

(2008) 02 GUJ CK 0087
In the Gujarat High Court
Case No : Appeal From Order No. 297 of 2005

Laxmichand Bhagaji Ltd.

APPELLANT

Vs

Madhubhai Manishankar Desai

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15A, 15A(1), 5(4A)
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 20 Rule 12(2), Order 29 Rule 1, Order 29 Rule 2, Order 39 Rule 1
Companies Act, 1956 — Section 445(3), 446, 446(2), 468, 477
Evidence Act, 1872 — Section 106
Gujarat Civil Courts Act, 2005 — Section 15(2)
Transfer of Property Act, 1882 — Section 111

Citation : (2008) 02 GUJ CK 0087

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Dipen C. Shah, for the Appellant; Sunit S. Shah and N.V. Gandhi for Respondent 1, for the Respondent

Judgement

K.A. Puj, J.—The appellant - original plaintiff has filed this Appeal under Order 43 Rule 1 of Civil Procedure Code, challenging the judgment and order dated 7.4.2005 passed by the learned Civil Judge (S.D.) Bardoli below an application Ex. 5 in Special Civil Suit No. 66 of 2003 whereby the application Ex. 5 was rejected. The Appeal From Order has come up for hearing on 23.8.2005. This Court has observed that since the appellant proposed to file Civil Application for interim relief, the hearing of Appeal was adjourned to 26.8.2005. In the meantime, the appellant has filed Civil Application No. 7646 of 2005. This Court has admitted the Appeal On 26.8.2005 and notice was issued in Civil Application making it returnable on 12.9.2005. However, the Civil Application No. 7647 of 2005 was disposed of by this Court on 18.1.2006 and it was observed therein that allowing this application would tantamount to allowing the Appeal, and therefore, it cannot be entertained. The appellant has filed Civil Application No.

3396 of 2007 for fixing the date of hearing. The said application was disposed of by the Court vide its order dated 5.3.2007 and Appeal From Order was fixed for hearing on 4.4.2007.

2. The hearing of Appeal was thereafter adjourned from time to time and ultimately it was effectively heard for the first time on 17.1.2008 and it was observed therein that the Court is of the prima facie view that at this stage, the order regarding handing over possession cannot straightway be passed. However, the present respondent has been enjoying the property since 1991 and he has not paid a single pie towards rent or occupation charges. The present appellant original plaintiff has in the injunction application only asked for direction to the respondent original defendant to deposit a sum of Rs. 2,500/- with the Court from the date of the Suit. The Court was, therefore, of the prima facie view that the said prayer could not be said to be unreasonable or improper. Before any direction was issued while finally disposing of the Appeal From Order, Mr. N.V. Gandhi, learned advocate appearing for the respondent prayed for some time to take necessary instructions from the respondent original plaintiff and hence the matter was adjourned to 24.1.2008 for final disposal. On 24.1.2008, Mr. Gandhi was not present. However, Mr. Amit Chaudhary, learned advocate appearing for Mr. Sunit Shah, learned advocate for the appellant has submitted that Mr. Sunit Shah is appearing in this matter and since he was out of station time was sought for. The Court, therefore, observed that as a matter of fact the matter was adjourned to seek instruction from the client, however no such instruction has come forward. The matter was, thereafter, adjourned to 25.1.2008. On 25.1.2008, Mr. Sunit Shah, learned advocate appearing for Mr. N.V. Gandhi submitted that he wanted to argue the Appeal at length and hence he sought permission to make his submission. Before granting such permission, the Court has asked the respondent to deposit a sum of Rs. 25,000/- before this Court towards an arrears of rent. Mr. Shah, under the instruction of the respondent, agreed to deposit the said amount on or before 30.1.2008 and matter was adjourned to 30.1.2008 on this condition. The matter was, thereafter, heard at length.

3. It is the case of the appellant original plaintiff that Laxmichand Bhagaji Ltd., Company incorporated under the Companies Act, 1956, was wound up and committee was constituted under the order of Bombay High Court in Company Petition No. 76 of 1991 for compromise and arrangement and the said committee came to be known as Laxmichand Bhagaji Depositors Management Committee. The said Committee is authorised to sell and recover sale proceeds by selling the property of the Company in liquidation anywhere in India pursuant to the Scheme of Compromise and Arrangement sanctioned by Bombay High Court in Company Petition No. 76 of 1991. The property bearing City Survey No. 4232 and registered in Nagarpalika at 2/1128 is the property of the Company in liquidation. The respondent-original defendant was the employee of the Company in liquidation and the said property was given to him for residential use during the period of service. Since the Company was wound up, the contract of

employment with the respondent had come to an end and the respondent has been unauthorisedly occupying the said premises since 28.11.1991. A Notice was also issued to the respondent to vacate the premises and the respondent has wrongfully retained the possession of the premises even after the receipt of the notice. It is, therefore, contended that the respondent is not the tenant of the Company in liquidation and no document like rent receipt etc., is produced by the respondent.

4. The appellant, therefore, filed Special Civil Suit No. 66 of 2003 before the learned Civil Judge (S.D.), Bardoli, praying for handing over the possession of the property bearing City Survey No. 4232 and having its Registration No. 2/1128 in the record of Bardoli Nagarpalika on the ground that the respondent is in unauthorised and illegal possession of the said property. The appellant has also prayed for recovery of rent of Rs. 90,000/- for the last 3 years alongwith the interest at the rate of 18% per annum. The appellant has further prayed for Rs. 2,500/- p.m. for use and occupation and loss of rent during the pendency of the suit. The appellant has also filed an application Ex. 5 seeking interim relief under Order 39 Rule 1 and 2 read with Section 151 of CPC praying for the direction to the respondent to deposit the sum of Rs. 2,500/- p.m. in the court for use and occupation as well as loss of rent during the pendency and final disposal of the suit. This injunction application was rejected by the learned Civil Judge (S.D.) Bardoli, vide his order dated 7.4.2005 and it is this order which is under challenge in the present Appeal From Order.

5. Mr. Dipen C. Shah, learned advocate appearing for the appellant has submitted that the order passed by the learned Civil Judge is ex-facie, erroneous and contrary to law and facts of the appellant's case. It is wholly based on misconception of law and it suffers from the vice of failure to appreciate evidence on record. He has submitted that the respondent was never the tenant of the Company in liquidation. He was merely an employee of the Company and after the winding up of the Company the contract of employment has ceased to exist and the respondent is no longer the employee of the Company. He has further submitted that the minutes of the meeting dated 17.10.1997 of the Management Committee appointed by the Bombay High Court clearly indicates that the property in question at Bardoli is property of the Company in liquidation. The said minutes clearly reveals that the respondent was the employee of the Company and not the tenant. The minutes further reveals that there is conclusive proof to establish that the property in question is the property of the Company and not the partnership property. He has further submitted that Clause 17 of the Compromise Scheme framed by the Bombay High Court, in no uncertain terms, states that selling of the property of the Company in liquidation shall be given priority to all other claims and all suits which come in the way of depositors receiving their amount out of the sale proceeds shall stand stayed. He has further submitted that the prayers made in para-14 of the suit as well as para-9 of the application are not the same and hence the injunction application cannot be rejected on that ground. The learned Civil Judge has also committed an error

in law while holding that the appellant is not entitled to a reasonable sum from the respondent towards use and occupation of the premises of the appellant. He has further submitted that all the power of attorneys have been cancelled by public advertisement dated 13.12.1990 and hence any transaction based on such power of attorney is void ab initio. He has further submitted that there is no dispute about the fact that the respondent was the employee of the Company in liquidation and the first floor of the said premises at City Survey No. 4232 at Bardoli was given to the respondent for residential purpose under the contract of employment. The respondent was given the permissive use of the said premises at Bardoli in the capacity of he being the Manager of the Company in liquidation. He has further submitted that the learned Civil Judge has committed a grave error of law and failed to consider that right of tenant to continue in possession comes to an end on determination of lease u/s 111 of Transfer of Property Act and for any occupation of the premises thereafter he becomes liable to pay damages at the rate at which the landlord could have let out the premises on being vacated by lease.

6. In support of his submission Mr. Shah has relied on various judgments of High Courts as well as of Hon"ble Supreme Court. He relied on all these judgments for canvassing different propositions such as prima facie case, appellant's right to claim mesne profit and/or damages keeping in mind the provisions contained in Order 20 Rule 12 of Civil Procedure Code, measurement of damages, guiding principle for claim of increasing rent and claiming possession of property on the ground of failure of payment of reasonable rent by tenant at sufferance and unauthorised occupant on termination of the lease agreement.

7. As far as scope of Order 29 Rule 1 and 2 vis-a-vis Section 94 of the CPC is concerned, Mr. Shah has relied on the decision of Hon"ble Supreme Court in the case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, wherein it is held that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" in Section 94 is only this that when the rules in Order 39, Civil P.C., prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 94 of the code have their effect and not in taking away the right of the Court to exercise its inherent power. The Court further held that Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the

Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code. Thus, there being no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order 39 or by any rules made under the Code, the Courts have inherent jurisdiction to issue temporary injunction in circumstances which are not covered by the provisions of Order 39, C.P.C., if the Court is of opinion that the interests of justice require the issue of such interim injunction

8. Mr. Shah has submitted that even during the pendency of the suit the appellant can claim the relief with regard to reasonable rent or mesne profit and provision of Order 20 Rule 12 would not come in its way. For this purpose he relied on the decision of the Hon"ble Supreme Court in the case of Girdhari Lal (Dead) by Lrs. Vs. Hukam Singh and Others, , wherein High Court had overruled the objection that a decree for rent for mesne profits during the pendency of the suit could not be granted under Order 20, Rule 12 of Civil Procedure Code. The defendant had himself pleaded before the Court that the suit was for ejectment on which the additional Court-fee had to be paid. The High court pointed out that the plaintiff had paid the additional Court-fee for a suit for ejectment. Hence, it held that it was not open to the defendant to object to the award of mesne profits on the ground that there was not suit for ejectment before the Court. This was quite a frivolous objection. In the present case, the appellant has filed suit of ejectment and also for mesne profit. The appellant has paid the proper Court fee and hence any objection to this effect is quite frivolous.

9. As far as rules governing for measurement of damages are concerned, Mr. Shah has relied on the decision of Madras High Court in the case of The Union of India (UOI) and Another Vs. Andhra Bank Limited, , wherein it is held that a tenant continuing in possession of the demised premises after the determination of a lease is called a tenant at sufferance. If such possession is attributable to the consent of the landlord given either expressly or by necessary implication, then he is called a tenant holding over or a tenant at will. But if in a given situation, such consent is not proved, then he is called a tenant by sufferance. But in no case he can be characterised as a trespasser. If a tenant at sufferance continues to occupy the premises after the determination of the lease, then he cannot unjustly enrich himself by claiming that he will pay only the quondam rent and not reasonable rate of damages for use and occupation of the premises. If he assents to pay the enhanced rent demanded at a time when the landlord determines the lease, then he will be considered as a tenant holding over on the basis of new contract of lease as between himself and the landlord. If the tenant, in spite of the warning, contumaciously remains in possession of the premises, the landlord secures a right to get a reasonable compensation from the tenant for such occupation, but it need not necessarily be the enhanced rate of rent

claimed by him; but in no circumstances, it can exceed the enhanced rate demanded by him. The Court further held that the Court should investigate and it has the jurisdiction to do so, and find in its discretion whether the enhanced rate claimed by the landlord, in such circumstances is penal or otherwise equitably justified. The Court has power and the discretion to fix a fair and equitable rent in such situations.

10. Mr. Shah further relied on the decision of the Hon''ble Supreme Court in the case of Roop Kumar Vs. Mohan Thedani, , for the proposition that when a person is in unauthorised occupation of premises what would be the amount of damages. In this context, the Hon''ble Supreme Court in para-32 observed that One plea which is urged with some amount of emphasis was increase of the damages from Rs. 500/- p.m. to Rs. 1200/- p.m. As noted supra, with the consent of the parties, the High Court had exercised powers under Order 41, Rules 30, 32 and 33. It took note of the ground realities which were not disputed before the Court. High Court recorded a positive finding that in the normal course the appellant would have paid at least Rs. 1200/- p.m., though the amount payable was more than, even for the period for which accounts were rendered or were to be rendered. It was fairly accepted by learned counsel for the appellant before is that the rentals in the area have increased by leaps and bounds after 1980. That being so, the specious plea that there was no scope for enhancement of the quantum of damages fixed by the Trial Court is indefensible. Judged from any angle, the appeal is devoid of merit and deserves dismissal with cost.

11. Mr. Shah further relied on the decision of the Bombay High Court in the case of Kesardeo Baijnath Vs. Nathmal Kisanalal, , wherein while lying down the criteria for ascertainment of mesne profit the Court held that criterion is not what plaintiff might have got had he been in possession but value of user of tenement in defendant after termination of tenancy. The Court further held that Protection of Rent Control Order is not available to erstwhile tenant. Considering all these issues in the context of unavailability of houses on rent, value or user of tenement to defendant would necessarily be much more than what defendant paid as rent.

12. Mr. Shah further relied on the decision of Patna High Court in the case of Ram Kishun Lal and Others Vs. Abu Abdullah Syed Hussain Imam, wherein it is held that under the definition of mesne profits in Section 2(12) the sum to be awarded is not what the plaintiff has lost by his exclusion from the land, but what the defendant has made or might with reasonable diligence have made by his wrongful possession. The Court further held that although u/s 106, Evidence Act, the burden of proving the amount of mesne profits actually received is on the person receiving them but as regards the amount of profits that might with ordinary diligence have been received by the person in occupation, the burden of proving is on the person claiming it.

13. Mr. Shah further relied on the decision of Bombay High Court in the case of

Ratilal Thakordas Tamkhuwala and Another Vs. Vithaldas Magandas Gujarathi, wherein it is held that The law with regard to mesne profits would not admit the consideration of only the standard rent fixed under the Rent Act as the measure of such profits. In fact, there would be no question of rent being earned by the person in wrongful possession, nor would the statutory quantification of rent by the Rent Act governs his liability. At the most and at the maximum, the rent so fixed by the Rent Act could be treated as merely a relevant piece of evidence so as to find out what the person could have, reasonably and with due diligence, had the property been let, earned and nothing more. It is the value of the wrongful possession that is the point of reference for the purpose of deciding the quantum of mesne profits. Rent could be a relevant factor for considering such a value but not decisive of the matter. The standard rent, as the law indicates, has different point of reference statutorily fixed and is not indicative of the value of the possession at the date when such possession becomes wrongful. The possession of a judgment-debtor becomes wrongful upon the passing of the eviction decree, while the provisions like those of the Rent Act have a different point of reference with regard to lawful possession.

14. Mr. Shah further relied on the decision of Allahbad High Court in the case of Raghubans Upadhyaya and Another Vs. Indarjit Singh and Others, wherein it is held that damages for trespass are at large but at least the plaintiff is entitled in every case to nominal damages. If a defendant makes a bona fide mistake, a Court ought to be content to award nominal damages but if a defendant takes a risk which he knows to be a risk and persists in fighting when he knows or ought to know that he is wrong, his conduct ought to be measured in some way by the special damages which the Court is entitled to award. The measure of damages in contract is quite different to that in tort. In contract the plaintiff can only recover the actual pecuniary loss. In tort he is entitled to special damages for trespass to property.

15. Mr. Shah further relied on the decision of Madhya Pradesh High Court in the case of Basodi alias Munshilal and Another Vs. Smt. Meera Bai and Others, wherein after relying on the judgment of Supreme Court in the matter of M/s. Marshall Sons and Co. (I) Ltd. Vs. M/s. Sahi Oretans (P) Ltd. and Another, , the Apex Court has awarded the mesne profit on higher rate at appellate stage, it is held that in view of this settled law, the appellate Court is within jurisdiction in awarding the mesne profit on higher rate. The Court further held that Courts have vested powers to award the mesne profit at the market rate for the period pendente lite of the suit and till recovery of possession of property but by supplying the sufficient reasons in the judgment or orders.

16. Mr. Shah further relied on the decision of Court of Appeal in the case of Swordheath Properties Ltd. v. Tabet reported in 1979 W L R 285. In this case the plaintiffs let residential premises at a rent payable monthly in advance at a rate of Pound 1,040 per annum to the first defendant for a fixed term of three months. Before that fixed term expired the first defendant left the premises

leaving the second and fifth defendants in occupation. The plaintiffs brought an action against all the defendants claiming possession of the premises and against the second, third, fourth and fifth defendants damages for trespass from the date when the first defendant's entitlement to remain in the premises terminated until possession at the rate of Pound 1,040 per annum. At the hearing of the action in January 1978, the judge granted the plaintiffs an order for possession but refused their claim for damages on the ground that no evidence had been adduced that the plaintiffs could or would have been able to let the premises to a suitable tenant during the period of the defendants' occupation. On an Appeal by the plaintiffs against the refusal to award damages, the Court, while allowing the appeal, held that where a plaintiff established that a defendant had occupied residential premises as a trespasser, then without adducing any evidence that he could or would have let those premises to someone else had the defendant not been in occupation, he was entitled to damages for trespass which, in a normal case, would be calculated by reference to the ordinary letting value of the premises.

17. Mr. Shah in support of his submission that the appellant is entitled to claim possession of the premises in question on termination of the lease agreement as soon as the Company went into liquidation and the employer employee relationship between the Company in liquidation and the respondent has come to an end. Mr. Shah has relied on the decision of Delhi High Court in the case of K.K. Dhawan v. Dr. (Mrs.) Promila Suri reported in All India Rent Control Journal 1998(1) 181, wherein it is held that relationship of landlord and tenant is created by a contract, mere payment of rent does not necessarily establish the relationship of landlord and tenant. Therefore, on the ground that landlady Mrs. Suri had issued rent receipt in the name of Mr. K.K. Dhawan would not make him a direct tenant of Mrs. Nirmal Kanta Suri. In fact the appellant failed to produce any contract establishing the relationship of landlord and tenant. On the contrary Ex. A-2 is a rent agreement entered in between the landlady and the Company to which present appellant was a signatory. Thus, signing Ex. A-2 he admitted that he occupied the tenanted premises as an employee of the tenant i.e. the Company. He was to remain in the premises so long as he was the employee of the Company. That is the reason, the Company issued notice to him to vacate and handover the rented premises to the landlady as he was no more an employee of the company.

18. Mr. Shah further relied on the decision of the Hon''ble Supreme Court in the case of Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, , wherein it is observed that payment of rent does not necessarily establish relationship of landlord and tenant. Such payment may only prove permissive occupation not amounting to any right or title to possession.

19. Mr. Shah further relied on the decision Of Hon''ble Supreme Court in the case of D.H. Maniar and Others Vs. Waman Laxman Kudav, wherein it is held that in order to get the advantage of Section 15-A of the Bombay Rent Act, the

occupant must be in occupation of the premises as a licensee as defined in Section 5(4A) on the 1st of February, 1973. If he be such a licensee, the non obstante clause of Section 15-A(1) gives him the status and protection of a tenant in spite of there being anything to the contrary in any other law or in any contract. In other words, even as against the express terms of the subsisting contract of licence the licensee would enjoy the benefits of Section 15-A. But if he is not a licensee under a subsisting agreement on the 1st of February 1973, then he does not get the advantage of the provision of the Bombay Rent Act. A person continuing in possession of the premises after termination, withdrawal or revocation of the licence continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such a person by no stretch of imagination can be called a licensee. If, therefore, W was not a licensee under a subsisting agreement in occupation of the premises on the 1st of February 1973 he could not take shelter u/s 15-A.

20. Based on the aforesaid judgments and provisions of law as interpreted by the Courts, Mr. Shah has strongly urged that the order passed by the learned Civil Judge (S.D.) deserves to be quashed and set aside and prayer made in the injunction application is required to be granted. Not only this, since the respondent has failed to pay the rent and/or occupation charges, since 1991, the learned Civil Judge may be directed to decide the suit forthwith and to pass a decree of possession in favour of the appellant.

21. Mr. Sunit Shah, learned advocate appearing for the respondent on the other hand has raised the preliminary objection against the maintainability of Appeal From Order. He submitted that the present Appeal From Order is filed under Order 43 Rule (1)(r) of Civil Procedure Code. It says that Appeal shall lie on the following order under the provisions of Section 104, namely, under Rule 1, 2, 2(A), Rule 4 or Rule 10 of Order 39. The relief prayed for by the appellant in injunction application does not fall in any of these rules. Rule 1 deals with cases in which temporary injunction may be granted. Rule 2 deals with injunction to restrain repetition or continuation of breach. Rule 2(A) deals with consequences of disobedience of breach of injunction. Rule 4 says that order for injunction may be discharged, varied or set aside. Rule 10 deals with deposit of money etc., in Court. He has, therefore, submitted that the relief claimed by the appellant in the injunction application is not covered by any of these four rules and hence appeal filed by the appellant against the impugned order is not maintainable. He has further submitted that Order 20 Rule 12 deals with decree for possession, mesne profit which states that where a suit for recovery of possession of immovable property and for rent or mesne profit, the Court may pass a decree (a) for the possession of the property; (b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent; (ba) for the mesne profits or directing an inquiry as to such mesne profits; (c) directing an inquiry as to rent or mesne profits from the institution of the suit until: (i) the delivery of possession to the decree-holder. (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-

holder through the Court, or (iii) the expiration of three years from the date of the decree, whichever event first occurs. Sub-rule 2 of Rule 12 says that where an inquiry is directed under clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry. On this provisions Mr. Shah contended that order regarding mesne profit cannot be passed during the pendency of the suit. At the most an inquiry can be ordered and after proper inquiry at the time of final decree, the Court may award mesne profit. He has, therefore, submitted that the learned Civil Judge has rightly rejected the injunction application.

22. He has further submitted that the Appeal From Order is filed u/s 104 of CPC and Section 104 states that an Appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders, an order u/s 35A, and order u/s 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92, as the case may be, an order u/s 95, an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution or a decree, any order made under rules from which an appeal is expressly allowed by rules. Mr. Shah has further submitted that an argument that u/s 94 or u/s 151 of CPC the Court may pass an order. Section 94 deals with supplemental proceedings and Section 151 deals with inherent power of Court. Under Sub-section (e) of Section 94 the Court in order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, make such other interlocutory orders as may appear to the Court to be just and convenient. Even if the order passed by the learned Civil Judge is treated as the order passed u/s 94(e), an Appeal can lie against such order. Likewise, while exercising inherent power u/s 151 of the Code the Court may pass an order. However, this fact by itself would not make the order appealable under Order 43 Rule 1 read with Section 104 of the Civil Procedure Code.

23. Mr. Shah has further submitted that even the present Appeal is not maintainable before this Court in view of the provisions of Gujarat Civil Courts Act, 2005. Section 15(2) of this Act states that Appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie (a) to the Court of District Judge of the district when the amount or value of the subject matter of the original suit or proceedings is less than five lakhs of rupees or such other sum as the High Court may, from time to time specify. (b) to the High Court in other cases. He has, therefore, submitted that though the suit for jurisdiction is of Rs. 5 lakhs the relief claimed is less than Rs.5 lakhs and hence the Appeal should have been filed before the District Court and not before this Court. He has, therefore, submitted that considering all these legal submissions, the present Appeal is not maintainable and hence without going into the merit of the matter, the Appeal straightway deserves to be dismissed.

24. After having heard the learned advocates appearing for the respective parties and after having gone through the memo of Appeal as well as the impugned order passed by the learned Civil Judge (S.D.) Bardoli and after having considered the relevant statutory provisions as well as the authorities cited before the Court, the Court is of the opinion that the learned Civil Judge has committed a serious error of law as well as of facts while rejecting the appellant's application Ex.5 for interim relief. As per the order passed by the Bombay High Court in Company Application No. 76 of 1991 the appellant is authorised to sell and recover sale proceeds by selling the property of the Company in liquidation any where in India pursuant to the Scheme of Compromise and Arrangement sanctioned by Bombay High Court. The property in question belongs to the Company in liquidation and hence the appellant has rightly filed Special Civil Suit No. 66 of 2003 before the learned Civil Judge (S.D.) Bardoli praying for handing over the possession of the suit property and for recovery of rent and/or mesne profit of Rs.90,000/- for the last 3 years by way of interim relief. The appellant has prayed for the direction to the respondent to deposit a sum of Rs.2,500/- p.m. for use and occupation and loss of rent during the pendency of the suit. The reason given by the learned Civil Judge for rejection of the application Ex.5 are not tenable at law and they are contrary to law laid down by the Court. Once the Company goes into liquidation the relationship of employer-employee comes to an end and, thereafter, the ex-employee has no right to stay in the premises allotted by the Company by virtue of his employment. u/s 630 of the Companies Act, 1956 illegal occupation of the Company's property amounts to criminal offence for which occupiers are liable to be prosecuted. For getting eviction, the Liquidator need not file any eviction suit. The Court can pass an order of eviction on filing application by the Liquidator or contributory. This Court has considered the provisions of Companies Act, 1956, with special reference to Sections 445(3), 446, 446(2), 468, 477, 630 and 630(2) of the Companies Act, 1956 in the case of Textile Labour Association v. O.L. of Amruta Mills Ltd. reported in (2005) 126 Company Case 469. It is true that this Court can not exercise its power as Company Court under the provisions of the Companies Act and only Bombay High Court can pass such order. However, if the suit is filed by the Committee empowered by the Bombay High Court and possession of the Company's property is sought for, the learned Civil Judge cannot ignore these statutory provisions contained in the Act. Even if the learned Civil Judge could not pass the final decree at this stage, it is not just and proper for him to reject the application Ex. 5.

25. The Court is not convinced with the first submission made by Mr. Sunit Shah, learned advocate appearing for the respondent. There is no substance in the contention that Appeal is not maintainable against the impugned order passed by the learned Civil Judge. The present Appeal is filed under Order XLIII Rule 1(r) of the Civil Procedure Code. The Order XLIII Rule 1(r) states that an Appeal shall lie from the orders under the provisions of Section 104, namely, an order under Rule 1, Rule 2 (Rule 2A), Rule 4 or Rule 10 of Order XXXIX Rule 10 of Order

XXXIX states that where the subject matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court. Here in the present case, the suit property belongs to the Company in liquidation. The appellant is the Committee duly authorised by the Bombay High Court. The respondent is in possession of the suit property since 1991 by virtue of his employment with the Company in liquidation. After the Company went into liquidation the respondent has no right to stay in the suit property. The appellant has, therefore, filed suit and prayed for interim relief in the form of direction to the respondent to deposit a sum of Rs. 2,500/- p.m. in the Court towards use or occupation charges or loss of rent. The relief prayed for in the suit, therefore, squarely falls within the purview of Rule 10 of Order XXXIX of CPC and hence the Appeal filed against the impugned order is maintainable under Order XLIII Rule 1(r) of Civil Procedure Code. Even otherwise, the Court has ample powers u/s 94 as well as 151 of the CPC to grant the relief sought for in the interest of justice.

26. As far as second submission of Mr. Shah that the Court cannot pass the order with regard to mesne profit at the interim stage is concerned, the same is also required to be rejected in view of the decision of Hon'ble Supreme Court in the case of Girdharilal (dead) by Lrs. v. Hukum Singh (Supra) wherein the High Court has over ruled the objection that a decree for rent or mesne profit during the pendency of suit could not be granted under Order 20, Rule 12 of Civil Procedure Code. In the present case, the appellant's suit is for ejectment and also for mesne profit. The appellant has also paid additional Court fees and hence there is no substance or merit in the objection raised by Mr. Sunit Shah. Once the adequate Court fee has been paid by the appellant and the claim in the suit is of more than Rs. 5 lakhs this Court has ample power and jurisdiction to entertain the present Appeal. Since Appeal is pending before the Court and during the pendency of the Appeal, the Appellant has paid additional Court fees, it cannot be said that on the date when the Appeal was filed this Court had no jurisdiction to entertain the said Appeal. Even in view of the judgment of Madhya Pradesh in the case of Basodi alias Munshilal v. Smt. Meera Bai reported in AIR 2006 (Supra) with which this Court is in complete agreement, the appellate Court is within its jurisdiction in awarding the mesne profit on higher rate. There is settled principle of law that the Courts are vested with the powers to award the mesne profit at the market rate for the period pendente lite of the suit and till recovery of possession of property. The claim of the appellant to ask the respondent to deposit a sum of Rs. 2,500/- p.m. in the trial Court is, therefore, neither unjust nor improper and it is in complete consonance with the provisions of law as well as judicial pronouncements.

27. The Court is also of the view that simply because some rent receipts are produced without any lease or tenancy agreement, the relationship of landlord

and tenant cannot be established. The present respondent cannot claim the status of tenant only on the basis of some rent receipts alleged to have been issued. Such payment would tantamount to the charges for permissive occupation and it would not create any right or title to the possession of the property. The appellant's advocate Mr. Dipen Shah has, therefore, rightly relied on the decision of the Hon''ble Supreme Court in the case of Sheodhari Rai v. Suraj Prasad Singh (Supra).

28. In view of the aforesaid findings given by the Court, the Appeal of the appellant is hereby allowed and the impugned order passed by the learned Civil Judge (S.D.) Bardoli is hereby quashed and set aside. The appellant is hereby directed to deposit the amount by way of mesne profit at the rate of Rs. 2,500/- p.m. from the date of filing of the suit till this date, less the amount of Rs. 25,000/- deposited by him before this Court pursuant to the order passed by the Court earlier, within one month from the date of receipt of writ or from the date of receipt of certified copy of this order, whichever is earlier. Since this Court is of the prima facie view that the respondent is in unauthorised occupation of the suit premises since 1991 onwards, the learned Civil Judge (S.D.) Bardoli is hereby directed to decide and dispose of the suit as expeditiously as possible, preferably within the period of six months from the date of receipt of writ or from the date of receipt of certified copy of this order, whichever is earlier. The learned Civil Judge (S.D.) Bardoli is further directed to consider the fact that if the amount as directed by this Court is not deposited by the respondent within the time granted hereinabove, while deciding the suit, this fact will also be taken into consideration. It is also made clear that after the Company went into liquidation, the possession of the suit premises by the respondent is either as tenant at sufferance or as trespasser and hence if any one else derive his title from the respondent qua the property of the Company in liquidation the same shall also be considered as illegal or unauthorised and while deciding the suit, this aspect will also be taken into consideration. The amount of Rs. 25,000/- deposited in this Court shall forthwith be transferred to the learned Civil Judge (S.D.) Bardoli alongwith the records and proceedings of the suit, if they are here.

29. Subject to the aforesaid directions and observations this Appeal is accordingly allowed.