

(1954) 02 BOM CK 0014

In the Bombay High Court

Case No : O.C.J. Appeal No. 88 of 1953 and Suit No. 104 of 1953

Mehersingh Sethi

APPELLANT

Vs

Khurshed Nadirshaw Satarawalla

RESPONDENT

Date of Decision : 24-02-1954

Acts Referred:

Bombay City Civil Court Act, 1948 — Section 12, 3

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 23, 28, 8

Civil Procedure Code, 1908 (CPC) — Section 16

Citation : (1954) 56 BOMLR 540

Hon'ble Judges : M.C. Chagla, C.J.;Shah, J

Bench : Division Bench

Judgement

Desai, J.—The plaintiff seeks a declaration and enforcement of a charge on certain property belonging to the defendant and known as The Orient Hotel situated in Bombay. The suit is before me for the trial of certain preliminary issues affecting the jurisdiction of this Court.

2. The plaintiff is the son of Nadirshaw Satarawala who died in April 1952. The deceased was the owner of certain leasehold premises situated at Mahableshwar in which he carried on business as a hotelier under the name of Rippon & Connaught Hotel. By a writing described as a "Lease" and made between the deceased and the defendant on May 8, 1948, the deceased demised in favour of the defendant those premises together with the furniture, fixtures and other articles lying in that hotel for a period of 3 years from May 1, 1948, to be used as a hotel under the name of Rippon & Connaught Hotel. By that writing the defendant further agreed that in the event of any instalment of rent remaining unpaid for one month after the due date thereof, the same would constitute a charge on the assets and income of two hotels owned by the defendant situated in Bombay and known as Orient Hotel and Metropolitan Hotel and that the same would remain as security for the payment to the plaintiff of the unpaid instalments of rent. The plaintiff's case is that the defendant failed and neglected to pay rent after the middle of the 2nd year of the agreement. The

arrears of rent amounted, according to the plaintiff to Rs. 40,000. The plaintiff further says that the defendant failed and neglected to pay Municipal taxes aggregating to Rs. 8,229-7-0 and this amount also he seeks to recover from the defendant. I may at this stage observe that neither the learned counsel for the plaintiff nor the learned Counsel for the defendant made any reference in the course of the arguments to this claim of Rs. 3,229-7-0 relating to Municipal taxes. Although the agreement of May 3, 1948, in terms states that it is one between a lessor and a lessee and the terms therein are such as are to be found in an agreement of demise of Immovable property by way of lease, it is the plaintiff's case that the writing created really a licence in favour of the defendant, and that the only rights that the defendant secured thereunder were those of a licensee and no rights of a tenant. According to the plaintiff, what was given to the defendant was merely the right or privilege of conducting the business of the Rippon & Connaught Hotel in the owner's premises and no interest in the property was created by the writing. The transaction, so it is alleged in the plaint, confers on the defendant no exclusive right to occupy the premises but merely an exclusive right to do the business of the hotel. The plaintiff in his plaint goes on to state that though the word "rent" is used in the agreement, the amount payable by the defendant to the plaintiff was really in the nature of royalty. Of the two hotels belonging to the defendant, he had sold the Metropolitan Hotel prior to the date of the suit. Relying on these facts, the plaintiff seeks in the first instance a declaration of a charge in his favour on the Orient Hotel in respect of the amount of arrears of royalty and further seeks enforcement of that charge.

3. The defendant by his written statement has raised various contentions. His principal contention, however, is that this Court has no jurisdiction to entertain and try the suit inasmuch as the suit is between landlord and tenant and relates to the recovery of rent, to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to by me as the "Rent Control Act") applies and deals with claims or questions arising out of that Act. The defendant's case is that by reason of the provisions of Section 28 of that Act, the proper Court to entertain such a suit would be either the Court of Small Causes in Bombay or the Court of the Civil Judge (Junior Division), Wai. The preliminary issues relating to jurisdiction of this Court have been tried before me and elaborate arguments were advanced by learned Counsel on either side. One aspect of the question as to jurisdiction arises because the Rent Control Act gives no protection to a mere licensee and does not apply where true tenancy does not exist.

4. In determining whether a particular agreement creates a tenancy or a mere licence, the Court must have regard to the real relation created by it. The question is not of form but of substance. The true nature of the agreement is not altered by the mere use of the word "tenant" or "licensee" and "rent" or "compensation" either in the writing itself or in the pleadings. The determination of this often affects the jurisdiction of the Court and is at times a matter of some

difficulty. In such a case, the Court will not be influenced merely by the ostensible nature of the agreement. Neither skill in drafting nor legal ingenuity should be permitted to alter the nature of the agreement. The question is not merely of applying any formal test; regard must be had to the substance of the agreement. Whether a tenancy does or does not exist must depend on the real intention and agreement of the parties as appearing from the whole facts of the case. Grantor and Grantee may in a written agreement have described themselves as "landlord" and "tenant" and yet have been held to be licensor and licensee; or they may have stated that they are licensor and licensee and have been held not to be so, but to be landlord and tenant. The Court will examine all the incidents of the legal relation between the parties and from those deduce their real intention and agreement. The Court has to consider all the facts and circumstances of the case and draw an inference from them without attributing undue weight to any one of them. Existence of any written or verbal agreement between the parties, the solemnity attaching to execution of the agreement, the mode or manner in which the parties have acted and dealt with one another, possession and right to control the property are all indicia which may help the Court in finding whether a tenancy was created or not. The leading case on the subject is *Glenwood Lumler Company v. Phillips* [1904] A.C. 405, Another leading case is *Wells v. Kingston-upon-Hull* (1875) L.R. 10 C.P. 402. The principles underlying these and other decisions of Courts in England have been applied by our Courts and I do not deem it necessary to discuss the same in any detail. The authorities clearly establish one leading principle that it is essential for creation of a tenancy of any premises that the tenant should have exclusive possession of the premises. I am far from saying that exclusive possession of the premises in question is a conclusive test, but it must be regarded as of dominant importance and due weight has to be given to it while considering it as one of the totality of facts.

5. A licence on the other hand is not exclusive. It is subject to the express or implied reservation that the possession or control over the property shall remain in the grantor. Therefore, where it appears that the grantor whether called lessor or licensor-the mere description does not make real difference-did not mean to part with possession or control but agreed only to permit the use of the property in a certain way and on certain terms while retaining control, it cannot be said that a tenancy was created.

6. Now, it is true that the Court looks not so much at the words used in or at the form of the agreement as to the substance of the agreement, but where the agreement read as a whole shows that the dominant intention was to create a tenancy and contains provisions consistent only with a tenancy, effect will be given to the express provisions. Such for instance are conditions relating to assignment and sub-letting of the premises in question and conditions reserving in the grantor the right to enter the premises to inspect and repair them. The agreement before me must, in my opinion, fall under this head. The agreement which is in terms a lease of the premises belonging to the owner situated at

Mahableshtar and particularly described in the schedule to the agreement and stated as used as a hotel in the name of Rippon & Connaught Hotel, has been drawn by attorneys of this Court. It has been executed with all the formality of a solemn agreement whereby the property is said to be demised by way of a lease. While not prepared to attach any particular importance to the words "lessor" and "lessee" "demise" and "rent" in the agreement, I am yet bound to attach due importance to the various clauses contained in this agreement. An examination of the agreement which is the only material placed before me in this case shows that it contains all the terms which normally find place in a lease for a number of years. Then there are covenants which one normally finds only in an agreement between a lessor and a lessee. The important covenants to my mind are those relating to the right of entry reserved by the lessor for the purpose of examining the state and condition of the demised premises and those which relate to restrictions on assignment or sub-letting of the premises by the lessee. There is also a term which clearly suggests that exclusive possession of the premises was handed over to the lessee. This being the position, it is unnecessary to summarise the terms and conditions and covenants contained in this agreement. It is sufficient to observe that there is not a single term in the agreement which goes to support the contention urged on behalf of the plaintiff that the agreement created a licence and not a tenancy. I have no doubt that the parties to the agreement intended what they have in terms stated in writing. It clearly appears that the intention was to hand over exclusive possession of the premises to the defendant and that the agreement was nothing short of a demise of the property and the defendant became a tenant of the same.

7. It was next argued on behalf of the plaintiff that even if it is held that there was-a lease of the property in question, that property is not premises as defined in the Act and within the meaning of that word as used in Section 28 of the Rent Control Act. It was urged that the expression "premises" does not include a room or other accommodation in a hotel or lodging house and that the premises in question are made up of various rooms in a hotel. The difficulty in the way of this contention was apparent and learned Counsel for the plaintiff did but faintly indicate this, argument. It is true that the definition of premises in Section 8 of the Rent Control Act excludes a room or other accommodation in a hotel or lodging house. But this would have application only when use of a room or other accommodation in a hotel or lodging house is given to a person for that purpose and cannot possibly apply in a case like the present one when the entire premises are demised and the grantee does not occupy the same for boarding and lodging. The contention is, in my opinion, impossible and must be negated.

8. There remains, the live issue in the case, the question whether the Court at Wa(sic) has jurisdiction to entertain this suit. The question I am informed has not arisen before in the Courts. It is an interesting question of some importance. Counsel for the plaintiff, in the course of his argument, stressed the fact that the assets of the Orient Hotel in Bombay include Immovable property, viz. the tenancy rights in respect of the premises of that hotel and urged that the suit

being for a declaration of a charge and enforcement of that charge on all the assets of that hotel by sale of the property which is within the jurisdiction of this Court and outside the jurisdiction of the Court of the Civil Judge at Wai, the latter Court in any event has no jurisdiction to try this suit. It was further urged that the Small Causes Court at Bombay would also not have any jurisdiction to entertain this suit. The argument proceeded that in that circumstance the jurisdiction of this Court was not ousted by Section 28 of the Rent Control Act. It may at the outset be observed that Mr. Banaji, learned Counsel for the defendant, conceded at the bar that the assets of the Orient Hotel in Bombay include the tenancy rights of the three floors; of the building in which the business of the Orient Hotel is carried on at Crawford Market in Bombay. Considerable emphasis was laid on behalf of the plaintiff on the provisions of Section 16 of the CPC and it was argued that the Court at Wai, within the jurisdiction of which Court the Rippon & Connaught Hotel at Mahabaleshwar is situated, is not competent to try a suit involving determination of any charge on Immovable property situated outside its local jurisdiction. It obviously follows, so it was argued, that the jurisdiction of this Court is not taken away.

9. Reference was made and in doing so learned Counsel for the plaintiff leaned heavily on a decision of the Appeal Court in *Goverdhanlal Bansilal Vs. Ramrichpal Dalsukhray*, . The plaintiff in that case filed a suit in this High Court to enforce a mortgage by deposit of title deeds on a property of the defendant situated at Ajmer on the ground that the security was created in Bombay. The amount claimed was below Rs. 25,000 and question arose whether the City Civil Court in Bombay had jurisdiction to entertain the suit, in which case of course the jurisdiction of the High Court would have been ousted u/s 12 of the City Civil Court Act. The Appeal Court held that although the value of the subject-matter of the suit was below Rs. 25,000, inasmuch as the mortgaged property was situated outside the jurisdiction of the City Civil Court, that Court had no jurisdiction to entertain the suit u/s 16, of the Civil Procedure Code. It has to be noted, however, that it was indisputable in that case that Section 16 of the CPC was applicable to the City Civil Court, Bombay.

10. The question involved in this case concerns primarily Section 28 of the Rent Control Act and I cannot accept in its entirety Mr. M. V. Desai's argument based on the provisions of Section 16 of the Civil Procedure Code. If the Court at Wai has jurisdiction to entertain this suit, the jurisdiction of this Court would necessarily be taken away. The governing section is Section 23 of the Rent Control Act and it deals with the special jurisdiction of Courts empowered to try suits between landlord and tenant falling within the ambit of that Act. The decision of the Appeal Court relied on by Mr. M. V. Desai was given in a case arising under a different enactment and was founded on the meaning and effect of Section 12 of the City Civil Court Act and Section 16 of the Civil Procedure Code. Though in respectful and dutiful agreement with that decision I have yet to examine how far it supports the present argument which has to be viewed in reference to the provisions of a different enactment.

11. To turn to Section 28 of the Rent Control Act which as I have already said is the governing section and is as under :

28. (1) Notwithstanding anything contained in any law and notwithstanding by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,

(a) in Greater Bombay, the Court of Small Causes, Bombay,

(aa) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887 , such Court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate, or if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions; and subject to the provisions of Sub-section (2) no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

12. Mr. Banaji, learned Counsel for the defendant, laid stress on the opening words of the section and urged that effect must be given to those words. I agree that I am bound to do so. A plain reading of those words shows that the Court of the Civil Judge at Wai exercises its special jurisdiction under the Rent Control Act as an off-spring of that enactment. Its jurisdiction is derived from Section 28 and embraces all suits of the nature therein mentioned. Further, the section in express and explicit terms enacts that "no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question". Neither the pecuniary limits laid down on the otherwise ordinary jurisdiction of that Court nor the limited nature of suits which it could otherwise have been competent to try can affect the special jurisdiction vested in it u/s 28 of the Act. But in my judgment it does not follow from this that the special jurisdiction conferred on the Court extends to a suit to declare and enforce a charge or mortgage on Immovable property outside its local jurisdiction merely because the original consideration for the charge or the mortgage was arrears of rent to which the Act could apply. Such suits are from their very nature and character outside the scope and ambit of the Act and Section 28 does not bring within the reach of that Court suits relating to charge or mortgage on any such property. Notwithstanding its wider jurisdiction it must in esse remain a Court created for the special purpose of dealing with suits between landlord and tenant relating to the recovery of rent or possession of any premises to which the Act applies and other cognate matters. It is also possible to consider the question from another angle. The special jurisdiction conferred by Section 28 of the Act on the Courts mentioned in that section does envisage the local limits of the same

even if regard is not to be had to Section 16 of the Civil Procedure Code. The section confines the special jurisdiction of the Court only to premises situated within its local limits. Now, I am aware that the question that arises for my determination does not relate to the situs of the property which was the subject-matter of the lease but the property which was the subject-matter of the charge. But even so I am unable to find anything in the section or the opening words of the section which would have the effect of extending the local jurisdiction of the Court to the unusual extent of enabling it to entertain a suit to enforce a charge on Immovable property entirely outside its local limits. The greatest stress, however, was laid by Mr. Banaji on the words, "suits between landlord and tenant.. relating to recovery of rent" and it was argued that the words "relating to recovery of rent" are of such wide import that they must include a claim based on a charge created to secure a debt arising in respect of arrears of rent. It was said that the words used in Section 28 are not "for recovery of rent" but "relating to recovery of rent" and that the latter expression must not be given any restricted meaning. I agree that the words under consideration must be given their plain, true and full meaning. In support of the present contention, learned Counsel for the defendant relied on the following passage from the judgment of the Supreme Court in Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala and Others, :

There is no reason to hold that "any claim or question" must necessarily be one between the landlord and the tenant. In any case, once there is a suit between a landlord and a tenant relating to the recovery of rent or possession of the premises the Small Causes Court acquires the jurisdiction not only to entertain that suit but also "to deal with any claim or question arising out of the Act or any of its provisions" which may properly be raised in such a suit.

Learned counsel also relied on the observation of Das J. in that case to the effect that Section 28 is wide enough to cover the claim of a landlord against a sub-tenant. Now, I am not concerned in this case with any suit against a sub-tenant. As observed by his Lordship there can be cases which are not necessarily between a landlord and a tenant and yet may be covered by Section 28 provided they relate to any claim or question arising out of the Act or any of its provisions. But I am unable to see anything in the present suit which would fall under the words ""dealing with any claim or question arising out of the Act or any of its provisions". Declaration and enforcement of a charge on any other Immovable property belonging to a tenant cannot possibly come within the ambit of these words. I respectfully agree that the words of the section must be given a sufficiently comprehensive meaning so as to give effect to the provisions of the Act, but I do not think that the observations relied on by learned Counsel advance the defendant's case in any manner.

13. It was said that the suit substantially relates to recovery of rent and must fall u/s 28 of the Rent Control Act. This is a fallacy and I think that there is a short answer to that. Recovery of rent from a tenant is one thing. To ask for a

declaration that a charge has been created by the tenant on some other immovable property belonging to him and for the enforcement of that charge by the sale of that property is quite a different matter. A charge in such a case arises as a result of a distinct agreement and as a result of two factors. Arrears of rent become a debt and then the debt is secured by a charge on some other property of the tenant. By this distinct agreement, a debt is created and what is more a security is created. That raises new rights and obligations arising from and referable not to the original relation of landlord and tenant but really arising from and referable to the relation analogous to that of mortgagor and mortgagee. The mere fact that the agreement creating a charge is to be found in the same writing as contains the terms and conditions of the lease does not, in my opinion, in the least affect the real nature of the transaction resulting in the charge. The agreement with which I am dealing gives the plaintiff *inter alia* a charge on an immovable property and the plaintiff seeks to enforce that charge. The validity or otherwise of that charge is not the question before me when I am only trying the issues affecting jurisdiction of this Court. Now, it is not as if the plaintiff is by some legal ingenuity or mere skill in drafting trying to bring within the jurisdiction of this Court a matter which it is not competent to entertain by virtue of the provisions of the Rent Control Act. The reliefs sought by the plaintiff appear to me to be quite in order, both in form and substance. The suit cannot be regarded as a suit by a landlord against a tenant. It is a suit by a person entitled to enforce a charge claiming to be in the position of a mortgagee of the property of the defendant described in the agreement.

14. But it was said that this would not be giving full meaning and effect to the words "relating to the recovery of rent" in Section 28 of the Act. To my mind the words used are plain and the task of interpretation can hardly be said to arise. *Absoluta sententia expositore non indiget*. I have but to expound the words as they stand according to their real sense. It would, in my judgment, be unduly straining the language used by the Legislature, if I were to hold that a suit to enforce a charge was a suit relating to recovery of rent simply because the original consideration for the debt and the security was arrears of rent. It is not possible to attribute to these words the unduly wide meaning which I am asked to give to them. Neither the plain meaning of the words nor the purpose and object of the Act impel me to do so. Nor is there anything in the entire context which supports the present argument. Moreover the Rent Act is an enactment which must be strictly construed. This is for the reason that it is an encroachment upon the property owner's right and for the still more important reason that it ousts the jurisdiction of this Court. An Act which confers exceptional exemptions and privileges co-relatively changing the general right of the subject or jurisdiction of ordinary Courts is subject to the principle of strict interpretation. But it is not necessary in the present case to have recourse merely to this principle of strict interpretation. As a matter of construction, I see no ground for accepting the unduly wide meaning of the words "relating to recovery of rent" which learned Counsel for the defendant asks me to do. Then it

was said that the result of granting a decree to enforce the charge to the plaintiff will have the result of enabling him to recover arrears of rent in respect of property situated outside the jurisdiction of this Court and within the jurisdiction of the Court at Wai. The result is not the test of the matter when I have to determine the real nature of the suit.

15. I find it impossible to say, upon my view of the section, that the Court at Wai is competent to entertain this suit. In my opinion the suit has been properly instituted in this Court.

16. The defendant will pay the plaintiff's costs of the hearing of the trial of the preliminary issues.

The defendant appealed.

Chagla, C.J.

17. The question of jurisdiction of this Court to entertain the suit filed by the respondent arises in this appeal.

18. It appears that the father of the plaintiff leased to the defendant certain property situated in Mahableswar within the jurisdiction of the civil Court at Wai. The lease was for five years; and the rent reserved under the lease was Rs. 10,000 for the first year, and Rs. 1.2,000 for each subsequent year. The lease was for the purpose of enabling the defendant to run a hotel in the name of Rippon-Connaught Hotel; and by this lease the lessee gave a charge on the assets and income of the two hotels carried on by the lessee in respect of any instalment of rent remaining unpaid for one month after the due date thereof. It may be stated that the rent reserved was made payable by certain instalments fixed under the lease. The case for the plaintiff was that the defendant paid the rent reserved for the first year, viz. Rs. 10,000, but for the year 1949 he only paid Rs. 5,000, and did not pay any rent subsequently. He, therefore, filed this suit for recovering the arrears of rent due to him, and also for enforcing the charge which he had under the lease.

19. A preliminary issue was raised before Mr. Justice Desai before whom the suit came up for hearing, that this Court had no jurisdiction to try the suit; and the learned Judge held that the Court has jurisdiction; thereupon the defendant appealed; and the appeal has come before us for disposal.

20. What is urged by the defendant is that the Special Court set up u/s 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act is the only Court upon which exclusive jurisdiction has been conferred to try the suit, and therefore the High Court has no jurisdiction to entertain or try the suit.

21. What is urged against this contention is that this is not a suit for recovery of rent, but this is a suit for enforcement of a charge, and a suit for enforcement of a charge is not exclusively triable by the Court at Wai within whose jurisdiction the premises are situate. It is also contended that the charge is a charge on

inimoveable property as the assets of the two hotels comprise tenancy rights and therefore the suit can only be filed where the inimoveable property on which the charge is sought is situate.

22. u/s 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act special Courts have been set up, and the jurisdiction conferred upon these Courts is to try any suit or proceeding between a landlord and tenant relating to the recovery of rent or possession of premises to which any of the provisions of Part II of the Act apply, and to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its provisions, and subject to the provision of Sub-section (2) no other Court shall have jurisdiction to entertain any such suit, proceeding, or application made, or to deal with such claim or question. So the section is really in two parts; not only it confers jurisdiction upon special Courts, but it also ousts the jurisdiction of every civil Court to try suits which are cognizable by the special Courts, or to try questions which can only be tried by special Courts set up under the Act. It would be noticed that the jurisdiction of special Courts is not merely to try suits for the recovery of rent or possession; but the jurisdiction is wider, because the jurisdiction is to try suits relating to the recovery of rent or possession of premises.

23. In the first place we have to determine what is the real nature of this suit. The plaint sets out the terms of the lease and the obligation of the defendant to pay rent; and in paragraph 9 thereof there is an averment that "there is now due by the defendant to the estate of the owner (the lessor having died, and the present plaintiff is his son) the sum of Rs. 40,000 as and by way of rent and Rs. 3,229-7-0 for taxes". The draftsman has also used the expression "royalty", but it is conceded by Mr. M. V. Desai on behalf of the plaintiff that the suit is by a landlord against his tenant, that the lease creates the relationship of landlord and tenant, and that what is due by the defendant to the plaintiff is rent, and not royalty. It is clear, therefore, that the suit is primarily to enforce liability of the defendant in respect of rent due under the lease; and in prayers (c) and (d) of the plaint the plaintiff wants a decree for Rs. 8,229-7-0 which is the amount due in respect of taxes, and a decree for Rs. 40,000 which is the amount due for arrears of rent; and in prayer (e) of the plaint the plaintiff deals with his charge and prays that the right, title and interest of the defendant in the hotel belonging to him be sold in default of payment of the sum of Rs. 40,000 which he has claimed under the lease. Reading, therefore, the plaint as a whole there can be no doubt that the suit is substantially and primarily for recovery of arrears of rent due by the defendant. The plaintiff undoubtedly also wants the assistance of the Court to recover that rent by the mode mentioned by him in prayer (e) of the plaint; and the mode of recovery which he has decided upon is the mode fixed between the parties under the lease, viz. by enforcement of the charge given by the defendant to him.

24. It is difficult to understand how this suit can be characterized as any other

than a suit for the recovery of rent. It is unnecessary in our opinion to characterize the suit in order to attract the wider jurisdiction of the Special Court, viz. a suit relating to recovery of rent. Mr. Desai says that the suit is primarily to enforce the charge, and as the Rent Act does not confer jurisdiction upon special Courts to pass decrees in respect of charges, the special Court would have no jurisdiction to try the suit. Now, even when a suit is filed to enforce a mortgage, primarily and essentially it is a suit to recover a debt, and in that suit to recover a debt the plaintiff seeks the assistance of the Court to enforce the security which has been given by the defendant for payment of that debt. The learned Judge has taken the view that once the arrears became due and payable by the defendant, they constituted a debt, and therefore the suit is to recover a debt, and not to recover rent. When a tenant is in arrears of rent, in one sense it is true that he owes a debt to the landlord, but the nature of the debt is rent due for use and occupation of the premises let out to him, and what Section 28 of the Rent Act does is to confer jurisdiction upon the special Courts to try all suits in respect of debts which are debts arising out of arrears of rent. Therefore, it would not be sufficient for the plaintiff to contend that this is a suit to recover a debt; but he must go further and satisfy us that the debt which he is claiming does not arise by reason of the relationship between the plaintiff and the defendant of landlord and tenant, and that the nature of the debt is not arrears of rent due by the defendant to the plaintiff,

25. It is then urged that Section 16 of the CPC prevents the Civil Judge's Court at Wai from having jurisdiction to try this suit. It is urged that the property in respect of which the charge is sought is situate in Bombay, and therefore the Civil Judge's Court at Wai would have no jurisdiction to try the suit. Section 28 of the Rent Restriction Act confers jurisdiction upon the special Courts set up by that section notwithstanding anything contained in any law; and notwithstanding that by reason of the amount of the claim or for any other reason the suit or proceeding would not but for the provision be within its jurisdiction, the special Court would still have jurisdiction to try suits and proceedings mentioned in that section.

26. Therefore, the only question that has to be determined is, is the suit of the nature contemplated by Section 28 ? If the suit is of that nature, then the rules with regard to the jurisdiction laid down in the CPC have no application. It is not permissible to ask the further question as to whether the special Court set up u/s 28 has the necessary pecuniary jurisdiction or even the necessary territorial jurisdiction. It must not be forgotten that Courts set up u/s 28 are special Courts with exclusive jurisdiction with regard to a particular subject-matter and their jurisdiction arises, not by reason of any pecuniary or territorial consideration, but their jurisdiction arises by reason of the subject-matter being of the nature mentioned in Section 28. Therefore, in order to determine the jurisdiction of the special Court, the only thing that has to be looked at is the subject-matter of the suit; and if the subject-matter of the suit is that which is described in Section 28, then the Special Court has jurisdiction, and no further question as to its

pecuniary or territorial jurisdiction can arise.

27. It is then urged that the question as to whether the plaintiff is entitled to a charge is not a question that arises under the Rent Act, nor is it a question with regard to which jurisdiction has been conferred upon the special Court. In our opinion Section 28 confers jurisdiction upon the special Court not only to decide the questions referred to in that section, but also all matters which are incidental or ancillary to the determination of those questions.

28. The main question as already pointed out in the suit is, whether any rent is due by the defendant, and what is the quantum of the rent. Having decided that question, it would only be then that the Court will have to consider, as incidental or ancillary to the decree to be passed for rent, as to whether a charge should be given to the plaintiff, and whether, in default of the defendant satisfying the decree, the charge should be enforced.

29. There is direct authority for the proposition that the special Court set up u/s 28 of the Act has jurisdiction not only to decide questions referred to in that section, but also matters incidental and ancillary to those questions. In *Importers and Manufacturers Ltd. v. Pheroze Vramroze Taraporewalla* [1053] S.C.R. 226 there was an interesting case which went up before the Supreme Court. In that case the plaintiffs had filed the suit for possession and compensation against their tenant and defendant No. 2, who claimed to be a sub-tenant. The plaintiffs did not recognise the sub-tenancy and contended that defendant No. 2 was a trespasser, and they were entitled to compensation from defendant No. 2 for use and occupation of the premises. This Court held that the plaintiffs can not only agitate the question as between themselves and the tenant in the Small Cause Court, which was the special Court constituted u/s 28 of the Rent Act, but they can also agitate the question between themselves and defendant No. 2, Defendant No. 2 appealed to the Supreme Court, and the Supreme Court held that as far as the question of compensation was concerned, it was incidental and ancillary to the claim for possession and therefore the Small Cause Court had jurisdiction to try that suit; and even with regard to the question of possession as between the plaintiffs and defendant No. 2, the Supreme Court held that all rights between the parties should be finally determined in the suit, and therefore the Court had jurisdiction to determine the question of possession even between the plaintiffs and defendant No. 2 upon whom the plaintiffs looked upon as a trespasser.

30. The position is identical here. If a claim for compensation is incidental and ancillary to a claim for possession, the claim for a charge in respect of a decree for arrears of rent is also incidental and ancillary to that decree. If the Court has jurisdiction to pass a decree for rent, the Court must have equally jurisdiction to determine the mode in which the plaintiff can recover the decretal amount. A claim for a charge is nothing more than a claim to have the decree, if obtained, satisfied in a particular manner.

31. In any view of the case it is difficult to understand how this Court can possibly decide the questions which arise in this suit. The defendant has contended that the standard rent of the premises is not Rs. 12,000, but much less. He has contended that he has made part payments which have not been acknowledged by the plaintiff. Therefore, the main question which this Court will be called upon to determine in this suit is, what is the standard rent and what is the quantum of rent which the defendant is liable to pay to the plaintiff. u/s 28 the jurisdiction of this Court is expressly ousted with regard to the determination of these questions; and therefore if we were to hold that the Court has jurisdiction to try the suit, we would really be holding that this Court has jurisdiction to try questions which the Legislature has set up a special Court to determine,

32. Mr. Desai relied upon two decisions of this Court; one is the decision of Mr. Justice Tendolkar reported in *Urmilabai v. Jehangir Pastakia* (1951) 54 Bom. L.R. 763 and the other is the decision of the appellate Court reported in *Goverdhanlal Bansilal Vs. Ramrichpal Dalsukhrai*, where we were considering the effect upon the jurisdiction of this Court of Section 12 of the City Civil Court Act; and what was held in those two cases was that suits on mortgages in respect of land situated outside the ordinary jurisdiction which were cognizable by this Court before the City Civil Court Act was enacted continued to be cognizable by this Court, because under the Bombay City Civil Court Act jurisdiction has not been conferred upon the City Civil Court to try suits of that nature. Now, when one looks at the Bombay City Civil Court Act and the scheme of the Bombay Rents, Hotel and Lodging House Rates Control Act the position becomes amply clear. u/s 3 of the City Civil Court Act power is given to the State Government to issue a notification conferring jurisdiction upon the Court to try, receive and dispose of all suits and other proceedings of a civil nature the value of the subject-matter of which does not exceed the amount mentioned therein; and this notification may be issued notwithstanding anything contained in any law; and u/s 12 of the Act, notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Civil Court.

33. The first distinction which is obvious is that Section 3 does not set up a special Court with exclusive jurisdiction; it sets up a civil Court with a particular pecuniary jurisdiction; and the position of the City Civil Court is like that of the other civil Courts in the State and all rules as to jurisdiction contained in the CPC apply to the City Civil Court. Therefore, in both these decisions what we held was that Section 16 of the CPC applied to the City Civil Court; and if the property was not situate within the jurisdiction of the City Civil Court, the City Civil Court could not entertain a suit to enforce a mortgage merely because the pecuniary limit was not exceeded in the mortgage suit. Further, Section 12 provides that the High Court has no jurisdiction to try only those suits which are cognizable by the City Civil Court. Therefore, the Bombay City Civil Court Act takes away a part of the jurisdiction which the High Court had and confers it upon this new Court; but to the extent that the jurisdiction is not conferred upon the City Civil Court, the

jurisdiction of the High Court continues unimpaired. Section 12 does not contain any prohibition against the High Court trying any particular or specific kind of suit or deciding or determining any particular question. As far as the test to be applied in order to determine the jurisdiction of the High Court when one considers the Bombay City Civil Court Act is, is a particular suit cognizable by the City Civil Court; if it is not, then the jurisdiction of the High Court continues. But the test to be applied when considering the Bombay Rents, Hotel and Lodging House Rates Control Act is entirely different. The question there is; what is the nature of the suit; what are the questions to be determined; and if the nature of the suit is that of a suit relating to the recovery of rent or possession by landlord and tenant, or it relates to any question that arises under the Act, then u/s 28 there is an express prohibition against Courts other than the named Court trying the suit or determining that question. Therefore, applying that test to the matter before us what we have to ask ourselves is, does this suit involve any question which can solely be determined by the special Court ? In our opinion the only answer to that question can be, that it undoubtedly does. As already pointed out, the principal question is the question of determination of rent; that question arises between a landlord and tenant, and the suit is expressly filed to recover rent after it is determined by the Court. This Court has no jurisdiction either to determine the rent or to give relief to the landlord in respect of the rent; and the relief which the landlord seeks is not the wider relief relating to the recovery of rent but the recovery of rent itself due from the tenant who has failed to pay rent. Therefore, in our opinion, with respect to the learned Judge who tried the suit, the Court has no jurisdiction to try the suit; and therefore the appeal must be allowed and the suit will be dismissed.

34. There are one or two observations which we would like to make. We were told by Mr. Desai that his client applied to the Civil Judge, Junior Division, Wai, for fixation of standard rent, and this was by an application No. 55 of 1950. Now, we are in 1954; and we are told that that application has not yet been disposed of. To delay applications made for fixation of standard rent under the Rent Restriction Act is to defeat the very purpose of the Act. The Act was put on the statute book -as far as the tenants are concerned-in order to give them speedy relief. That is why the Legislature set up special Courts and conferred exclusive jurisdiction upon those Courts. If a simple application like an application for fixation of standard rent may be kept pending for about four years, it seems to us that it was futile for the Legislature to set up special Courts and to confer upon them special jurisdiction to dispose of cases arising under the Act. Ordinary civil Court would have disposed of this matter much earlier.

35. We, therefore, direct that in the event of the plaintiff filing a suit for recovery of rent and possession in the Wai Court, which is the Court having jurisdiction, that Court will dispose of the suit with utmost expedition. We have every sympathy for the plaintiff who has been kept out of his rent and has been kept out of his premises, and who has come to this Court and has been told by this Court that it has no jurisdiction to deal with his matter and to give him the

necessary relief.

36. As questions of jurisdiction are always difficult questions to decide, and as the question whether a suit to enforce a charge will be cognizable by this Court or not has arisen for the first time in this appeal, we cannot blame the plaintiff for having come to this Court in the belief that as this Court had jurisdiction in the past it would have jurisdiction even after the passing of the Rent Restriction Act. One learned Judge of this Court has taken the view that this Court has jurisdiction.

37. In the circumstances, we think that the fairest order to make with regard to costs will be that there will be no order as to costs throughout. The order of Mr. Justice Desai directing the defendant to pay the costs of the issue is set aside.

38. Liberty to the appellant's attorneys to withdraw the sum of Rs. 500 deposited in Court.