and other proceedings under the repealed law pending at the commencement of this Act before any Court or authority shall be continued and disposed of in accordance with, the provisions of the repealed law as if that law had continued in force and this Act had not been passed;

Provided that in any such suit or proceeding for the fixation of fair rent or for the eviction of a tenant, from any building, the Court or any other authority shall have regard to the provisions of this Act.

(Emphasis supplied)

23. Identical provisions like Sub-section (2) of the first proviso below it of Section 59 of the Act came for consideration before the Hon"ble Supreme Court for the first time in the case of Karam Singh Sobti and Another Vs. Shri Pratap Chand and Another, . The Hon"ble Supreme Court stated thus :

"Let us now consider Section 57 of the Control Act of 1958 against the background of the scheme of the two Control Acts, as stated above. The first sub-section of Section 57 repeals the Control Act of 1952 in so far as it is applicable to the Union Territory of Delhi. If the repeal stood by itself the provisions of the General Clauses Act (X of 1897) would have applied with regard to the effect of the repeal and the repeal would not affect the previous operation of any enactment repealed or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The provisions of the General Clause Act will not, however, apply where a different intention appears from the repealing enactment. Such an intention is clear from Sub-section (2) of Section 57 which contains the saving clause. It states in express terms that notwithstanding the repeal of the, Control Act of 1952, all suits and proceedings under the Control Act of 1952 pending before any Court or other authority at the commencement of the Control Act of 1958, shall be continued and disposed of in accordance with the provisions of the Control Act of 1952, as if the Control Act of 1952 had continued in force and the Control Act of 1958 had not been passed. Nothing can

be more emphatic in the matter of a saving clause than what is contained in Sub-section (2), of Section 57. We had said earlier that had Sub-section (2) of Section 57 stood by itself without the provisos, then the incontestable position would have been that the present case would be governed by the provisions of the Control Act of 1952. The question before us is, does the first proviso to Sub-section (2) make a change in the position and if so, to what extent? The first proviso states inter alia that in the matter of eviction of a tenant from any premises to which Section 54 does not apply, the Court or other authority shall have regard to the provisions of the Control Act of 1958. Section 54 need not be considered by us as it merely saves the operation of certain enactments which do not apply to the premises under our consideration. What is the meaning of the expression "shall have regard to the provisions of this Act" (meaning the Control Act of 1958)? Does it mean that the proviso takes away what is given by Sub-section (2), except in the matter of jurisdiction of the Civil Court to deal with an eviction matter which was pending before the Control Act of 1958 came into force? We are unable to agree that such is the meaning of the first proviso. We think that the first proviso must be read harmoniously with the substantive provision contained in Sub-section (2) and the only way of harmonising the two is to accept the view which the Punjab High Court has accepted, namely, that the words "shall have regard to the provisions of the Act" slightly modified or clarified the previous provisions, these modifications and clarifications should be applied. We see no other way of harmonising Sub-section (2) with the first proviso thereto...."

24. Again, in the case of *S. Kartar Singh Vs. Chamanlal and Others*, , the Supreme Court referring to the case of *Shri Pratap Chand (supra)* held that the effect of the first proviso to Section 57(2) was that pending proceedings would continue under the old Act with this addition that where the new Act had slightly modified or clarified the previous provisions, those modifications and clarifications would govern the case. The Supreme Court also referred to the case of *Brij Kishore v. Vishwa Mitter*, AIR 1965 S.C. 1574, and held that the first proviso to Section 57(2) of the new Act must be read harmoniously with the substantive provisions of Sub-section (2) and the only way of harmonising same was to read the expression "shall have regard to the provisions of this Act" as merely meaning that where the new Act had slightly modified or clarified the previous provisions, those modifications and clarifications should be applied. These words did not take away what was provided by Sub-section (2) and ordinarily the old Act would apply to pending proceedings.

25. On behalf of the plaintiff, reliance has been placed on a judgment of this Court in the case of *Smt Nirmala Kashinath Rau v. Smt. Ratan Vassudev Dhempe* 2002(2) G.L.T. 110.

26. On behalf of the defendant, reliance has been placed on a judgment of the Division Bench of this Court in the case of *Damodar Caxinata Naique, etc. v. Alvaro dos Remedios Furtado, etc.* 1997(1) G.L.T. 131. It has been submitted by

Shri Dessai, learned Senior Counsel that the ratio of Nirmala Rau's case (supra) has to yield to the ratio of the Division Bench judgment in the case of Damodar Caxinata Naique (supra) and has to be understood in that light.

27. The learned Division Bench of this Court in the said judgment in the case of Damodar Caxinata Naique (supra) was dealing with the ground of eviction on account of non-payment of rent stipulated u/s 47 of the Decree vis-a-vis the ground of non-payment of rent u/s 22(4) of the Act "Article 47 of the Decree stated that the right to rescission of the contract on the grounds of non-payment of rents expires as soon as delay is put to an end the moment the lessee makes a payment of deposits the rents or the rent and indemnity, as may be the case, up to the time of contesting the suit which is pending". Sub-section (4) of Section 22 of the Act provides that in any proceeding falling under Clause (a) of Sub-section (2), if the controller on an application made to it is satisfied that the tenant's default to pay, tender or deposit rent was not without reasonable cause, he may, notwithstanding any thing contained in Sub-section (3) or in Section 32, after giving the parties an opportunity of being heard, give the tenant a reasonable time, to pay or tender the rent due by him to the landlord upto the date of such payment or tender and of such payment or tender the application shall be rejected.

28. Referring to the case of S. Kartar Singh Vs. Chamanlal and Others, the Division Bench observed that there was a clear pronouncement of law by the Apex Court that in interpreting the language of the first proviso what is to be considered is whether the section sought to be relied upon is a mere modification and/or clarification. If that be the case then in terms of the proviso, the provisions in the new Act can be applied, to pending proceedings filed under the old Act. The Bench further observed that in the case before the Apex Court what was being considered was the issue of the sub-letting and that the Apex Court had no occasion to consider whether in fact the said provisions would amount to a minor modification or clarification as the matter was disposed of on other issues.

29. The Division Bench stated that Section 22(4) of the Act provided that reasonable time to be given to deposit or tender the rents to the landlord and in that case the defendant/appellant had been depositing rents in various forums. What Section 22(4) required was an opportunity to the tenant to pay to the controller. The Division Bench observed that under the Decree if the tenant did not pay or make payment as contemplated the plaintiff/landlord, was entitled to a decree of eviction. However, on the provisions of Section 22(4) of the Rent Act made applicable, the Rent Controller had power to avoid forfeiture by giving the tenant reasonable time to deposit the arrears. The Division Bench further observed that in fact it may be pointed out that earlier under the Act there was no provision to avoid forfeiture on the ground of nonpayment of rent which has been subsequently brought in by Section 22(3) of the Act. On the contrary, such provision was contained in Section 47 of the Decree. The Division Bench

observed that from the records they found that the original plaintiff to the knowledge of the original defendant and/or his representatives was depositing the rent earlier pursuant to the order of the Court in 1962 and after 1967 he continued to so deposit. Thereafter he has been depositing under some order of the Court. This, therefore, was a case where the original defendant had shown reasonable cause and therefore he was entitled to the benefit of Section 22(4) of the Act. The Division Bench therefore held that the original plaintiff and the present appellant was entitled to the benefit of Section 22(4) of the Act.

30. In the case of *Nirmala K. Ran* (supra) the Court was dealing with a case where the suit was filed for :

- (a) eviction;
- (b) recovery of arrears of rent; and
- (c) for mesne profits.

This Court held that :

"33. The above judgment of "the Apex Court is fully applicable to the facts of the case on hand. The facts in the present case are identical with that of the above case of *Karam Sing Sobti and Anr.* (cited supra). The provision, of Section 59(2) of the Goa Rent Control Act is also identical with that of Section 57(2) of the Delhi Rent Control Act of 1958. The language used in Section 59(2) of the Goa Rent Control Act is plain and provides for protection of benefits of the eviction decree passed under repealed law. In this backdrop, there is no alternative, but to hold that the Lower Appellate Court was wrong in holding that the suit would be governed by the Goa Rent Control Act and not by Decree No. 43525. In this view of the matter, the impugned judgment and decree of the Lower Appellate Court is liable to be quashed and set aside and the same is accordingly, quashed and set aside. The proceedings are remitted back to the Lower Appellate Court for decision on merits. So far as other issue raised by the learned Counsel for the respondents; based on the first proviso to Section 59(2) is concerned, the issue needs no consideration in the present appeal for want of any finding in this behalf by the Lower Appellate Court. The parties are at liberty to raise this contention before the Lower Appellate Court who shall be free to decide it on the its own merits. All other contentions on merits are left open."

31. The learned first Appellate Court had rejected the claim of the plaintiff relying on the observations of the Hon"ble Supreme Court in para 8 in the case of *Lakshmi Narayan Guin and Others Vs. Niranjana Modak*, . It was a case where there was a non obstante clause by way of sub-section (1) of Section 13 of the West Bengal Premises Tenancy Act, 1956 as extended to Memoir which reads as follows :

"Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the grounds...."

and, in that context the Hon"ble Supreme Court observed that the legislative command in effect deprived the Court of its unqualified jurisdiction to make such order or decree. The Court further observed that when the suit was instituted the Court possessed such jurisdiction and could pass a decree for possession but it was divested of the jurisdiction when the Act was brought into force and the language of Sub-section (1) made that abundantly clear and regard had to be held to its object.

32. In my view the ratio in the case of Lakshmi Narayan Guin (supra) was not. at all applicable to the case at hand where the provisions of Sub-section (2) of Section 59 of the Act and the first proviso had to be harmoniously construed and have already been so construed by the Supreme Court in the cases referred to hereinabove namely that if the new section is by way of modification or clarification of the old, effect has got to be given to the same.

33. In my view the Division Bench judgment in the case of Damodar Naique (supra) need not be followed in this case because the fact situation in relation to the grounds of eviction was different from this case.

34. A close look at Section 46(d) of the Decree shows that it provides for more than one ground of eviction, namely, when a tenant carries out in the building without a written consent from the lesser : (a) works that may alter its external structure; or (b) internal arrangement of its division; or (c) may cause in respect of it reasonable deterioration, so also not permitted, which cannot be justified in accordance with Section 39. Section 39 of the Decree deals with the duty of the lessee, inter alia, to maintain and restore the property in the condition in which the lessee had received it damages which could be referred to as due to normal wear and tear, etc. In my view the ground specified by me at (a) above is not available as a ground of eviction under the Act. As already stated, the defendants have altered the external structure of the house by its shape, design and complexion. The suit of the plaintiff had to be continued and disposed of on the ground available to the plaintiff under the Decree namely the first part of Clause (d) of Section 46 of the Decree as if the Act had Not come into force as provided by Section 59(2) of the Act.

35. Alternatively, I am also of the view that the plaintiff was also entitled to seek eviction of the defendant on ground C as specified by me hereinabove in terms of Clause (d) of Section 47 of the said Decree. Akin to ground C there is a corresponding provision made in Section 22(c) of the Act. i.e. "that the tenant has committed such acts of damage as are likely to impair materially the value or utility or the building". The word "deterioration" as appearing in C of Clause (d) of Section 46 of the Decree signifies making a thing bad or worse. The word "utility" Section 22(c) of the Act would mean the condition of being useful or profitable (see Concise Oxford Dictionary, ninth edition). Assuming for a moment that what is contemplated under C of Sub-section (d) of Section 46 of the Decree came to be modified and/or clarified by virtue of the ground of eviction enumerated in Clause (c) of Sub-section (1) of Section 22 of the Act, then also,

in my view the plaintiff was entitled for eviction of the defendants under Clause (c) of Sub-section (1) of Section 22 of the Act, namely, that the defendants had committed acts of damages which were likely to impair material the value or utility of the building to the plaintiff. On this aspect the evidence of the plaintiff has gone absolutely unchallenged. The plaintiff had stated that his house was an ancestral house. He had further stated that by construction it had greatly affected the exterior look of the house. He had also stated that by virtue of the said reconstruction it had also affected separately the value of the house. Although the defendant might have incurred some expenditure for the said reconstruction and additions of rooms, looking at it from plaintiffs angle that expenditure instead of enhancing the value of the house, has diminished the same. It is to be noted that there are many owners of houses who like to maintain their ancestral houses externally as they are, either because of family pride or sentimental value or aesthetic beauty or antiquity which in this case the defendants have impaired materially by the said reconstruction.

36. From whether angle one looks at the case of the plaintiff, in the first suit the plaintiff was certainly entitled for a decree of eviction against the defendants, first, as held by me under Clause (d) of Section 46 of the Decree or alternatively u/s 22(2)(c) of the Act.

37. As far as the second R.C.S. No. 74/1980 is concerned, the conclusions arrived at by both the Courts below are also perverse. The plaintiff had clearly stated that the defendants had demolished the wall and had extended to the rear of his property which was not the suit property (let out to the defendants). P.W. 2 had also stated that he had noticed that the compound wall at the rear side of the house was extended and he was informed that the coconut trees were cut. As against the said evidence led by the plaintiff, the defendant (D. W. 1) had in terms admitted that part of the compound wall at the rear was demolished by him at the time of construction, and obviously D.W. 1 would not have demolished the said compound wall in case he did not require further space for the construction done by the defendant. D.W. 4, Cordeiro, who is defendant's star witness has also in terms admitted that the said wall was demolished and not only that, had also conceded that defendant No. 1 might have gone beyond the limit authorised to him by one palm or so. In other words, that the defendant No. 1 had encroached, whatever might have been the distance, into the property in possession of the plaintiff which was not let out to the defendant No. 1 along with the house was admitted and being so both the courts below ought to have decreed this suit as well.

38. In view of the above, both the appeals deserve to succeed. Consequently the Judgment/Decrees of both the courts below are hereby set aside. R.C.S. No. 73/80 is hereby decreed in terms of prayer (a) of the plaint Likewise R.C.S. No. 74/80 is also hereby decreed in terms of prayer (a) of the plaint. The defendant No. 1 to pay the costs to the plaintiff of both the suits, throughout. At the request of the defendant, the operation of this judgment is hereby stayed for

eight weeks.