
(2001) 10 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 1813 of 1991

Krishna Kashinath Patil

APPELLANT

Vs

S. Mohandas Kamath

RESPONDENT

Date of Decision : 22-10-2001

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Constitution of India, 1950 — Article 227

Citation : (2002) 1 ALLMR 353 : (2002) 2 MhLj 924

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

Bench : Single Bench

Advocate : M.S. Karnik, for the Appellant; N.V. Walawalkar and G.S. Keluskar, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—This petition under Article 227 of the Constitution of India is directed against the order dated 17-11-1990, passed by the Additional District Judge, Thane, in Civil Appeal No. 101 of 1989, confirming the order passed below Exh. 1 in Regular, Darkhast No. 1 of 1985 dated 25th January, 1989 by the Civil Judge, Junior Division, Vasai, whereby Darkhast Application No. 1 of 1985 was dismissed holding it to be not maintainable.

FACTS

2. The facts giving rise to the present petition in nutshell are as under:--The petitioner is a landlord of the plot of land situate at Agashi, Taluka Vasai, District Thane. There was a structure standing on the said piece of land, bearing House No. 185. The same has been in possession of the respondent as tenant on monthly rent of Rs. 15/-. The suit premises is governed by provisions of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 ("Bombay Rent Act" for short).

3. The petitioner herein had filed Regular Civil Suit No. 2 of 1970, in the Court of

Civil Judge, Junior Division, Vasai, against the respondent-tenant on the following grounds:

(1) that the premises was being used for the purpose other than for which it was leased i.e. storing charcoal, onions, potatoes and such other sundry articles; (2) that the accommodation available with the petitioner was insufficient to meet the requirement of his 10 family members, had another house bearing No. 160 used or the residence was not sufficient to accommodate 10 members of his family. The petitioner's family at the relevant time being growing family with his two married sons, he was in need of the suit premises for his occupation; (3) that the suit premises had become dilapidated due to change of user and (4) that the respondent had unauthorisedly entered and occupied eastern verandah without written consent of the landlord and also removed tin sheets therefrom.

4. On being summoned, the respondent appeared but chose not to file any written statement to deny the plaint allegations. The parties to the suit entered into compromise. The decree came to be passed, based on compromise. The preamble of which reads as under :

Extract of compromise

Preamble reads us under :

5. This suit coming on this day the date 15th January 1970, for final disposal before Shri V.B. Gunjotikar, Civil Judge, Junior Division, Vasai, in the presence of Shri A.G. Patil the Advocate for the plaintiff and Shri Rajani, Advocate for the defendant and in pursuance of the mutual pursis at Exh. 16, it is decreed as follows :

Terms and Conditions of Compromise

6. (a) The rent of the suit premises is fixed at Rs. 100/- (rupees hundred) per month and the said rent be deemed as standard rent.

(b) The plaintiff to give to the defendant the suit premises in rent for the period of 15 (fifteen) years and a rent agreement in respect thereof be executed by the plaintiff in favour of the defendant. In the said rent agreement, the plaintiff shall give in writing the permission viz. that the defendants, for the purpose of hotel and residence may carry out "pakka" or "kacha" construction in the suit premises and may construct well and W.C., if so required etc.

The defendant do pay to the plaintiff within 8 (eight) days from today a sum of Rs. 1000/- (rupees one thousand only) being the amount of cost of the suit and also to make good the damage caused to the structure and things together with other articles which were kept therein. If the defendant fails to pay the said damages then the plaintiff shall have right to recover the said amount by initiating darkhast/execution proceeding.

(c) The defendant shall vacate the premises taken on rent after 15 years i.e. on the date 31-12-1984 and shall give vacant possession thereof to the plaintiff."

Dissection of compromise.

7. The dissection of the aforesaid decree based on consent terms would show that the monthly rent of the suit premises was fixed at Rs. 100/- per month. The said rent was agreed to be treated as standard rent. The lease deed for a period of 15 years was to be executed by the plaintiff in favour of the defendant. In the said lease deed permission was to be given, by the plaintiff to the defendant, to erect permanent or temporary structure on the suit premises for hotel and residence. The defendant was to pay an amount of Rs. 1,000/- to the plaintiff towards cost and for having damaged the suit premises and articles lying therein. In the event of default on the part of the defendant, to pay the said amount, right was given to the plaintiff to recover the said amount by initiating execution proceeding. The defendant had agreed to hand over vacant possession of the suit premises to the plaintiff after expiry of 15 years.

Compromise acted upon.

8. In pursuance of the aforesaid compromise decree, the original plaintiff/decreed holder/present petitioner was paid Rs. 1,000/- and in turn he had executed registered lease deed on 17th January, 1970 in favour of the respondent for a period of 15 years. He was allowed to occupy the suit premises as a tenant on payment of standard rent in the sum of Rs. 100/- per month for a period of 15 years i.e. up to 31-12-1984.

Initiation of execution proceeding.

9. The original petitioner decreed holder soon after the expiry of the lease period of 15 years called upon the respondent to hand over vacant and peaceful possession of the suit premises. Respondent failed to deliver possession. Consequently, the petitioner initiated execution proceeding being Darkhast No. 1 of 1985.

The respondent on being noticed appeared and objected to the execution of the decree, contending that, with the execution of registered lease deed for 15 years, a fresh contract of tenancy was created in favour of the respondent. The respondent thus contended that the petitioner did not have any right to act upon the said decree as it stood satisfied with the execution of registered lease deed in his favour. He, therefore, prayed for dismissal of the execution proceeding with costs.

The executing Court upholding the contention of the respondent dismissed petitioner's Darkhast No. 1 of 1985 vide its order dated 25th January, 1989. The learned executing Court took the view that with the execution of registered lease deed, it had given birth to a new contract of lease. As such the said lease could only be determined by terminating tenancy in accordance with the provisions of Bombay Rent Act. It was also held that the lease could not have been treated as determined soon after expiry of period of 15 years. The executing Court refused to issue warrant of possession. Consequently, the darkhast proceeding came to

be dismissed as not maintainable.

Appeal Court Judgment.

10. Being aggrieved by the aforesaid order, the petitioner preferred appeal being Civil Appeal No. 101 of 1989 to the District Court, Thane, though no such appeal was tenable. However, the lower Appellate Court without going into the question of tenability of the darkhast proceeding concurred with the findings of the executing Court and held that the consent decree stood satisfied with the execution of registered lease deed. It gave rise to a fresh contract of lease. Consequently, the lower Appellate Court dismissed petitioner's appeal.

Writ to this Court.

11. The petitioner has challenged the aforesaid findings of the Courts below in this petition filed under Article 227 of the Constitution of India.

RIVAL CONTENTIONS

12. When the above matter was called out for final hearing, the petitioner appeared in person. The respondent was represented by his Counsel. Petitioner found it difficult to meet the legal contentions raised by the learned Counsel for the respondent. Consequently, Shri M.S. Karnik, Advocate, was requested to act as Amicus Curie. He was requested to argue this petition on behalf of the petitioner.

13. Shri Karnik, learned counsel appearing for the petitioner contended that the terms of the decree must be read in the light of the facts and circumstances of the case prevalent at the time of passing of the decree in question. He contended that originally the suit premises was damaged and dilapidated condition. It was, therefore, necessary to permit the respondent/defendant (tenant) to re-construct the suit premises for its proper use and enjoyment. Mere compromise without granting permission to the defendant to re-construct would have served no purpose. In absence of specific permission from the plaintiff/landlord to occupy the suit premises the defendant/tenant would not have proceeded to construct the same. In this view of the matter, permission had to be granted to the defendant to occupy the suit premises till 31-12-1984. Thus in his submission, the agreement of lease was nothing but it was a consequence of the compromise decree.

14. The learned Counsel for the petitioner further went on to submit that the lease agreement was executed to implement the terms of the compromise decree. Had it not been executed, the judgment debtor on the face of compromise decree would have got it executed through the Court by putting decree in execution. Instead of driving the judgment debtor to file execution proceeding, the decree holder thought it fit to execute lease deed in terms of compromise decree. Thus in his submission, by no stretch of imagination it could be said to be a fresh contract of lease. It was executed as one of the terms of compromise decree. He urged that decree can only be said to be satisfied with

delivery of possession of the suit premises.

14-A. He further contended that the defendant/judgment debtor without filing written statement chose to compromise the suit claim. Consequently, it would be lawful to infer for want of denial that all the averments made in the plaint were deemed to have been admitted by the defendant: In this view of the matter, he contended that having regard to the fact that no written statement was filed and that the plaintiff had allowed the defendant to occupy the premises for 15 years under the terms of the decree was sufficient to infer that it was nothing but a mere concession given to the defendant. This by no stretch of imagination could be said to be an act of creating a new tenancy in favour of the respondent.

14-B. He further contended that the execution of the registered lease deed was one of the terms of the compromise decree. It was one of the obligations incurred by the decree holder. At the same time, as a part of compromises, reciprocal obligation was incurred by the respondent/defendant/judgment debtor to vacate the suit premises after expiry of 15 years. Since the period of lease agreed between the parties was more than 11 months, the lease deed necessitated registration, being a requirement of law, but nonetheless execution of lease and consequent obligation to vacate the suit premises, after expiry of 15 years, was a part of composite compromise scheme. Thus it is not open for the respondent/defendant to contend that the execution of lease was an obligation incurred only by the decree holder under decree and that the vacation of suit premises was not the obligation incurred by the judgment debtor. In his submission, since the defendant tenant had represented and agreed to hand over possession after expiry of 15 years, the said representation having been accepted by the plaintiff/landlord, the defendant tenant was estopped from contending that new tenancy was created in his favour and that the possession of suit premises cannot be recovered from him in execution of the compromise decree.

15. The learned counsel for the petitioner in support of his contention placed reliance on the decision of the Supreme Court in case of Bai Chanchal v. Syed Jalaluddin, AIR 1981 SC 1081 and contended that there was no fresh tenancy created between the parties. He also placed reliance on another judgment of the Supreme Court in the case of K.K. Chari Vs. R.M. Seshadri, so as to contend that even if one of the grounds for eviction exists and satisfaction of the Court to such ground is proved, then, in that event, it cannot be allowed to contend that the decree for eviction is not lawful. In his submission, in the present case, there is no dispute that statutory grounds for eviction were very much in existence. No written statement was filed. Thus there was no dispute with regard to the statutory grounds for eviction made out in the plaint. Based on deemed admission, the compromise decree for eviction was passed in favour of the petitioner/plaintiff. He, therefore, contended that in the present case the satisfaction of Court could very well be inferred from the facts and circumstances of the case. As such he submits that his case is squarely covered by the

judgment of the Supreme Court in *K.K. Chari v. R.M. Sheshadri* (supra). In nut shell, he contended that the decree was a lawful decree having been passed by the competent Court on the satisfaction of the existence of the statutory grounds for eviction. In his submission, such a decree was capable of being executed, as such, it was rightly put to execution. The executing Court ought to have executed the same and petitioner ought to have been put in possession of the suit premises. In these circumstances, it was contended that judgments and orders passed by both the Courts below being bad and illegal are liable to be quashed and set aside.

16. Per contra, the learned Counsel appearing for the respondent with equal force contended that the compromise decree itself is null and void as the Court did not record its satisfaction before accepting the terms of compromise under its signature. The Court ought to have recorded its satisfaction about the existence of grounds for eviction. He further urged that under the Bombay Rent Act, tenant's rights are protected as it is a beneficial legislation, as such, he cannot be evicted except by strict compliance with the provisions of the Bombay Rent Act. In his submission, Section 13 of the Bombay Rent Act gives only a restricted power to the Court to order eviction of a tenant, only if it is satisfied about the existence of any statutory grounds prescribed under the Bombay Rent Act. He also tried to rely upon some of the judgments of the Supreme Court to contend that the consent decree in the present form cannot result in eviction of a tenant in execution of decree, which is null and void. In support of his submission, he specifically relied upon judgment of the Apex Court in the case of *Bai Chanchal v. Syed Jalaluddin* (supra) and *Kaushalya Devi and Others Vs. Shri K.L. Bansal*, . By way of alternate argument, he contended that the impugned decree no longer exist. In his submission, it really worked itself out and stood satisfied and extinguished by reason of execution of fresh lease deed. He relied upon two circumstances emerging from the terms of compromise, namely, (1) Respondent had paid Rs. 1,000/- to the petitioner within the prescribed period, prescribed under the compromise decree and that the clause of compromise decree which provided for execution of the decree to recover the said amount in the event of default by the respondent had become unnecessary as the purpose for which it was incorporated did not survive and (2) The fresh lease deed was executed and registered and the period of lease was to expire on 31-12-1984, and the respondent had agreed to vacate the said property i.e. the house and open plot on or before 31-12-1984. Thus, both the parts of the compromise decree which were executable in the event of default in performance of the terms of the same, did not survive any longer as both the terms of the compromise decree were fulfilled, one by payment and the other by execution of the fresh lease deed.

17. The learned Counsel for the respondent further contended that the old house, which was the subject mater of the old lease deed and that of old Suit No, 2 of 1970 no longer existed in view of its demolition, with the result, old lease came to an end. The new house was to be constructed by the respondent under the compromise decree. The said new house was the subject matter of the fresh

lease. Based on these facts, he contended that the compromise decree worked itself out and as such it stood extinguished. In his submission, compromise decree stood superseded with the execution of fresh lease deed. The compromise decree thus no longer exists. The executing Court found that it could not be executed against the respondent.

18. The learned counsel for the respondent, based on the aforesaid submissions, further went on to submit that at the highest, even if it is assumed that the period of lease agreed between the parties expired on 31-12-1984, as per the clause incorporated in the compromise decree, even then the same would have to be enforced by a suit for possession filed under the Bombay Rent Act. He submits that it will have to be enforced in the same manner as any other contract is enforced, as the compromise decree being an agreement with seal of the Court.

19. The learned counsel for the respondent faintly tried to contend that clause relating to handing over possession after expiry of 15 years, cannot be said to be in accordance with law as it would amount to contracting out of the statutory rights conferred on a tenant by the Bombay Rent Act. He, therefore, contended that this part of the decree could not be allowed to be executed in view of the judgment of the Apex Court in *Gurupadappa v. Bibekanand*, AIR 1996 SC 198.

20. The learned counsel for the respondent further contended that when fresh contract of lease was created, the Bombay Rent Act was in operation in that area, consequently, the relationship between the parties would be governed by the provisions of the said Act. The petitioner/landlord thus cannot obtain possession of tenanted premises from the respondent unless the Court is satisfied that a statutory ground for eviction of the respondent as a tenant exists. The respondent-tenant who is protected by the provisions of the Bombay Rent Act, cannot be evicted in execution of the decree in question, which in this submission, is non-est for the reasons already canvassed.

21. The learned Counsel for the respondent further contended that respondent tenant is covered by the definition of the term "tenant" mentioned in Section 5(11)(b) of the Bombay Rent Act, by reason of his continuing in possession after expiry of lease. Consequently, he cannot be evicted from the suit premises except by a suit under the Bombay Rent Act. He sought to place reliance on judgment of the Supreme Court in the case of *Damadilal and Others Vs. Parashram and Others*, .

22. The learned counsel for the respondent at the costs of repetition, looking to the facts and circumstances of the case, contended that the parties to the consent terms clearly intended to execute fresh lease deed and further intended that it should be governed by the Bombay Rent Act and that the monthly rent of Rs. 100/- agreed between the parties was to be treated as standard rent. He thus tried to support the orders of Courts below.

23-25. The learned counsel for the respondent further contended that though

initially Suit No, 2 of 1970 was filed by the petitioner under Bombay Rent Act for possession of the premises on the grounds of change of user and reasonable and bona fide requirement, but the plaintiff while entering into the consent terms, gave up these grounds as is evident from the conduct of the parties reflected in the consent terms. He tried to press into service following two circumstances in support of his submissions:

(a) The ground with respect to change of user from residence alone to residence and keeping articles like coal, onions and potatoes was given up, when the petitioner agreed to permit and actually permitted the respondent to demolish the old house and construct a new one for residence and hotel. The respondent accordingly demolished the old house and constructed a new house. Thus the petitioner himself permitted change of user.

(b) The ground with respect to bona fide requirement for occupation was also given up by not insisting on possession within a reasonably short time. On the contrary, by giving an unreasonably long period of 15 years, that too by allowing the respondent to demolish the old house and construct new house at this own cost, the petitioner had really given up his case for personal occupation and bona fide need. Had he needed the said house, he would not have agreed for such a long lease. While concluding his submissions, the learned Counsel for the respondent prayed for dismissal of the writ petition.

THE ISSUES

26. The substantive issues on the rival contentions between the parties are as follows :--

(i) Whether decree in execution is a nullity?

(ii) Whether, the consent decree resulted in a fresh contract of lease between the parties for a period of 15 years? If yes, whether with the execution of registered lease deed, the decree in question stood extinguished and lost its executability?

FINDINGS

27. It appears that the question of validity of eviction order based on a compromise was a subject of several decisions of various High Courts of this country. In spite of this, Supreme Court had occasion to notice absence of uniformity of opinion with regard to the principles applicable to such cases. However, the Supreme Court had occasion to observe in the case of *Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by L.Rs.*, that their decisions in *K.K. Chari v. R.M. Sheshadri (supra)*, *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, *Roshan Lal and Another Vs. Madan Lal and Others*, and *Suleman Noormohamed and Others Vs. Umarbhai Janubhai*, can be treated as index to resolve the conflict.

28. In addition to the above judgments, some more judgments of the Supreme Court were placed for consideration by the parties to this petition to establish

their respective contentions which I propose to deal herein while recording my finding on each issue.

Issue No. (i):

29. It may be noticed that it is settled proposition of law that the executing Court cannot go behind the decree unless the decree passed by it is a nullity. A decree is said to be a nullity, if it is passed by a Court having no inherent jurisdiction. Merely because the Court erroneously passed a decree or there is an error while passing the decree, the decree cannot be called a nullity. The decree to be called a nullity is to be understood in the sense that it is ultra vires the powers of the Court passing the decree and not merely voidable decree.

30. On the above canvass, let me examine the contention with regard to the nullity of the decree in execution. Before I embark upon the correct principles to be followed, while dealing with the question of decree being nullity, relevant statutory provisions of the Act may be noticed.

Section 13(1)(a), (g) and (k) of the Bombay Rent Act reads as under :-

"13. When landlord may recover possession. -- (1) Notwithstanding anything contained in this Act but subject to the provisions of Sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a) that the tenant has committed any act contrary to the provision of Clause (a) of Section 108 of the Transfer of Property Act, 1882;

(b)

(c)

(d)

(e)

(f)

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h)

(i)

j)

(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or

(1)

Section 13(2) of the Act reads as under :

"(2) No decree for eviction shall be passed on the ground specified in Clause (g) of Sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the Court is satisfied that no hardships would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only."

31. The aforesaid statutory provisions clearly stipulate that, if there is a contest the Court can pass a decree for eviction, only if the Court is satisfied about the existence of grounds mentioned in sub-sections quoted hereinabove. The satisfaction can also be inferred impliedly. How such satisfaction is to be inferred needs to be considered on the canvass of the law laid down by the Supreme Court in this behalf.

32. In *K.K. Chari v. R.M. Sheshadri* (supra), this Court took the view that even if the satisfaction of the Court as to the availability of the ground of eviction is not recorded in the eviction order it will not conclude the matter. That the Court was so satisfied can also be considered from the point of view whether a stage had been reached in the proceedings for the Court to apply its mind to the relevant question. Other materials on record can also be taken into account to find out if the Court was so satisfied. Though *Alagiriswamy, J.* agreed with the proposed order but thought it necessary to add a few words of his own. He observed:

"..... The law on this subject has gone into a labyrinth and I think it is time we took a hard look at it and laid down the correct position."

33. *Nagindas Ramdas v. Dalapatram* (supra) was a case u/s 28 of the Bombay Act (57 of 1947), the earlier cases were sought to be distinguished on the ground that they related to a different Act. That line of argument was rejected on the ground that object of all these Acts is the same and that policy element is involved in the enactments relating to rent control in general, both in England and India. There the suit for possession was brought on the ground of non-payment of rent as well as bona fide requirement of the landlord. In the memo of compromise, the tenant agreed to pay certain sums as arrears of rent, the immediate delivery of possession was postponed for sometime till the plaintiffs were able to provide lease of other premises for the tenant. It appears that no evidence had been recorded before the compromise order was passed. When the time for execution came, the tenant raised objections u/s 47 of the Code of Civil Procedure, 1908 ("C.P.C." for short).

34. There being no evidence recorded on the merits before the compromise order was passed, the Court had to consider the nature and extent of material on

which the Court could be said to have satisfied itself about the existence of the grounds. The Court inferred that there was implied admission in the compromise which provided for payment of arrears of rent by the tenant in respect of the first ground and that the satisfaction of the Court in the matter may be based on an admission made by the tenant. The Court observed :

"From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible u/s 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions, the former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive, they can be shown to be wrong.

35. Suleman Noormohamad v. Umarbhai Janubhai (supra) was again a case in which suit was brought on the ground of non-payment of rent and bona fide personal necessity under the relevant provisions of the Act. The decree for possession was passed on the basis of a compromise under which the judgment debtor was to hand over possession by a future date. On his failure to do so, execution application was filed and the judgment debtor challenged the validity of the decree. The order did not mention that the Court was satisfied about the grounds for eviction. The Court read pleadings and came to the conclusion that there was no serious dispute to be tried and if a decree for possession would have been passed in invitum the tenant would not have got three years time to vacate the premises; that he, therefore, agreed to suffer a decree by consent and gained three years time under it. The Court also relied on the presumption that every compromise under Order 23, Rule 3 of C.P.C. shall be presumed to be lawful unless it is proved to the contrary. An admission by the tenant about the existence of a statutory ground, expressly or impliedly, will be sufficient and there need not be any evidence before the Court on the merits of the grounds before the compromise order is passed. If there is an admission of the tenant it will not be open to him to challenge its correctness as the admission made in judicial proceedings are absolutely binding on the parties. At any rate decree cannot be called a nullity to enable the executing Court to go behind it.

36. The other judgments of the Supreme Court in the case of Smt. Kaushalaya

Devi v. K.L. Bansal (supra) and Ferozi Lal Jain Vs. Man Mal and Another, are more or less adopts the same line of thinking adopted in the above judgments and on peculiar facts of those cases, the Supreme Court had reached to the conclusion that for want of satisfaction of the Court that one or more statutory grounds warranting decree for eviction existed, the decrees in those cases held to be null and void.

37. In order to infer such satisfaction one has to turn to the compromise decree in question. In this case, the order does not record satisfaction of the Court but on the facts of this case it is clear that the burden was upon the tenant to prove that he did not admit the statutory grounds for eviction sought to be made in the suit. The admission on the part of the tenant can be safely inferred and conclusion can be drawn that there was no serious dispute to be tried and if a decree for possession would not have been passed in invitum the tenant would not have got 15 years time to occupy the suit premises; that he, therefore, agreed to suffer a decree by consent and gained 15 years time under it with right to reconstruct and occupy newly constructed premises. The very fact that the tenant agreed to reconstruct the premises at his own cost is sufficient to infer damage caused to the suit premises by the tenant. This circumstances itself can be treated as admission on the part of the tenant about existence of statutory ground warranting decree for eviction mentioned in Section 13(1)(o) of the Bombay Rent Act.

38. The tenant, based on a compromise decree, not registered lease deed executed in his favour and erected new structure in place of old one and occupied the same for 15 years, thus it is clear that the compromise decree did not remain a paper decree but the same was acted upon by the parties to the decree. The learned counsel for the petitioner also relied on the presumption that every compromise under Order 23, Rule 3 of C.P.C. shall be presumed to be lawful unless it is proved to the contrary. Thus in the peculiar facts and circumstances of this case, it is clear that there was an implied admission by the tenant of the , ground at least contained in Section 13(1)(a) of the Bombay Rent Act. The existence of this one ground is sufficient to sustain decree for eviction. Apart from this the respondent is claiming right to remain in possession on the basis of registered lease deed which itself was the out-come of compromise decree. He acted upon the said decree by paying Rs. 1,000/- to the plaintiff. In this view of the matter, it is not open for the respondent to blow hot and cold and contend that the decree in question is a nullity. He is bound by the terms of compromise and consequently decree in question. It is, therefore, not possible to hold that decree in execution is a nullity. Accordingly, the issue No. (i) is answered in negative i.e. in favour of the petitioner and against the respondent.

Issue No. (ii):

39. The learned counsel for the petitioner contended that there was no intention whatsoever to create fresh or new lease. In terms of compromise plaintiff had merely agreed that for next 15 years, the defendant would be allowed to remain

in possession of the tenanted premises on the standard rent fixed in the sum of Rs. 100/- per month. He submitted that in view of the fact that the defendant had demolished the earlier old structure, circumstances had forced the plaintiff to grant necessary permission to reconstruct. In absence of grant of little longer time to occupy, the defendant would not have agreed to reconstruct the premises damaged/demolished by him. He urged that correct reading of the compromise decree would clearly demonstrate that the tenant was to remain in possession for 15 years by way of concession and was to hand over the vacant possession of the suit premises to the landlord on 31-12-1984 without fail.

40. The learned counsel for the tenant tried to support findings recorded by both the Courts below and contended that with the registration of lease deed, fresh tenancy came into being for a period of 15 years on revision of rent, which was fixed as standard rent in the sum of Rs. 100/- per month, as such it was not open for the decree holder to execute decree for possession. In his submission, the decree in question stood extinguished with the execution and registration of lease deed. It is thus urged that the consent terms will have to be read as a whole and looking to the nature of the recitals in the decree which incorporates the consent terms, it is impossible to resist the conclusion that the consent terms necessarily continued the tenancy of the defendant. If the tenancy is continued by the consent between the parties, possession of the premises covered by that tenancy cannot be taken away except in accordance with the procedure prescribed by the relevant rent law and in this case except following the provisions of the Bombay Rent Act.

41. It is thus well settled that whether a consent decree creates a new tenancy or continues the old tenancy has to be decided on the language of the consent decree itself. In this behalf, it will be profitable to refer to the observations of the Supreme Court made in the case of Smt. Kalloo and Others Vs. Dhakadevi and Others, , wherein the observations were made as under :--

"When a compromise petition is filed in an execution proceeding, and a contention is raised by the judgment-debtor on a subsequent execution being started by the decree-holder that the compromise has given rise to a fresh contract between the parties and that the decree sought to be executed is not executable, what is to be seen is whether the decree has been extinguished as a result of the compromise and a fresh contract has emerged. When a compromise takes place in the course of execution of a decree-for eviction, the compromise may extinguish the decree and create a fresh lease, or the compromise may provide a mere mode for the discharge of the decree. What actually takes place depends on the intention of the parties to the compromise. And the intention has to be gathered from the terms of the compromise and the surrounding circumstances including the order recorded by the Court on the basis of the compromise."

42. Let me turn to the terms of the consent decree. The first condition incorporated in the consent decree has fixed the standard rent at the rate of Rs.

100/- per month. The second term relates to 15 years period given to the judgment debtor/respondent to remain in possession as a tenant. Moreover, it also contained a term that decree holder shall execute the rent agreement separately. All these terms were not necessary, had it been the intention of the plaintiff/decreed holder to allow the judgment debtor only time to vacate suit premises. All these terms, if read together denote intention to create fresh lease. No clause is to be found as to what should happen if tenant refuses to vacate the suit premises, had it not been the intention to create new tenancy, it was not necessary to use the word rent that too a standard rent, while fixing the amount of monthly rental charges.

43. The language in the consent decree contains ample intrinsic evidence to indicate intention to create new tenancy, as such in my opinion, parties did not contemplate ejectment by execution of the compromise decree. Had the intention been to allow the judgment debtor only permissive possession for a period of 15 years, and the ejectment thereafter in execution of the compromise decree, the parties would have said so.

44. One more piece of intrinsic evidence is available in the decree itself, that is for recovery of amount of damages and cost of suit determined in the sum of Rs. 1,000/-. The decree provides that in the event of default in payment, the decree holder can recover this part of the decree by initiating executing proceeding but no such right has been provided in the compromise decree in favour of the decree holder. Had the intention been to recover possession by putting the decree in execution, then the decree would have so provided. It does not do so, the difference in the mode provided in two different clauses is understandable because a tenant who may otherwise be liable to ejectment, may be protected by provisions of the Rent Act. Assuming that tenancy of the respondent has come to an end, the respondent cannot be evicted from the suit premises in his possession without taking appropriate action by filing suit for ejectment or in any manner as may be permissible in law but not by applying for execution of compromise decree. In this view the decree in question stood extinguished and discharged with the execution of the registered lease deed. Accordingly, issue No. (ii) is answered against the decree holder and in favour of the respondent/tenant.

45. Both the Courts below while taking the view endorsed by me have relied upon the judgments of this Court in the case of Gurupadappa v. Akbar Sayad AIR 1952 Bom. 252 and Prithvichand Ramchand v. S.Y. Shinde 1985 Mh. LJ. 199. The view taken by them is a reasonable and possible view in the facts and circumstances of the case. This Court not being a Court of appeal is not expected to substitute its view unless the view taken by the Courts below is found to be perverse. Since, the view taken by me is in line with the view taken by the Courts below, this petition is liable to be dismissed with no order as to costs.

Accordingly, writ petition is dismissed with no order as to costs.

46. Shri M.S. Karnik, Advocate assisted this Court as Amicus Curie and I am beholden to him. I also place my appreciation on record for the assistance rendered to me by both the learned counsel while canvassing their rival contentions.