

(1973) 06 GUJ CK 0001
In the Gujarat High Court

Maniben Chhotubhai and Others

APPELLANT

Vs

Kacharabhai Bhulabhi

RESPONDENT

Date of Decision : 22-06-1973

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 35
Constitution of India, 1950 — Article 133(1)(c)

Citation : (1974) 15 GLR 209

Hon'ble Judges : J.M. Sheth, J;A.N. Surti, J

Bench : Division Bench

Judgement

J.M. Sheth, J.—This appeal is directed against the order passed by the Executing Court in Darkhast No. 367 of 1970, over-ruling the objections raised by the present appellants regarding the executability of the "decree against them and issue of a warrant for possession under Order 21, Rule 35 of the CPC against them, which order has been Confirmed by the learned District Judge, Surat, in Civil Appeal No. 84 of 1971.

2. Short facts leading rise to this appeal are as under:

Respondent decree-holder filed Civil Suit No. 1499 of 1966 against one Chotubhai Kunverbhai Rathod (since deceased) on 24-11-1966 for recovery of possession of the leased premises and for the arrears of rent, etc., on the ground that Chhotubhai (tenant) whose contractual tenancy was determined, was a tenant-in-arrears for a period over six months and the landlord required the suit premises reasonably and bona fide for his personal face and occupation. In that suit, decree on the basis of consent terms came to be passed on 26th September, 1966. One of the consent terms was that the tenant withdraws all his contentions raised in his written statement. One of the terms was that the tenancy had come to an end ad there was no relationship of landlord and tenant between the parties. The arrears of rent as well as the mesne profits that become payable by the defendant to the plaintiff upto 30th September, 1967,

come to Rs. 755/-. Taking into account the sum of Rs. 300/- deposited by the defendant in the Court, the balance that remains to be paid comes to Rs. 455/-. Defendant has to pay the said sum and other costs. He has also to pay mftsne profits at the rate of Rs. 30/- till handing over possession from 1st October, 1967. The aforesaid sum of Rs. 455/- is to be paid by monthly instalment of Rs. 20/-. The date is also fixed for payment of instalment every month. The possession of the suit property was to be handed-over by the defendant to the plaintiff on or before 30th September, 1970, In case the defendant hands-over possession of the suit property to the plaintiff without the plaintiff's filing an application to execute the decree for obtaining possession on or before 30th September, 1970, the defendant is to give a concession as regards the costs of the suit. On the basis of these consent terms, the decree came to be passed. As the possession was not handed-over on the specified date, the respondent judgment-creditor filed Darkhast No. 267 of 1970 to execute the decree. As original judgment-debtor Chhotubhai had died on 17th October, 1968, this Darkhast was sought to be executed against the present appellants stating that they were the legal heirs and representatives of the deceased judgment-debtor. Notice was issued to the appellants and it is after hearing their objections, the impugned order came to be passed. One of the main contentions raised on behalf of the appellants before the Executing Court was that this decree was a nullity as the Court could not pass such a decree on the basis of the consent terms in view provisions contained in Section 13(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 1 (Which will be hereinafter referred to as "the Act").

3. It was contended that the Court has to satisfy itself about the existence of one of the grounds mentioned in Clauses (a) to (i) in Sub-section (i) of Section 13 of the Act. In the instant case, the Court had merely passed the decree on the basis of the consent terms. Consequently, the decree was a nullity. Both the Courts negatived this contention on the ground that some of the terms of the decree clearly indicated that there was sufficient material for the satisfaction of the Court that the landlord was entitled to the decree on the grounds which are covered by some of the grounds mentioned in Section 13(1) of the Act.

4. Another objection raised was that such decree against the legal representatives cannot be executed against them without first getting the decree amended so as to show that the decree itself indicates that this decree is executable against the legal representatives of the deceased judgment-debtor. That contention also has been negatived on the ground that the real object in this behalf is that these legal representatives must be given an opportunity to raise their objections and they should be heard on the point that this decree is not executable against them. In the instant case, immediately after the filing of the execution petition, notice was issued by the Court, which executed and had passed the decree against them, and it was only after hearing of their objections against the executability of the decree, that the impugned order is passed.

5. Mr. A.H. Mehta, appearing for the appellant, has made the following submissions:

(1) Whether eviction could be based on the basis of the consent terms in view of the fact that statutory duty imposed upon the Court has not been performed as the decree is merely based on the basis of consent terms and consequently, the decree is a nullity?

(2) Consent decree creates a new tenancy.

(3) Appellants, in their own right, have become statutory tenants and they cannot be said to have inherited or succeeded to any rights of Chhotubhai who was himself a statutory tenant at the time of his death in year 1968 A.D. The present appellants, therefore, cannot be evicted in execution of a decree passed against Chhotubhai.

(4) Decree having not been amended so as to show the appellants as "legal representatives of Chhotubhai, execution against them without such amendment in the decree itself was incompetent.

6. We have already referred to the consent terms of the decree. It is clear from those terms that relationship of landlord and tenant between the parties was in terms terminated. Even prior to the filing of the suit, the contractual tenancy was determined. Deceased Chhotubhai, therefore, was only a statutory tenant and against such a statutory tenant, t suit was filed for recovery of possession on two grounds:

(1) That the tenant was a tenant-in-arrears for a period over, six months. In the suit itself, it was in terms stated that rent due from 1-10-1965 to 31-10-1966 and that amount came to Rs. 390/- and Rs. 16.50 paise were due for the municipal axe. Prior to the filing of the suit, notice making a demand for arrears of rent was also given.

(2) That the landlord required the suit premises reasonably and bona "fide for his personal use and occupation.

It is thus evident that possession was sought on the ground that the landlord has become entitled to get possession in view of the provisions of Section 12 of the Act and also in view of the provisions contained in Section 13.

7. In the consent terms, which find place at Ex. 26, in the record of the entire amount has been admitted and mesne profits have been agreed to be paid for the period beyond the date of the suit till the specified date for banding over possession. All the contentions raised have been "withdrawn the judgment-debtor. It means that all the averments made "Be "the judgment-creditor are admitted It is, therefore, evident that there were sufficient materials on the record itself for the Court to satisfy itself about the grounds which would entitle the landlord to recover possession under the provisions of the Act. The two Courts below have rightly come to the conclusion that the decision of a Division

Bench of this Court in *Shah Rasiklal Chunilal v. Sindhi Shyamlal Mulchand* 12 GLR 1012, will have application. It is observed therein:

It is only when the Court passes a forbidden decree by going outside its ambit of jurisdiction by passing a decree de hors the Rent Act or which is ultra vires the Rent Act on a ground which is not one of the grounds under the Rent Act, the decree would lack inherent jurisdiction of such a Rent Court. In such "a case it would be immaterial whether it is a consent decree or a decree in invitum and the decree would be a nullity because it is a forbidden decree.

The pertinent observations made therein are:

If there is foundation for the exercise of jurisdiction of the Rent Court, the eviction decree could not be treated as a nullity merely on the ground that the satisfaction of the Court could not be based on consent of the parties. In view of Section 58 of the Evidence Act, when there is no doubt as to the genuineness of the admission, the admission would furnish the best proof in such adversary proceedings, especially when the parties are represented by the Advocates. Similarly, the terms of Order 23, Rule 3 of the CPC could not be ignored from consideration. Satisfaction of the Court would have to be an objective decision on facts which are proved or which are even admitted by the parties. Such an admission may be found even in the consent terms. If these relevant terms in the consent terms provide the or foundation by showing the existence of the relevant grounds under the Act, it would be for the Court concerned to be satisfied as the existence of the relevant grounds under the Act. Merely because the Court commits an error in so satisfying itself or merely because its satisfaction is not expressly recorded or the materials on the record are inadequate for such satisfaction, the consent decree could not be said to be a nullity, so long as there is a foundation for invoking the jurisdiction of the Rent Court. If the Court had not properly expressed its satisfaction, that would be no ground for, treating the decree as a nullity, so long as the decree shows on the face of it that the Rent Court had remained within its mandated area and had not gone outside its area of jurisdiction. If the consent decree passed by the Rent Court is -Cot inconsistent with the provisions of the Rent Act and if the statutory fetter-created by the Rent Act has not been ignored by it but only the question within its jurisdiction has been wrongly decided, the decision of the Rent Court would be within jurisdiction and its decree would not be a nullity. Such order recording a compromise, of course, can be challenged in appeal under Order 43 Rule 1(m) but the order could not be challenged on the ground of lack of competence in any collateral proceeding, either in execution or in a separate suit.

It observed:

is only in these cases where the Court merely passes a consent decree simply on consent terms, ignoring this relevant mandate of the legislature without any material for its satisfaction either in the form of admission or otherwise as to the existence of the relevant ground under the Act for eviction that the consent

decree would be really forbidden or prohibited consent decree. In other cases, the consent decrees would be real consent decrees which the Rent Court would have complete jurisdiction to pass which could never be assailed as nullities, merely because the Court had not in terms recorded its satisfaction in the order or because it was wrongly satisfied as the existence of the relevant ground of eviction. -The executing Court have to examine this question looking to the consent term along with the order of the Court by considering whether there was any foundation for the exercise of jurisdiction of the rent Court. Once the foundation exists, there would be material which would justify the Rent Court in invoking its jurisdiction and once there is such jurisdiction, the consent decree however erroneous, would not be a nullity.

8. This matter had initially come for hearing before a single Judge. In View of the general importance, the matter was referred to a Division Bench and that is how this matter has come before us.

9. Mr. S.N. Shelat, appearing for the respondent-judgment-creditor, at the outset of the hearing of the appeal, raised a preliminary objection that this second appeal was not maintainable. Against the impugned order, only a revision petition can be filed. In support of his argument, he has invited our attention to the decision of a Division Bench of this Court in "Gandhi Gopaldas Gordhandas v. Bai Lalitabai Marghabhai 12 GLR 492. It has been observed there in:

Execution proceedings arising out of the decree passed after the coming into operation of the Bombay Rent Act are included in the expression proceeding" used in Section (1) Of Section 28. Therefore, original execution proceeding for recovery of possession between a landlord and tenant are governed by Section 28(1). If it is so, appeal against any decision therein relating to execution, discharge and satisfaction is competent u/s 29(1) but a further appeal against an appellate decision in such proceedings is barred by Sub-section (2) of Section 29. Though second appeals in Execution proceedings He by virtue of Section 100 read with Section 2(2) and Section 47 of the CPC (and not by virtue of Section 47), they are barred by (2 of the Bombay Rent Act in the proceedings instituted to execute decrees to suits governed by Section 28 of the Bombay Rent Act.

It is, therefore, evident that this second appeal is incompetent and the preliminary objection raised by Mr. Shelat is well-founded. We uphold that preliminary objection and hold that this second appeal is not competent.

10. Mr. Mehta, appearing for the appellants, requested us to convert this second appeal into Civil Revision Application and that request of his is granted. The appellants will, therefore, be hereinafter referred to as "the petitioners" and the respondent will be referred to as "the opponent".

11. We have already indicated that one of the consent terms in term mentions that the relationship of landlord and tenant has been put to an end. It is, therefore, quite evident that no new tenancy has been created. Submission No. 2 made by Mr. Mehta, therefore, is devoid of any merits.

12. So far as submission No. 1 is concerned, there is also no merit. View similar to the view taken by a Division Bench of this Court in Shah Rasiklal Chunilal's case (Supra), has been taken by the Supreme Court in the recent decision of the Supreme Court in K.K. Chari Vs. R.M. Seshadri, , explaining the earlier Supreme Court decisions. It is observed by Dua and Vaidialingam, JJ.:

(Madras Bldg. (Lease Rent Control) Act, 1960)

Section 10(1) of the Act places an embargo on the right of a landlord to get a tenant evicted except in accordance with the provisions of that section or Sections 14 to 16.

Since the landlord had asked for eviction on the ground that he requires the premises for his own occupation, the Controller can pass an order in his favour only if he is satisfied that his claim is bona fide. The statute says so and that has to be given full effect.

If a stage had been reached in a particular proceeding for a Court to apply its mind regarding the existence of a statutory condition, it may be held that it was so satisfied about the plea of the landlord. Again from other material on record, it can be inferred that the Court was so satisfied.

An order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact, viz., the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based.

It is no doubt true that before making an order for possession the Court is under a duty to satisfy itself as to the truth of the landlord's claim if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry. It is no doubt true that each case will have to be decided on its own facts to find out whether there is any material to justify an inference that an admission, express or implied, has been made by the tenant about the existence of one or other of the statutory grounds.

Thus, if there was material before the Court, when it passed the order of eviction by consent, from which it can be shown that the Court was satisfied about the requirement of landlord being bona fide such an order will not be a nullity even without the Rent Controller's decision in favour of the landlord.

Under the circumstances of unconditional withdrawal of the defence regarding

the statutory condition pleaded by the landlord, and the compromise following it, it is futile to hold that the Rent Controller must again embark upon an enquiry regarding the requirement of the landlord being bona fide and adjudicated upon the same. Withdrawal of the defence expressly amounts to the tenant admitting that the landlord has made out his case regarding his requiring the premises for his own occupation being bona fide. Of course, if there is a dispute between the landlord and tenant, the Court must decide the matter and adjudicate upon the plea of the landlord.

For all the reasons mentioned above, it cannot be held in the particular circumstances of this case, that the decree for eviction has been passed solely on the basis of the compromise entered into between the parties.

A close scrutiny of the aforesaid decision of the Supreme Court, which had also to deal with similar provisions of the Madras Rent Act, clearly indicates that the view taken by the Division Bench of this Court is a correct view. When this decision was pointed out to Mr. Mehta, he has frankly stated that he could not pursue his submission No. 1 any further. Submission No. 1, therefore, fails.

13. Submission No. 4 is also, in our opinion, devoid of any merits. Mr. Mehta has relied upon the decision of a Division Bench of the Bombay High Court in *Kirtilal Jivabhai v. Chunilal Manila* 47 BomLR 728, in support of that submission of his, that the Executing Court had no power to execute this decree against the petitioners-legal representatives of the judgment-debtor without the amendment of the decree by the Court which passed the decree, which would on the face of the decree itself show that this decree is executable against the legal representatives of the deceased judgment-debtor. When Mr. Mehta's attention was drawn by us to the later Full Bench Decision of the Bombay High Court in *Odhavji Lakhamshi v. Sakarchand Dahyabhai* AIR 1949 Bom 63, he did not pursue this point further. It is observed by the Full Bench of the Bombay High Court:

Although under Order 21, Rule 16 an assignee is entitled to apply for execution, he cannot get the decree executed unless he has established his title to be the assignee after giving notice to the judgment-debtor and after his objections, if any, have been heard by the Court. It is to be noticed that a notice to the judgment-debtor is mandatory. It is the very foundation of the jurisdiction under Order 21, Rule 16. But it is equally to be noted that the object of giving the notice is to enable the judgment-debtor to place before the Court his objections, if any, to the execution of the decree, and what is prohibited, is the execution of the decree without hearing the objections of the judgment-debtor.

An assignee of a decree applied for execution of the decree. An order for attachment was made though no notice under Order 21, Rule 16 had been issued and though the judgment-debtor's objection to the assignment had not been heard. The judgment-debtor came to know about the levying of the attachment and he "raised various objections to the assignment and to the title of the

assignee to maintain the execution. His objections were heard in full and the Court held that the assignment was good and that the assignee had title to maintain execution. On that, a notice under Order 21, Rule 66 in respect of the attached property was issued.

It was held that although admittedly no notice was given under Order 21, Rule 16 there was no bar against the assignee filing his darkhast and applying for execution. But all the processes in execution which were taken before the judgment-debtor's objections were heard and before the title of the assignee was established were bad in law. Therefore, the order of attachment was bad but the Darkhast as a whole could not be dismissed.

In the instant case, notice was issued. Objections of the petitioners were heard and thereafter, the impugned order has come to be passed. Same principle will govern the case when one is concerned with the legal representatives of the judgment-debtor. It was the very Court which had passed the decree, issued the notice against the petitioners-legal representatives of the judgment-debtor for showing cause why a decree should not be executed against them and it is after hearing them in that behalf, the impugned order has come to be passed. We, therefore, hold that there is no substance in this submission No. 4.

14. The main submission made by Mr. Mehta is submission No. 3. He has vehemently urged before us that the petitioners cannot be said to have succeeded to the estate of the deceased judgment-debtor, the judgment-debtor himself having no interest in the property, which was the subject-matter of lease. Admittedly, the judgment-debtor was a statutory tenant. It is, Mr. Mehta submitted, a settled position that such a statutory tenant under the Act has merely a personal right to remain in possession of the property leased unless the landlord evicts him by taking a proceeding under the Act and the landlord had become entitled to recover possession in view of the provisions of the Act. In the instant case, Mr. Mehta submitted, the deceased judgment-debtor had a right to remain in possession of the property in dispute in view of the consent terms till 30th 1970. He died sometime in year 1968. It means, that the judgment-debtor died prior to the date when he had to hand over possession of the suit property under the decree passed on the basis of the consent terms.

15. Mr. Mehta has invited our attention to the definition of the word "tenant" given in Section 5(11) of the Act, which reads as under:

"tenant" means any person by whom or on whose account rent is payable for any premises and includes.

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(b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the commencement of the "Bombay Rents, Hotel and Lodging House Rates Control (Amendment)

Ordinance, 1959: (c)(i) in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant as may be decided in default of agreement by the Court, and

(ii) xxx xxx xxx

It is canvassed before us by Mr. Mehta that the word "tenant" has been given an extended meaning. It includes not only a contractual tenancy, meaning thereby, person by whom or on whose account rent is payable for any premises, but includes also a person who would fall within the categories of persons referred to, in Clauses (a), (aa), (b), (c)(i) and (c)(ii). In the instant case, prior to the filing of the suit, contractual tenancy of the deceased judgment-debtor was determined and consequently, the deceased judgment-debtor had become a statutory tenant. He would, therefore fall within a class of persons referred to in Clause (b). He has further submitted that in view of the decree passed on the basis of the consent terms, he had a right to remain in possession of the property till 30th September, 1970. He died prior to that specified date. It means that he had a right to remain in possession of this property when he died and that right would have continued till 30 September, 1970, if he had survived. He has further contended that Clause (c)(i) of Section 5(11) of the Act should be read alongwith Clause (b). That Clause (c)(i) clearly indicates that in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant, as may be decided in default of agreement by the Court, will also be included within the definition of the word, "tenant" given in Section 5(11) of the Act. Admittedly, present petitioners who are the legal representatives of deceased Chhotubhai, were residing with him at the time he died and admittedly, the premises in question were the premises let for residence. He has, therefore, contended that in view of this definition of "tenant" and particularly, in view of Clause (c)(i) of Section 5(11) of the Act, the present petitioners would be the statutory tenants and that would be, independently of deceased Chhotubhai. In short, his submission was that on the death of Chhotubhai-original statutory tenant, his legal representatives, acquiring statutory rights, in view of the provisions of Clause (c)(i) of Section 5(11) of the Act, become independent statutory tenants and they are entitled to protection under the Act and they cannot be evicted in the execution of the decree obtained against Chhotubhai. It was vehemently urged by him that they acquire such Independent status of the statutory tenants and that is not by their inheriting any estate or succeeding to the statutory tenant, as statutory tenant Chhotubhai had merely a personal right to remain in possession of the property, and the moment he dies, that personal right of his would come to an end. When his attention was drawn by us to a pointed query as to what would have happened if Chhotubhai had not died and the decree for possession was sought to be executed against Chhotubhai, whether these family members who were residing with him would have to leave the suit premises alongwith Chhotubhai or not? Mr. Mehta frankly stated that in

that event, the legal representatives of Chhotubbal, who were residing with him, would have also to leave the suit premises alongwith Chhotubhai in execution of the decree obtained against Chhotubhai. But according to Mr. Mehta on account of the happening of an intervening event, viz, death of Chhotubhai, position of members of the family of that Chhotubhai has improved and that is, on account of such a definition given in Clause (c)(i) of Section 5(11) of the Act. It is submitted by Mr. Mehta that it may be that lacuna has been left by the legislature, but the Court must give the relief which these legal representatives are entitled to, in ytesi of the definition and it is for the legislature to remove the lacuna, if there be any, and if the result which was never intended by it is likely to ensue. It is submitted, it is not for the Court to take into account such result and give a meaning to the section which the plain language, of It does not indicate.

16. Mr. Mehta has invited our attention to the decision of the Supreme Court in *Anand Nivas Private Ltd. v. Anandji Kalyandi's Pedhi* 5 GLR 111, in support of his submission, that a person remaining in occupation of the premises let to him, after the determination of or expiry of the period of tenancy is commonly though in law not accurately called "a statutory tenant". Such a person is not a tenant at all he has fib estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is a personal right and is not capable of being transferred or assigned. It is significant to note that in, the majority judgment given by the Supreme Court, at page 125, after referring to Section 5(11) of the Act, which defines "tenant, it is observed

The expression "tenant" in the different clauses is defined to mean a contractual tenant or a statutory tenant or both. In the principal definition the expression "tenant" means only a person who is a contractual tenant because rent is payable by a contractual tenant and not by a statutory tenant. By Clause (a) Sub-tenants and further persons who have derived title under a tenant before the commencement of the Ordinance 111 of 1959 would be regarded as tenants. These would be sub leasees, transferees or assignees of contractual tenants Similarly, by Clause (aa) persons to whom interest in premises has been transferred in virtue of a notification issued by the State Government permitting in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in notification, would be transferees of contractual tenants. "Clause (b) contemplates a tenant holding over and a statutory tenant alike it takes in a person remaining in occupation with or without the assent of the landlord, when the premises were let to him or to his predecessor before the commencement of the Ordinance. Clause (c) includes in the definition the members of the family of a tenant, statutory or contractual residing with him at the time of his death, as may be decided in default of agreement by the Court. Having regard to the plurality of its meaning

the sense in which the expression is used in different sections, and even clauses of must be ascertained from the context of the scheme of the Act the language of the provision and the object intended to be served thereby.

These observations of the Supreme Court which are underlined by us, Clearly indicate that having regard to the plurality of the meaning of the word "tenant" given in Section 5(11) of the Act, the sense in which expression is used in different sections, and even clauses, is to be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

17. We would like to refer to the decision given by Bhagwati, J. (as he then was), in *Parubai Manila Brahmin v. Baldevdas Zavefbhai Tappehan* 9 GLR 563, for a limited purpose. At the relevant observations made are:

The definition of tenant is contained in Section 5(11) and Clause (c) of that section includes within the, definition of a tenant any member of the tenant's family residing with him at the time of his, death as may be decided in default of agreement by the Court. Now the Rent Act is an Act enacted for the benefit of tenants and under it certain benefits are conferred on the tenant. One of such benefits is the protection of irremovability which is conferred on the tenant by Section 12 so long as he pays, and or is ready and willing to pay, the standard rent permitted increases, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Rent Act. This protection of irremovability" is extended to any member of the tenant's family residing with him at the time of his death by virtue of the inclusion of such member within the definition of a tenant in, of the Rent Act. This provision extending the meaning of the word to include any member of the tenant's family residing with him at the time of his death is intended to cover a situation which might arise on the death of a tenant. If a tenant is a contractual tenant, no difficulty may arise since the contractual tenancy being a heritable asset, it would be inherited by the heirs of; tenant. But if a tenant is a statutory tenant, the statutory tenancy would come end with his death and the members of his family who might be residing with him at the time of his death would not be entitled to resist the claim of the landlord for recovery of possession of the premises and would be thrown on the street. The Legislature, therefore, enacted Section 5(11)(c) for the purpose of protecting the members of the tenant's family residing with him at the time of his death by providing that one of them should on the death of the tenant be regarded as a statutory tenant entitled inter alia to the protection of Section 12 of the Rent Act.

18. In *Heirs of Deceased Darji Mohanlal Lavji v. Muktabai* GLR 272, a Division Bench of this Court had also an occasion to consider these provisions and after referring to the provisions of Section 5(11) of the Act, at page 277, has observed:

In a case where the statutory tenant dies, his tenancy would come to an end. In order to protect the members of the family residing with such a tenant, the

provisions of Section 5(1 I)(c) of the Act were enacted. The said provisions lay down the manner of devolution of the statutory tenancy and it devolves on the death of the statutory tenant on any member of the tenant's family residing with him at the time of, or within three months immediately preceding his death.

These decisions clearly indicate the object underlying this extension of the meaning given to the word "tenant" and especially the object underlying the engrafting of this Clause (e) of Sub-section (11) of Section 5 of the Act.

19. The question that is posed before us, is whether it could ever have been contemplated by the legislature to give benefit of the provisions of the Act to the members of the tenant's family, even though the tenant himself, during his lifetime, had lost the right of protection under this Act and the landlord's right and tenant's obligation, had been crystallised under a decree of a Court. It is an admitted position that so far as deceased Chhotubhai was concerned, he had lost the protection under the Act. Landlord's right to recover possession had ripened into a decree of the Court and tenant Chhotubhai, who was admittedly a statutory tenant, had withdrawn all his contentions regarding the protection and had in term agreed to an absolute order of possession and the specified date for delivery of possession was 30th September, 1970. It was an absolute order of possession and not a conditional order. Could it have been contemplated by the legislature that position of the legal representatives of such a tenant who had lost all the rights and who had incurred an obligation under a decree of the Court to handover possession of the suit property on the specified date, on account of the happening of the death of that person in the meantime, had improved and they had higher and better rights than him? In our opinion, that could never have been intended and has not been intended by the legislature. The legislature only intended to protect the members of the family who were staying with the tenant at the time of his death, if such a tenant, which would include within its meaning a contractual or a statutory tenant, had not lost the right of protection under the Act, if the tenant happens to die. It is only with that object in mind that Clause (c) has been introduced in Section 5(11) of the Act. If the tenant himself, of whose family the present petitioners are the members, had no protection under the Act and was bound under the decree to hand-over possession of the suit property on the specified date and which was an absolute order and not a conditional order, his legal representatives, in our opinion, could not get any better and higher right and have not any such better and higher right. It cannot be said, in our opinion, that Chhotubhai, after passing of the decree and after passing of an absolute order of possession, was in possession of the suit property as a statutory tenant, precisely meaning thereby, a tenant who was entitled to protection under the Act. He was entitled to continue in possession of the suit property till the specified date in view of a concession made under the consent terms, which was super-added with a decree and not on account of the statutory protection. He cannot, in our opinion, be said to be person who was entitled to protection under the Act. He had already lost that protection. The present legal representatives, therefore, could not be said to be

such members of a tenant's family as would be entitled to claim protection as a tenant had ceased to be a tenant, entitled to protection under the Act, the rights and obligations having been crystallised by a decree. In our opinion, it cannot, on the facts and circumstances of the case, be said that these legal representatives were independent statutory tenants in their own rights and they could claim any protection under the Act. They being legal representatives, are bound by the decree and they were entitled to remain in possession as legal representatives till the specified date and no more.

20. We will now refer to some decisions which, in our opinion, fortify our conclusion.

21. In *Jam Manufacturing Co. Ltd. Vs. Sadashiv Sitaram*, , a Division Bench of the Bombay High Court had to deal with the provisions of Section 5(1 I)(c) of the Act. At page 45, Patel, J., speaking for the Division Bench observed:

Again, in *American Economic Laundry Ltd. v. Little* (1950) 2 All.E.R. 1186, a similar question arose in connection with an unconditional order for possession against the "statutory tenant", one Little the execution of which, however, was suspended from time to time finally upto 3rd April, 1950. Little died on 8th March, 1950 and his daughter who lived with him as a member of his family, claimed protection u/s 12(1)(g) of the Act of 1920. The tenant had merely a right to apply for a postponement of execution of the order u/s 5(2) of the Act. Somervell, L.J., said (p. 1188):

In my opinion, a tenant in that position with an absolute order made against him, notwithstanding that it may be suspended, is not a tenant within the meaning of Section 12(1 Kg) of the Act of 1920. That, I think, is in accordance with a common-sense application of the section. It would be an illogical result if that section gave protection to a widow which the Court had expressly taken away from the husband whose tenancy she relies on, that tenancy having been brought to a suspended end by the order for possession.

At page 47, after reviewing several English authorities, it is observed:

Whatever may be the reasons for the reluctance of the English Judges to describe the successor u/s 12(1)(g) of the 1920 Act as "inheriting" the interest of the deceased tenant, the practical effect of the judgments referred to is that the successor u/s 12(1)(g) takes right exactly similar to those taken by a heir.

At pages 47 and 48, it is observed:

In *Parwatibai Namdeo Vs. Jagannath Maruti Warthi*, the contractual tenant was a defaulter in the payment of rent. After his death, his wife continued in possession. The landlord applied to the Rent Controller for permission to serve upon her a notice to quit on grounds of arrears of rent and her being a habitual defaulter. The Controller rejected the application but in appeal the landlord succeeded. The tenant approached the High Court under Article 227 of the Constitution. It was contended for the widow that her tenancy was independent

and the default of her husband could not prejudice her. The Court held that the tenancy which the widow acquired was the same and not different; in other words, the tenancy was a continuous one. It is true that in the Central Provinces and Berar-Letting of Houses and Rent Control Order, 1949, the definition did not contain a clause similar to Section 5(1 I)(c) of the Bombay counterpart. Even so, in our view, the conclusion cannot be different, since by the addition of Clause (c) in Section 5(11 the Legislature clarified the principle of succession to the tenant, whether contractual or statutory. A similar conclusion was reached by Chitale, J., in *Constantino Musarato v. Patroline Alvia Dias* C.R.A. 245 of 1962, dated 23-7-1962 (Bom.), with reference to the present section, and in our view, with respect, rightly.

Our case stands on a stronger footing. We are called upon to decide a question, whether the petitioners who are the legal representatives of deceased Chhotubhai, judgment-debtor, got any higher and better rights than Chhotubhai, simply because Chhotubhai happened to die prior to the specified date of handing-over possession referred to in the decree passed on the basis of the consent terms. In our opinion, the answer should be, without any doubt, in the negative, otherwise there will be illogical results. If we accept the argument advanced by Mr. Mehta, the result would be that if Chhotubhai had been alive on 30th September, 1970, the opponent-landlord could have evicted him alongwith the present petitioners, who were the members of his family residing with him, in execution of the decree, but as he died before the specified date, his legal representatives got better and higher rights than him. There was an embargo placed upon a landlord's right and he could not evict the tenant even though his contractual tenancy was determined and he had a right to recover possession under general law in view of the provisions of the Special Statute which gave protection to the tenants. The tenant himself had lost the protection. It was not only that the landlord, on account of some default made by the tenant, became entitled to get possession. As he required the suit premises for his personal use and occupation, he filed a suit against that tenant and all the necessary conditions, entitling him to recover possession having been satisfied, a decree came to be passed against the deceased tenant. In the decree also, absolute order for possession has been passed. Simply because his tenant happened to die before the specified date, his right to execute the decree cannot be worsened and right of the legal representatives of such a person, viz. Chhotubhai, cannot be bettered.

22. In our opinion, the English decision referred to by *American Economic Laundry, Ltd. v. Little* (1950) 2 All E.R. 1186, is a very appropriate decision for our purposes. The defendant, Miss Littel, was the daughter of deceased tenant and she claimed u/s 12(1)(g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, Section 13, and the Increase of Rent and Mortgage Interest (Restrictions) Act, 1933, Section 1, protection. The relevant "which arose for consideration were as under:

the expression "tenant" includes the widow of a tenant with him at the time of his death, or, where a tenant... leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county Court.

It is thus evident that in that decision also, the section which required to be interpreted was practically similarly worded like the section that are required to interpret. Defendant Miss Little claimed that those words applied to her case. She was residing with her father and he she submitted, a tenant within the meaning of that provision. While the defendant's father was alive the landlords took proceedings against him and obtained a final order for possession on September 20, 1949, But under the powers given by Section 5(2) of the Act of 1920, as substituted" by the Rent and Mortgage Interest Restrictions Act, 1933, Section 4, execution was suspended until December 20, 1949. On December 15, 1949, the Defendant's father applied, as he was entitled to do u/s 5(2), for an extension of the suspension of the order and that was granted until January 20, 1950. From January 20, 1950, until March 3, the landlords, undoubtedly, could have executed the order, though they did not do so. On March 3, the defendant's father being seriously ill, application was made on his behalf for an extension to April 3, 1950. On defendant's father died. The defendant had remained in landlords took out a summons for possession and: the defendant claoaed was entitled to remain in possession by reason of the rights given in Section 12(1)(g) of the Act of 1920 to the relatives of a deceased tenant. It is observed:

The point which now arises is whether a tenant against "tenant" within Section 12(1)(g)? That definitions in the Act, is to be read strictly except where the context otherwise requires.

It is observed:

The problem which we have to solve is not assisted by considering in what respect his position is the same quead the landlords as it was before the order wits made Obviously it is fundamentally different in the respect, that, whereas before he was entitled to the protection of the Acts until successful proceedings was taken he is now in the position of proceeding having been taken and an order for possession having been made. All that he has is a right to apply for a postponement u/s 5(2).

In my opinion, a tenant in that position, with an absolute order made against him, notwithstanding that it may be suspended is not a tenant within the meaning of Section 12(1)(g) of the Act of 1920. That, 1 think, is in accordance with a commonsense application of the section. It would be an illogical result if that section gave protection to a widow which the Court had expressly taken away from the husband whose tenancy she relies on, that tenancy having been brought to a suspended end by the order for possession. 1 am reinforced in that view by a case which deals with an analogous, though not identical, question, viz., *Bahayer Colliery Co. Ltd. v. Abbotti* (1964) K.B. 8.

In our opinion, the principle enunciated in the aforesaid English decision is a correct principle and we adopt it.

23. Mr. Mehta has tried to distinguish that case on the ground that in that case, time for delivering possession came to be extended by the Court In exercise of its powers given under a particular section. In the instant case, in the decree itself, specified date for handing over possession was 30th September, 1970. It would, therefore, clearly indicate that deceased Chhotubhai had under a decree a right to remain in possession of the premises in question till 30th September, 1970, and it is prior to that date that he died. In our opinion, that will not make any difference in the position. The order passed for possession under the decree on the basis of the consent terms is an absolute order for possession. It means that Chhotubhai was entitled to remain in possession under the Court's order which was no doubt, on the basis of the consent terms super-added by a decree. It cannot be said that he had any right of protection under the Act, He had already lost that right and he had incurred an obligation under a decree to hand-over possession on 30th September, 1970. It cannot, therefore, be said that he was a tenant who was entitled to protection under the Act and consequently, members of his family residing with him at the time of his death cannot be said to be persons who could acquire any such independent status of statutory tenants as claimed on their behalf by Mr. Mehta.

24. Mr. Mehta has further tried to distinguish the aforesaid English ground that Courts in India have found that a statutory has no interest in the Immovable property which is the subject of demise. He has merely a personal right to remain in possession till he is evicted under the provisions of the Act. In support of that submission of his, he has strongly relied upon the decision of the Supreme Court in *Anand Nivas Private Ltd. v. Anandji Kalyanji's Pedhi* (Supra). It is significant to note that in that decision, the Supreme Court, by its majority judgment, has in terms stated

A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately called a statutory tenant. Such a person is not a tenant at all he has no estate or interest in the premises occupied by him. He has merely the protection of the statute its that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy Is personal: it is not capable of being transferred or assigned, and devolves on his death only in the matter provided by the statute. The right of a leasee from a landlord on the other hand is an estate or interest in the premises and in the absence of a contract to the contrary is transferable and the premises may be sub-let by him. But with the determination of the lease, unless the tenant acquires the right of a tenant holding over, by acceptance of rent or by assent to his continuing in possession by the landlord, the terms and conditions of the lease are extinguished, and the rights of such a person

remaining in possession are governed by the statute alone. Section 12(1) of the Bombay Rent Control Act merely recognises his right to remain in possession so long as he pays or is ready and willing to pay the standard rent and permitted increases and performs the other conditions of the tenancy, but not the right to enforce the terms and conditions of the original tenancy after it is determined.

These observations made by the Supreme Court clearly indicate that the tenant's right to remain in possession after the determination of the contractual tenancy is personal; it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute. In the instant case, as said earlier, Chhotubhai had lost protection under the Act. A decree was passed against him, imposing an obligation upon him to handover possession of the suit premises on the specified date. He was entitled to remain in possession till 30-9-1970. It is only such right that would devolve on his legal representatives and consequently, his legal representatives could only claim to remain in possession till the specified date, viz. 30th September, 1970. They cannot claim any higher or better right than that and cannot claim any status of independent statutory tenants, as the person who was originally the statutory tenant and with whom they were residing at the time of his death, had already lost the protection under the Act and had incurred an obligation to handover possession without any condition attached to it. In our opinion, therefore, submission No. 3, made by Mr. Mehta is also not well-founded.

25. We may also refer to Sub-section (1) of Section 50 of the Civil Procedure Code, which reads:

Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

In the instant case, the judgment-creditor sought to execute this decree for possession which was not satisfied against the present petitioners who were the legal representatives of the deceased Chhotubhai. This decree was, therefore, executable against them.

26. All the contentions raised by Mr. Mehta fail. The revision petition, therefore, fails. Revision petition is dismissed with costs. Rule is discharged.

27. Oral request made by Mr. Mehta for grant of certificate under Article 133(1) (c) of the Constitution of India for an appeal to the Supreme Court is turned down as no case is made out for the grant of such certificate under Article 133(1) (c) of the Constitution of India. His request that the impugned execution of the decree be suspended for a period of one month from today to enable him to approach the Supreme Court and get the necessary stay order, is granted.

28. Civil Application No. 415 of 1972 which was a stay application given during the proceedings, is dismissed and rule is discharged. No order as to costs is made in that civil application.