

(2024) 12 BOM CK 0007

In the Bombay High Court

Case No : Civil Revision Application No. 103 Of 2024

Metal Box India Ltd

APPELLANT

Vs

M/s. S.F. Engineer

RESPONDENT

Date of Decision : 03-12-2024

Acts Referred:

Constitution of India, 1950 — Article 14
Code of Civil Procedure, 1908 — Section 115, Order 20 Rule 12
Sick Industrial Companies Act, 1985 — Section 18(2)(f)
Transfer of Property Act 1882 — Section 106
Maharashtra Rent Control Act, 1999 — Section 3(1)(b), 15, 16
Companies Act, 1956 — Sections 391, 394

Citation : (2024) 12 BOM CK 0007

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Anil Anturkar, Kashish Chelani, Atharva Date, Aditya Mehta, Nishant Vyas, Niyomi Jariwala, Anuja Jhunjhunwala, Nidhi Singh, M. Mulla Associates, V.A. Thorat, Rohaan Cama, Ziyad Madon, Amit Mehta

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J

1) The Civil Revision Application is filed challenging the judgment and decree dated 16 January 2024 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 231 of 2016 filed by the Revision Applicant and confirming the judgment and decree dated 28 March 2016 passed by the Small Causes Court decreeing T.E. & R. Suit No. 153/165 of 2001. The Small Causes Court, while decreeing the suit, has directed the Revision Applicant-Defendant to handover vacant and peaceful possession of the suit premises to the Plaintiffs, with further direction to conduct enquiry into mesne profits under the provisions of Order 20 Rule 12 of the Code of the Civil Procedure, 1908 (the Code). Aggrieved by the concurrent decrees for eviction passed by the Trial and the Appellate Courts, Defendant-Revision Applicant has invoked revisionary

jurisdiction of this Court under Section 115 of the Code.

2) Two flats bearing Nos. 201 admeasuring 1850 sq. ft (carpet) and 204 admeasuring 1810 sq.ft (carpet) in aggregate admeasuring 3660 sq.ft. of carpet area alongwith two enclosed garages admeasuring 171.25 sq.ft situated in a building known as 'Marlow' at 62-B, PW Road, Worli, Mumbai-2 are the suit premises. Plaintiff-S. F. Engineer claims to be the owner in respect of the suit premises. Defendant No.1 was inducted as a monthly tenant in respect of the suit premises. Defendant No.1 is a public limited company, whose paid-up share capital as on the date of coming into force of Maharashtra Rent Control Act, 1999 (MRC Act) was above Rs.1 crore. Plaintiff claimed that Defendant No.2-Bhagwandas V. Bhawnani was unlawfully occupying Flat No.201 as illegal sub-tenant since 1989. In the above background, Plaintiff issued notice to Defendant No.1 on 19 December 2000 terminating its monthly tenancy and demanding compensation at the rate of Rs.1,50,000/- per month. Defendant No.1 replied the notice on 22 December 2000 and refused to vacate the suit premises. Plaintiff instituted T. E. & R. Suit No.153/165 of 2001 before the Small Causes Court, Mumbai against Defendant Nos.1 and 2 seeking recovery of possession of the suit premises. The suit was premised on an assertion that the paid-up share capital of Defendant No.1 was above Rs.1 crore and that therefore it was not entitled to protect its tenancy under the provisions of Section 3(1)(b) of the M.R.C. Act. Defendant No.1 filed Written statement inter-alia contending that it was declared as sick industrial company on account of its reduced paid-up share capital and claimed that it was not an exempted entity under the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act. It appears that the suit was dismissed against Defendant No.2 by order dated 6 September 2007 passed in Interim Notice No. 152/2007. Accordingly, the Revision Applicant continued as sole contesting Defendant in the suit. Based on the pleadings of the parties, the Small Causes Court framed following issues :

1. Whether the court has jurisdiction to try and decide/entertain the suit ?
2. Does plaintiff prove that, he has validly terminated the lease or tenancy rights of defendants in respect of suit premises according to Section 105 of Transfer of Property Act ?
3. Does defendant no.2 prove that, he is lawful sub-tenant or deemed tenant or protected licensee of suit premises ?
4. Does defendant no.2 prove that, he is lawful sub-tenant or deemed tenant or protected licensee of suit premises ?
4. Is plaintiff entitled for decree of possession and money decree on account of arrears of rent and mesne profits ?
5. What order and decree ?

2A. Whether the defendant Company which was not enjoying the protection of MRCA 1999 as on date of filing of this suit i.e. dated 01.03.2001 can

subsequently get protection on account of reduction of its share capital below 1 Crore and whether under Section 3(1)(b) of said Act ceases to apply on account of such reduction ?

2B. Whether the order dated 04.12.2007 passed by Appellate Authority for Industrial and Financial Reconstruction in proceedings instituted by defendant no.1 under The Sick Industrial Companies Act, 1985 is not binding on the plaintiff ?

2C. Whether the plaintiff proves that, defendant no.1 has played fraud and by suppression obtained order dated 04.12.2007 from the Appellate Authority for Industrial and Financial Reconstruction under The Sick Industrial Companies Act, 1985 and it operates retrospectively in this suit w.e.f. 10.06.1996 ?

3) Both the parties led evidence in support of their respective contentions. After considering the pleadings, documentary and oral evidence, the Small Causes Court held that the Defendant was not enjoying protection of MRC Act as on the date of filing of the suit and could not subsequently secure such protection after reduction of its paid-up share capital below Rs.1 crore. The Small Causes Court therefore held that the Defendant was not entitled to protection of its tenancy under the provisions of the MRC Act and proceeded to hold that Plaintiff validly terminated its license/tenancy in accordance with the provisions of Section 106 of the Transfer of Property Act. The Small Causes Court accordingly decreed the suit directing the Defendant to handover vacant and peaceful possession of the suit premises to the Plaintiff with further direction to conduct an enquiry into mesne profits under the provisions of Order 20 Rule 12 of the Code.

4) The Revision Applicant-Defendant preferred Appeal No.231/2016 before the Appellate Bench of the Small Causes Court challenging the eviction decree dated 28 March 2016. Plaintiff filed cross-objections at Exhibit-9 to the limited extent of challenging the Small Causes Court's finding in para-25 of the judgment on the issue of Defendant obtaining the order for reduction of its paid-up share capital to less than Rs.1 crore by playing fraud upon the Board for Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction (AAIFR). The Appellate Bench, by its judgment and decree dated 16 January 2024, has dismissed both the Appeals preferred by the Applicant-Defendant as well as cross objections filed by the Plaintiff-Respondent. The Appellate Bench has confirmed the eviction decree dated 28 March 2016 passed by the Small Causes Court. Aggrieved by the decree passed by the Appellate Bench of the Small Causes Court on 16 January 2024 thereby confirming the eviction decree passed by the Small Causes Court, the Applicant-Defendant has filed the present Revision Application.

5) Mr. Anturkar the learned Senior Advocate appearing for the Revision Applicant-Defendant would fairly submit that at the very outset that the issue of availability of protection of the MRC Act to a public or private limited Company, whose share capital was Rs.1 crore or more has been decided by this Court in Depe Global

Shipping Agencies Pvt. Ltd. Versus. Mather and Platt (India) Ltd. 2024 SCC OnLine Bom 3189. He would fairly submit that in the judgment in Depe Global Shipping, this Court has held that once a public or private limited company loses protection of MRC Act on account of its paid-up share capital being above Rs.1 crores as on 31 March 2000, subsequent voluntary act of reduction of paid-up share capital below Rs.1 crore does not restore the lost protection of M.R.C. Act. Mr. Anturkar would however canvass two broad propositions. Firstly, he would submit that the judgment in Depe Global Shipping (supra) is not applicable to the facts of the present case. Secondly and alternatively, he would submit that even if it is held that the judgment applies to the facts of the present case, some of the findings recorded therein are required to be reconsidered in the light of this Court not considering paragraphs of one Apex Court judgment and few other judgments not being brought to the notice of this Court.

6) In support of his contention that the judgment in Depe Global Shipping is not applicable to the facts of the present case, Mr. Anturkar would submit that the case before this Court in Depe Global Shipping involved implementation of Scheme of Arrangement sanctioned under the provisions of Sections 391 and 394 of the Companies Act and whether such Scheme would be binding on a landlord. That this Court further held that while sanctioning the Scheme of Arrangement under Sections 391 and 394, the High Court merely exercises a supervisory jurisdiction and does not adjudicate any dispute between the parties. That the present case does not involve reduction of paid-up share capital on account of sanctioning of Scheme of Arrangement under Sections 391 and 394 of the Companies Act but the reduction in the paid-up share capital has essentially been effected on account of the provisions of the Sick Industrial Companies Act, 1985 (SICA) which has completely different effect than the provisions of the Companies Act. That in Depe Global Shipping, the Scheme of Arrangement was more by consent as the same was voluntary and unilateral, whereas in the present case, reduction of paid-up share capital is neither voluntary nor by consent. In support of his alternate plea of reconsideration of the law laid down by this Court in Depe Global Shipping, Mr. Anturkar would submit that this Court has ignored crucial paragraph Nos. 37, 40 and 42 of the judgment in Carona Ltd. Versus. Parvathy Swaminathan & Sons (2007) 8 SCC 559. He would further submit that this Court has not taken into account the ratio of the judgment of the Apex Court in Pasupuleti Venkateswarlu Versus. The Motor & General Traders (1975) 1 SCC 770. Mr. Anturkar would further submit that in Pasupuleti Venkateswarlu (supra), it is held that the supervening events occurring during pendency of litigation must be considered by Courts. He would also rely upon judgment of this Court in R.S. Madireddy & Another. Versus. Union of India and Ors. (2022) SCC OnLine Bom 2657 and of the Apex Court in R.S. Madireddy and Another Versus. Union of India and Others 2024 SCC OnLine SC 965 in support of his contention that the supervening event of reduction of paid-up share capital of the Defendant-Company during pendency of the suit would have effect of restoration of protection of M.R.C. Act. He would submit that the view taken by

this Court that the crucial date for determining exclusion of an entity under the provisions of Section 3(1)(b) of the MRC Act is the date of coming into effect of the Act i.e. 31 March 2000 runs counter to the judgments in Carona Ltd., Pasupuleti Venkateswarlu and R.S. Madireddy. He would further submit that there is nothing in the Preamble of the Act to indicate that there is any sacrosanct about the date of 31 March 2000 to be treated as sole the yardstick for determining the paid-up share capital. That the date on which the Court gives justice to the tenant, who is not in a position to pay the market rent on account of loss of cash rich status, would be the relevant date for determining exclusion under Section 3(1)(b) of the MRC Act. He would therefore submit that the view taken by this Court virtually fossilizing the date of 31 March 2000 for applying the yardstick of paid-up share capital is required to be reconsidered by holding that the said yardstick would apply on the date on which the Court proceeds to decide the suit. Mr. Anturkar would further submit that fossilizing the date of 31 March 2000 would result in a strange situation where the Company, who has paid-up share capital of less than Rs. 1 crore as on 31 March 2000 would continue to enjoy protection of M.R.C. Act notwithstanding the fact that on the date of judgment of the suit, its paid-up share capital exceeds Rs.1 crores. That therefore adopting the date of 31 March 2000 for applying the yardstick of paid-up share capital is contrary to the legislative intent. Lastly, Mr. Anturkar would submit that this Court in Depe Global Shipping has relied upon paras-7 and 8 of the judgment in Central Bank of India Versus. National Rayon Corporation Limited (2014) 13 SCC 291. However, the case before the Apex Court did not involve reduction of paid-up share capital to less than Rs.1 crore on account of non-voluntary act like passing of order under the provisions of SICA. Mr. Anturkar would therefore submit that the view taken by this Court in Depe Global Shipping requires reconsideration in the event of this Court holding that the judgment applies to the facts of the present case.

7) On the above broad submissions, Mr. Anturkar would submit that the Defendant-Company is entitled to protection of its tenancy under the provisions of the M.R.C. Act and that therefore the suit, as filed by the Plaintiff, is not maintainable and ought to have been dismissed. He would accordingly pray for setting aside the decree passed by the Trial and as upheld by the Appellate Court.

8) The Revision Application is opposed by Mr. Thorat, the learned Senior Advocate appearing for the Respondent-Plaintiff. He would submit that the issue involved in the present Revision Application is squarely covered by the judgment of this Court in Depe Global Shipping. That the Revision Applicant cannot urge before this Court to take a view different than the one taken in Depe Global Shipping since this Court is not exercising review jurisdiction while deciding the present Revision Application. Mr. Thorat would further submit that the protection from rent escalation and eviction is created by the provisions of the M.R.C. Act and therefore the date of coming into force of the Act is relevant for the purpose of determining the entities who shall enjoy the rent control protection. That there is nothing in the Act which seems to suggest any date different from 31 March

2000 is suggested for the purpose of applicability of provision of Section 3(1)(b) thereof. He would rely on para-50 of the judgment in Carona Ltd. wherein the Apex Court noted that the paid-up share capital of the Company therein was more than Rs.1 crore on the date of termination of the tenancy. That in the present case, the tenancy was terminated on 19 December 2000 whereas the paid-up share capital of the Applicant-Defendant came to be reduced below Rs.1 crore on 4 December 2007. He would take me through paras-24 and 25 of the judgment of the Appellate Court to demonstrate that the defence taken by the Defendant about the paid-up share capital being reduced in accordance with the first scheme of 1996 has been expressly rejected and a finding of fact is recorded that the Scheme became effective and operational only from 4 December 2007. Lastly, Mr. Thorat would submit that the conduct of the Applicant-Defendant is such that this Court would be loathe to entertain the present Revision Application. He would submit that the Appellate Court had passed order dated 23 March 2021 fixing the interim compensation at the rate of Rs.5 lacs per month excluding the contractual rent and had directed the Applicant-Defendant to deposit the arrears of rent from the date of the decree and to continue to pay the same during pendency of the appeal. That the Applicant-Defendant has failed to deposit the said amount of interim compensation and that the total amount of interim compensation payable from 28 March 2016 till date is Rs.5.2 crores. Inviting my attention to para-51 of the judgment of the Apex Court in Carona Ltd., Mr. Thorat would submit that this Court may not entertain the present Revision Application considering the conduct of the Revision Applicant. He would pray for dismissal of the Revision Application.

9) Rival contentions of the parties now fall for my consideration.

10) Plaintiff instituted T.E. & R. Suit No.153/165 of 2001 seeking recovery of possession of the suit premises from the Defendant on the ground that its monthly tenancy was terminated by notice dated 19 December 2000. Plaintiff's suit is premised on an assertion that the Defendant no longer enjoyed protection of its tenancy on account of it being an excluded entity under the provisions of Section 3(1)(b) of the MRC Act as its paid-up share capital exceeded Rs.1 crore. On the other hand, it is the defence of the Defendant that its share capital has been reduced to less than Rs.1 crore on account of the order dated 4 December 2007 passed by the AAIFR and the Defendant, not being a cash rich entity, is entitled to rent control protection. Accordingly, the Defendant contended that its tenancy can be determined and possession of the suit premises could be secured by the Plaintiff-landlord either on account of default in payment of rent under Section 15 or by making out one of the grounds enumerated under Section 16 of the M.R.C. Act. Defendant thus contended that it was impermissible to terminate its protected tenancy by merely serving the notice. The moot point for consideration before the Trial and the Appellate Courts was whether Defendant enjoyed protection of its tenancy under the provisions of the M.R.C. Act.

11) Section 3 of the M.R.C. Act provides for exemption from application of the

act to certain entities and provides thus :

3. Exemption.

(1) This Act shall not apply ----

(a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf, but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of more than rupee one crore or more.

Explanation.- For the purpose of this clause the expression "bank" means,-

(i) the State Bank of India constituted under the State Bank of India Act, 1955;

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;

(iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980; or

(iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.

(2) The State Government may direct that all or any of the provisions of this Act shall, subject to such conditions and terms as it may specify, not apply-

(i) to premises used for public purposes of a charitable nature or to any class of premises used for such purposes;

(ii) to premises held by a public trust for a religious or charitable purpose and let at a nominal or concessional rent;

(iii) to premises held by a public trust for a religious or charitable purpose and administered by a local authority; or

(iv) to premises belonging to or vested in an university established by any law for the time being in force.

Provided that, before issuing any direction under this sub-section, the State Government shall ensure that the tenancy rights of the existing tenants are not adversely affected.

(3) The expression "premises belonging to the Government or a local authority" in subsection (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be, and such person shall be entitled to create a tenancy in respect of such building or a part thereof.

12) Thus, a public limited company or private limited company having paid-up share capital of Rs.1 crore or more is excluded from application of provisions of the MRC Act under Section 3(2)(b). According to the Plaintiff, in Form-20B filed by the Petitioner under the Companies Act 1956, its paid-up share capital was indicated as Rs. 20,23,40,000/-. There is no dispute to the position that as on the date of coming into force of the MRC Act i.e. as on 31 March 2000, the paid-up share capital of the Defendant-Company was over Rs.1crore. According to the Applicant, it was declared as a sick industrial company by BIFR under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 on 27 May 1988 on account of negative net worth and wiping out of the entire paid-up share capital. On 10 June 1996, the Scheme for financial reconstruction of the Petitioner was sanctioned by the BIFR. However, there is nothing on record to indicate any that reduction in the Applicant's share capital was effected under the 1996 Scheme. According to the Applicant, the AAIFR modified and updated the Scheme for rehabilitation of the Applicant in August 2000 and again there is nothing on record to indicate that the said order effected any reduction in the paid-up share capital of the Applicant-Company. The Delhi High Court passed order dated 16 July 2001 making the updated sanctioned scheme for rehabilitation as prepared by the Operating Agency in October 2000 operative. The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was enacted on 1 January 2004 and according to the Applicant, the same was not enforced till 1 December 2016. According to the Applicant, the AAIFR passed an order on 4 December 2007 by which the paid-up share capital (both preference and equity) of the Applicant-Company was reduced to Rs.2,23,000/- and the sanctioned scheme for rehabilitation dated 10 June 1996 as modified by the AAIFR in August 2000 prepared by the Operating Agency on 3 October 2000 and made operative by the Delhi High Court by order dated 16 July 2001. The order dated 4 December 2007 was passed by the AAFIR in appeals filed inter-alia by the Applicant-Company challenging the BIFR's order dated 11 September 2006 passed during the course of review hearing conducted by it to monitor implementation of the sanctioned scheme. In the order dated 4 December 2007, the AAIFR agreed that the suggestions made before it for updating the revival

scheme due to reduction of share capital, thereby paving way for induction of funds for wiping out all accumulated losses. The AAIFR accordingly directed revision and updating of the objections and allowed the Appeal upholding the recommendations and updated the revival scheme by directing reduction in existing paid-up share capital of the Company by 99% of equity capital and 99% of preference share capital in terms of Section 18(2)(f) of SICA. The relevant portion of the direction of the AAIFR in paragraph-26(g) of the order reads thus:

(g) The recommendation of the MA for reduction in the existing paid-up share capital of Metal Box by 99% on equity capital and 99% on the preference share capital, in terms of Section 18(2)(f) of SICA is allowed and the scheme stands updated accordingly.

13) Thus, for the first time on 4 December 2007, the AAIFR directed revival of the scheme by updating the same by reducing the paid-up share capital of the Applicant-Company. The reduction in share capital thus took place on/or after 4 December 2007.

14) After having held that the reduction in paid-up share capital of the Applicant-Company got affected on/or after 4 December 2007, the next issue for consideration is whether such reduction in the paid-up share capital would have the effect of restoration of protection of M.R.C. Act in respect of the demised premises. The issue is no more res-integra and is squarely covered by the judgment delivered by me in Depe Global Shipping (*supra*) wherein this Court was tasked upon to decide similar issue. The issue before this Court in Depe Global Shipping has been captured in para-1 of the judgment as under:

1. The issue involved in the Revision Application is permissibility to seek restoration of protection of rent control legislation by an entity, which has once lost the same. Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 (M.R.C. Act) excludes the entities enumerated therein from application of the Act. Accordingly a public or private limited company having paid up share capital of rupees one crore or more is excluded from protection of its tenancy under the MRC Act. The issue that this Court is tasked upon to decide is whether a company which had paid up share capital in excess of Rs.1 Crore as on the date of coming into effect of MRC Act (31 March 2000) and had lost the rent control protection, can resume the lost rent control protection on account of subsequent reduction of its paid up share capital below Rs.1 crore.

15) This Court considered the entire statutory scheme of the MRC Act and also took note of the historical background in which the MRC Act was enacted by making a detailed reference to the judgment of the Apex Court in *Malpe Vishwanath Acharya and others Versus. State of Maharashtra and another* (1998) 2 SCC 1. This Court thereafter made reference to the judgment of the Apex Court in *Leelabai Gajanan Pansare and others Versus. Oriental Insurance Company Limited and others* (2008) 9 SCC 720 and took note of observations of the Apex Court that M.R.C. Act is a sequel to the judgment in *Malpe Vishwanath*

Acharya. This Court took note of the observations recorded by the Apex Court in *Leelabai Gajanan Pansare* that the Legislature evolved economic criterion while enacting the provisions of the MRC Act while offering an economic package and that one of the facets of such economic package was to exclude entities under Section 3(1)(b) who can afford rent at market rate. This Court thereafter held that the Scheme of Arrangement sanctioned under the provisions of Sections 391 and 394 of the Companies Act would not bind the landlord as the same does not operate in rem and does not affect rights and obligations between the landlord and transferor company in its capacity as tenant. This Court thereafter considered the issue as to whether there was permanent loss of rent control protection and whether it is permissible to regain the lost protection on account of reduction in the paid-up share capital of a Company. This is the precise issue involved in the present case. This Court answered the said issue by recording following findings in paras-58 to 71 of the judgment:

E. 5 Permanent Loss of Rent Act Protection and Impermissibility to Regain the Lost Protection by Voluntary Reduction of Paid Up Share Capital

58. Even if contention of Respondent about applicability of the sanctioned Scheme by this Court for all purposes, including the purpose of governance of landlord-tenant relationship under the MRC Act, is to be accepted, there is another angle from which the issue can be examined. For examining that angle I momentarily proceed by assuming the position that even for the purposes of application of provisions of Section 3(1)(b) of the MRC Act, the paid up share capital of Respondent-Company stood reduced to Rs. 75,60,000/- on account of sanction of the Scheme by order of this Court passed on 18 April 2001. There is no doubt to the position that reduction of the paid up share capital by Respondent-Company is a voluntary act. It had lost the protection of rent control legislation on 31 March 2000 and seeks restoration of such protection on account of its voluntary act of reduction of its paid up share capital. The issue for consideration is whether an entity which gets covered by provisions of Section 3(1)(b) of MRC Act and loses the protection of Rent Act, can regain such protection on account of happening of a subsequent event. In the present case Respondent's paid up share capital was undoubtedly over Rs. 1 crore as on 31 March 2000 when MRC Act came into effect and accordingly Respondent lost protection of Rent Act on 31 March 2000. Its Scheme of Arrangement and Demerger was sanctioned by this Court subsequently on 18 April 2001. Thus, during the period from 31 March 2000 to 17 April 2001, Respondent was covered by provisions of Section 3(1)(b) of the MRC Act and had lost the protection of the Act qua its tenancy. In such circumstances, whether subsequent sanction of Scheme by this Court on 18 April 2001 resulting in reduction of paid up share capital below Rs. 1 Crore would enable Respondent-Company to regain the lost protection of MRC Act, is the issue that arises for consideration.

59. As observed earlier, the issue needs to be decided by bearing in mind the history and objective behind incorporation of Section 3(1)(b) in MRC Act. Since

'affordability to pay market rent' is the economic criterion adopted by the Legislature while listing entities in Section 3(1)(b), the issue of regaining lost protection of Rent Act also needs to be decided by applying the test of 'affordability to pay market rent'. In the present case, as on 31 March 2000, Respondent-Company had paid-up share capital of Rs. 18,90,19,120/- in addition to cash reserves of Rs. 45 odd crores. Thus, Respondent was undoubtedly a 'cash rich' entity as on 31 March 2000. It had lost protection of Rent Act on account of its inclusion in the listed entities under Section 3(1)(b) of the MRC Act. What has been done by the Respondent-Company through the Scheme of Arrangement and Demerger is only rejig of its business activities by redistributing its Fire and Security products into Veedip and Fluid Engineering products into Datum. Both Veedip and Datum are sister concerns of Respondent, who are subsequently renamed as Mather and Platt Pumps Ltd. and Mather and Platt Fire Systems Ltd., respectively. The business has thus remained with the same management with internal distribution thereof into sister companies. Therefore, the issue is whether Respondent, who was once a cash rich entity and had already lost rent control protection can be permitted to regain the same on account of such voluntary rejig effected in respect of its businesses.

60. Once the history and objective behind enactment of Section 3(1)(b) of the MRC Act is borne in mind, in my view, there appears to be no scope for an entity, who has made exit from rent control provisions on account of its cash richness to make a re-entry into the sphere of rent protection by doing a voluntary act of reduction of paid-up share capital. If such re-entry is permitted, the same would not only frustrate the entire legislative object of excluding cash rich entities from ambit of rent control protection, but would then open a pandora's box for companies to devise mechanisms for the purpose of regaining the lost protection of rent control legislation. The legislative intent is such that if an entity can afford to pay market rent, it should be excluded from the ambit of rent protection. The statute has consciously not made any provision for re-entry of the entity, who has once lost rent control protection for having acquired the status of cash richness.

61. Much is argued by the parties on use of the term 'having' in Section 3(1)(b) of the MRC Act. It is sought to be argued by Respondent that if the legislature wanted to intend one time exit (without re-entry) from rent control provisions, it would have used the word 'has' in Section 3(1)(b) of the Act. It is sought to be suggested that the Legislature has consciously used the words 'having' and 'has' at different places in the Act for different purposes. It is contended that while seeking decree for eviction on grounds specified under Section 16(1)(a) to 16(1)(e), past events are contemplated therein by using the word 'has', for eg. (a) tenant 'has' committed act contrary to Section 108(o) of the Transfer of Property Act, (b) tenant 'has' erected permanent structure, (c) tenant 'has' been guilty of conduct which is nuisance or annoyance, (d) tenant 'has' given notice to quit, and (e) tenant 'has' unlawfully sublet. It is therefore sought to be contended that since the word used in Section 3(1)(b) is 'having', what is contemplated is a

present event, referable to the date of termination of tenancy or date of filing the suit. I am unable to agree. If the Legislature was to use the words 'has' or 'had' in Section 3(1)(b), the provision could have become a one-time exercise of determining eligibility of entities for exclusion of protection under the MRC Act, which is not the legislative intent. Since the test of 'affordability to pay market rent' is the economic criterion for exclusion of entities from rent control protection, all entities who would fit into the criterion prescribed under Section 3(1)(b) after 31 March 2000 would also get covered by the said provision. To illustrate, if a company which has domestic operations as on 31 March 2000 and was protected under MRC Act, decides to open offices abroad and becomes multinational company in the year 2005, the intention of the Legislature is to take such company into the sweep of Section 3(1)(b). In a similar manner, a company, whose paid up share capital was less than Rs. 1 crore as on 31 March 2000 and which enjoyed protection of tenancy under MRC Act, grows with passage of time and increases its paid up share capital in excess of Rs. 1 crore subsequently, will have to be necessarily included in Section 3(1)(b) of the Act by applying the economic criterion of 'affordability to pay market rent'. This is because both the types of entities discussed above become capable of affording market rent as per the criterion fixed by the Legislature, the moment they either became multinational or increased the paid up share capital beyond Rs. 1 crore. They can fend for themselves and negotiate with the landlord for fixation of fair market rent and afford to pay the same.

62. If the contention of Mr. Dani is to be accepted, the same would reduce the exercise of exclusion of cashrich entities as a onetime measure by freezing the applicability of provision as on 31 March 2000 thereby resulting in absurd situation where companies subsequently growing and achieving affordability to bear market rent would still continue to enjoy protection under MRC Act, which definitely is not the legislative intent. At the same time, this principle cannot be applied in a converse situation where an entity which was once able to pay rent at market rate and had lost protection under MRC Act, would regain such protection by either reducing paid up share capital or converting itself from multinational to domestic company. Permitting regaining of lost protection in such cases would be against the entire legislative objective.

63. In my view therefore, once an entity gets covered by provisions of Section 3(1)(b) and loses protection in respect of its tenanted premises under the MRC Act, it can never regain the same irrespective of any subsequent event resulting in change of its character or status. In short, once an exit is made from the provisions of MRC Act, re-entry therein is impermissible. The exit door however remains open for entities to qualify in the criterion laid down under Section 3(1)(b) subsequent to 31 March 2000. This would be the correct interpretation of provisions of Section 3(1)(b) as the same seeks to fulfil the legislative object. Permitting re-entry in rent control sphere to an entity who has once lost it, would defeat the legislative objective and is therefore required to eschewed.

64. It would also be necessary to deal with Mr. Dani's submission that the reduction of paid up share capital has not taken place on 18 April 2001, but the same has been effected from the appointed date i.e. 1 April 1999. Thus, a peculiar situation is created in the present case where Respondent-Company's Scheme of Arrangement resulting in reduction of its paid-up share capital has been brought into effect retrospectively from 1 April 1999. In my view, such retrospective reduction in paid-up share capital is wholly irrelevant once it is found that the Respondent was actually and factually covered by Section 3(1)(b) on 31 March 2000 and had lost the protection of MRC Act. The landlord could have issued notice for termination of tenancy and filed a suit for eviction during the gap period from 1 April 2000 till 17 April 2001 and such suit would have been perfectly maintainable without having any effect thereon on account of subsequent event in the form of sanctioning of the Scheme on 18 April 2001. I have discussed and answered much broader issue of permissibility to regain lost protection of MRC Act on account of subsequent events and once it is held that it is impermissible to regain such lost protection, the issue of retrospective sanction of the Scheme from the appointed date of 1 April 1999 takes a backseat, and in that sense, becomes otiose.

65. Reliance by Mr. Jagtiani on the judgment of Carona Ltd. (supra), in my view, provides necessary guidance for answering the issue involved in the present case. In case before the Apex Court, the Appellant therein was a tenant in respect of premises located at Chembur, Mumbai and while defending decree for eviction passed by the Small Causes Court, the Appellant-tenant contended that its paid up share capital had substantially eroded and was less than one crore rupees, when the proceedings were initiated by the landlord. It appears that a resolution was passed by the Board of the Appellant company to decrease the share capital from Rs. 8.20 crores to Rs. 41 lakhs and that this 'jurisdictional fact' of reduction of paid up share capital was in existence at the time when eviction proceedings were initiated against it. Thus in Carona Ltd., paid up share capital of the company was Rs. 8.20 crores as on 31 March 2000. The only difference between the facts of the case in Carona Ltd. and that of the present case is that, the paid up share capital in Carona Ltd. continued to be in excess of Rs. 1 crore even on the date of termination of tenancy whereas in the present case it had reduced to less than Rs. 1 crore as on the date of termination of Respondent's tenancy. Another difference is that BIFR had not approved reduction of paid up share capital in Carona Ltd. In my view, however the said difference is inconsequential for the purpose of application of ratio of the judgment in Carona Ltd. to the present case. The Apex Court considered its judgment in Gajanan Dattatraya v. Sherbanu Hosang Patel in which contention was raised that use of the expression 'has sublet' under Section 13(1)(e) of Bombay Rent Act was in past perfect sense requiring occurrence of event in the present time since the word 'had sublet' was not used. The Apex Court had negatived the said contention in Gajanan Dattatray. Similar argument was raised before the Division Bench of the Gujarat High Court in Maganlal Narandas

Thakkar v. Arjan Bhanji Kanbi and in para-49 of judgment in Carona Ltd., the Apex Court has reproduced the findings of Division Bench of Gujarat High Court in Maganlal Narandas Thakkar and in para-50 of its judgment applied the said ratio in Carona Ltd. as well. The Apex Court held in paras-48, 49 and 50 as under:

48. The Court approved the view taken by the High Court of Gujarat in Maganlal Narandas Thakkar v. Arjan Bhanji Kanbi [(1969) 10 GLR 837]. In Maganlal [(1969) 10 GLR 837] the High Court of Gujarat had an occasion to consider a *pari materia* provision under the Saurashtra Rent Control Act, 1951 [Clause (e) of sub-section (1) of Section 13 of the Act reads as under:

"13. (1)(e) that the tenant has, since the coming into operation of this Act, unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein;"

49. A similar argument was advanced before the Court. However, considering the scheme of the Act, the Court refuted the contention. The Division Bench observed:

"So far as the first point is concerned, Mr. Desai laid great stress, and relied very heavily, on the grammatical meaning of the words 'has sub-let'. His argument is that the meaning of the words 'has sub-let' includes the element that the sub-letting must be continuing on the date when the plaintiff filed his suit. He stated, and there is no dispute on the point, that the words 'has sub-let' do not use the verb 'sub-let' in the present perfect tense. He referred to p. 61 of Handbook of English Grammar by R.W. Zandvoort. In Para 140 of this book it is stated that when a verb is used in present perfect tense, it denotes "a completed past action connected, through its result, with the present moment". The argument of Mr. Desai was that the sub-letting which started sometime after 1951, that is after the Act came into operation, must be connected with the present moment through its result; and his argument was that once the sub-tenancy was created, it must be connected with the present moment—the date of filing the suit—by its result by the sub-tenant continuing in possession of the premises up to that date. Mr. Desai thus urged before us that unless a sub-tenant were in possession of the property sub-let on the date of the suit it cannot be said that the tenant 'has sub-let' the premises, even though a sub-tenancy was in fact created by the tenant. In our opinion if this interpretation were to be accepted, the result would be that a tenant can with impunity put some other person in possession of the premises as a sub-tenant and avoid an order for delivery of possession against him by seeing to it that the sub-tenant departs from the property before the plaintiff files a suit. Having regard to the scheme of the Rent Control Act, particularly the scheme of Sections 12 and 13 of the Act and the context in which the words 'has sub-let' are used, it appears to us that that is not the way in which the meaning of the words 'has sub-let' should be gathered. If the Rent Control Act were not in force and the parties were left to their ordinary rights under the Transfer of Property Act, the landlord will have a vested right to

recover possession in him as soon as he terminates the tenancy of the tenant in the manner provided in the Transfer of Property Act. After terminating the tenancy he can immediately call upon the tenant to hand over possession to him. By enacting Section 12 of the Rent Control Act, the landlord's right to terminate the tenancy is not affected, but the enforcement of his right to recover possession immediately thereafter from the tenant is affected. The provisions of Section 12 prevent a landlord from recovering possession of the property from a tenant even after a lawful termination of his tenancy, provided the tenant fulfils the conditions mentioned in Section 12. Section 12 does not take away the right of the landlord to recover possession of the premises but merely postpones the enforcement of this right of the landlord so long as the tenant fulfils the conditions laid down in that section. Having put this impediment in the enforcement of the right of possession of the landlord or in other words, having clothed the tenant with an immunity from dispossession, the legislature proceeds in Section 13 to lay down those conditions on the fulfilment of which the landlord is entitled to recover possession of the premises from the tenant. Section 13, therefore, provides for those contingencies on proof of which the tenant loses the immunity from dispossession under Section 12. Some discussion took place on the question whether the tenant has a right of possession or whether he has merely an immunity from being dispossessed. Whether it be called an immunity from dispossession or whether it be called a personal right of possession, the fact remains that by Section 13, the legislature has provided for dispossession of tenant, despite provisions of Section 12, if the court is satisfied that any one of the grounds mentioned in Section 13 does exist. One of such grounds is the sub-letting of the premises or a part thereof by the tenant. In view of this scheme of the provisions in Sections 12 and 13 of the Act, it is necessary for us to construe the meaning of the words 'has sub-let' keeping in mind that the verb 'sub-let' is used in the present perfect tense. First, it must be a completed past action, that is the sub-letting must be completed. A sub-letting is complete as soon as the subtenant is put in possession of the premises given to him on sublease. Now, this completed act of sub-letting must have a result. What would be that result in the context of Sections 12 and 13 of the Act? The result of sub-letting would be removal of the impediment in the way of the landlord to recover possession of the premises. In other words, the result of sub-letting would be to take away that personal right of possession which the tenant enjoyed under the provisions of the Rent Act. Now, this result must be connected with the present moment. The present moment will be the moment when the suit is filed. How is this result connected with the filing of the suit? The answer is quite obvious. It is this removal of the impediment in the way of the landlord's recovery of possession which induces him to go forthwith to the court and file a suit for possession. Therefore, the words 'has sub-let' mean that a sub-letting has taken place and as a result of that sub-letting the impediment in the way of the landlord to recover possession has been removed, thus, inducing him to go to court and ask for recovery of possession. It is the result of the completed act i.e. the removal of the impediment in his way, which permits the landlord to go to the court and ask

for a decree for possession. It is not necessary, therefore, that sub-letting must continue, it is enough if the premises have been sub-let sometime after the coming into operation of the Act. The provisions of Section 15 of the Saurashtra Rent Control Act make sub-letting unlawful. Therefore, any sub-letting by the tenant after the Act came into operation immediately removes the impediment in the way of the landlord to recover possession and entitles him immediately to go to the court and ask for recovery of possession. In order to convey the correct meaning of the words 'has sub-let' it is not necessary to show that the sub-letting was in existence on the date of suit. It is enough that the sub-letting has taken place sometime after the Act came into operation; it does not matter that the sub-letting came to an end before the landlord gave notice or before the landlord filed a suit."

50. In our opinion, the ratio laid down in the above cases applies to the present case as well. Admittedly, on the date the tenancy was terminated, the tenant (public limited company) was having a paid-up share capital of rupees more than one crore. Under Clause (b) of Section 3(1) of the Act, therefore, the provisions of the Act were not applicable to the suit premises. It is true that a resolution was passed by the company to reduce the paid-up share capital to less than rupees one crore, but the said resolution was never approved by BIFR. But even otherwise, once it is proved that the tenancy was legally terminated and the Act would not apply to such premises, a unilateral act of tenant would not take away the accrued right in favour of the landlord. Unless compelled, a court of law would not interpret a provision which would frustrate the legislative intent and primary object underlying such provision. We, therefore, see no infirmity in the conclusions arrived at by the courts below.

(emphasis and underlining added)

66. Though there is some factual difference in Carona Ltd. and the present case, the ratio of the Apex Court is that a unilateral act of tenant would not take away the accrued right in favour of the landlord. It is further held by the Apex Court that unless compelled, a Court of law would not interpret a provision which would frustrate the legislative intent and primary object underlying such provision. In my view, the judgment in Carona Ltd. completely answers the issue at hand and as has been observed above, interpretation of Section 3(1)(b) of the MRC Act permitting re-entry of an entity in the realm of rent protection, which has once been lost, would completely frustrate the legislative object and this Court would therefore avoid accepting such interpretation. On the contrary, prohibiting such reentry would fulfil the legislative intent, as well as the primary object underlying the provisions of Section 3(1)(b).

67. In Crompton Greaves Ltd. (supra), Division Bench of this Court has decided the issue of constitutional validity of Section 3(1)(b) of the MRC Act.

The challenge was mounted on the premise of invidious distinction between companies having paid up capital of Rs. 1 crore and other commercial ventures

and that classification of companies on the basis of paid up share capital was not reasonable and did not have nexus with the object of the legislation. While repelling to challenge to the constitutional validity of Section 3(1)(b) of the MRC Act, the Division Bench held in para-31, 32 and 33 of its judgment as under:

31. Turning then to the provisions of section 3(1)(b) of the present Act, the legislature has decided not to afford protection of the Rent Act to certain categories of tenants mentioned therein. It has been stated that under the Bombay Rent Act, the rents which were payable were frozen on the basis of what was known as a "standard rent" formulae which landlords contended caused tremendous hardship to them as the same resulted in inadequate returns to the landlords. The legislature felt the need of the Rent Act to bring in the necessary balance between the interest of tenants and the landlords. To bring this balance, the Rent Control Bill, when it was introduced in the State Legislature, made a deviation from the existing provisions of the rent laws and introduced an exemption provision under the new Act whereby premises let to foreign missions, international agencies, multinational companies and public limited companies having a paid up share capital of more than Rs. 1 crore were exempted from the Act. When the bill was referred to the Joint Committee of both the Houses of Legislature, the Joint Committee held as many as fifty sittings to consider and discuss the provisions of the Bill. The committee held prolonged discussions and heard views on the proposed provisions in the Rent Control Bill of the representatives of tenants and landlords before making its recommendations. It is thus seen that the legislature had applied to mind to the problem of housing and control of rents and suggested certain measures. It did not proceed on the basis that rent control legislation was meant only for the benefit of the tenants but it wanted to strike a balance between the interests of the landlord and tenants. Therefore, it cannot be said that the provisions of section 3(1)(b) have got no nexus with the object which is sought to be achieved.

32. It is urged that no reason has been given as to why only corporate tenants have been singled out for exclusion and why other tenants similarly situated i.e. having capacity to pay, are also not excluded/exempted. Even within commercial ventures no reason is discernible as to why partnership firms, HUFs and proprietary concerns having economic/financial capacity to pay are protected by the Act, whilst private and public limited companies are excluded. Therefore, there is violation of Article 14 of the Constitution. We are unable to accept these contentions. It is no doubt true that Article 14 ensures non-discrimination in State action both in the legislative and the administrative spheres in the democratic republic of India. This, however, cannot mean that all laws must be general in character and universal in application. As pointed out in *Chiranjitlal Chowdhari v. Union of India*, 1950 SLR 659, the State in the exercise of its governmental powers must necessarily make laws operating differently on different groups or classes of persons and it possess for that purpose large powers of distinguishing and classifying persons or things subject to such laws. Further it is equally well settled that legislation enacted for the achievement of a

particular object or purpose need not be all embracing. It is for the legislature to determine what categories it should embrace within the scope of legislation and merely because the categories which would stand on the similar footing are not covered by the legislature would not render the legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 unless it is palpably arbitrary or amounts to total denial of equal protection laws. (see *Sakhawant Ali v. State of Orissa*, (1954) 2 SCC 758 : AIR 1955 SC 166). Besides there are obvious distinctions between a company incorporated under the Companies Act on one hand and partnership firm or HUF on the other hand. It is not necessary to examine the same in detail. Suffice it to say that even for the purpose of Rent Act, a partnership firm and a company do not stand on the same footing. For example if partners in a partnership firm sell their shares to a third party, it would amount to subletting within the meaning of the Rent Act whereas in a case of a limited company whose shares are transferred may not result into sub-letting and forfeiting of tenancy since the entity remains the same. We see nothing illegal or unfair in the classification adopted by the impugned provision.

33. We also do not find any substance in the submission that the criteria of paid up share capital is arbitrary and violative of Article 14 of the Constitution. The paid up capital of a company is the capital that it has invested into the business from its own sources. It is not necessarily the money with which it was born. Even the money credited to the paid up capital like bonus shares forms a part of the paid up capital of the company. The companies which have paid up share capital of more than Rs. 1 crore by their very nature are substantial organisations. The paid up share capital of a company is a factor which rarely fluctuates, unlike other factors like net worth which are applied while determining the financial status of a company. It is a factor which is insisted upon by various agencies, such as banks while granting loans as also for the purpose of listing on the stock exchanges. The paid up share capital also reflects the confidence which the public at large has in a particular company. It is also a fact that the paid up share capital cannot be reduced unless the procedure prescribed by the Companies Act is followed and without prior permission of the Company Court as envisaged by the provisions of the Company Act. It is therefore not possible to hold that criteria of paid up capital is wholly irrelevant. The lack of perfection in a legislative measures does not necessarily imply its unconstitutionality. To quote the words Venkatachaliah J. as His Lordship then was, in "*Ashwathanarayana Shetty v. State of Karnataka*, 1989 Supp (1) SCC 696 (at page 723)..." "no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of criticism, under the equal protection clause reviewing fiscal devices".

(emphasis added)

68. The Division Bench in *Crompton Greaves Ltd.* thus not only upheld the

criterion of paid up share capital, but also highlighted the importance of paid up share capital of a company which rarely fluctuates. Mr. Dani has sought to read observations of the Division Bench in para-33 of the judgment about permissibility to reduce paid up share capital after following of procedure and with prior permission of Company Court. However, in my view, the issue of effect of such subsequent reduction of share capital on exclusion of Rent Act protection was not before the Division Bench and therefore the judgment cannot be read in support of a proposition that in cases where there is reduction in the paid up share capital by an order of a court, such company would be able to regain protection of Rent Act.

69. Reliance by Mr. Dani on the judgment of Single Judge of this Court in *New Era Fabrics Ltd., Mumbai* (supra) has no application to the present case. The judgment is rendered in facts of that case where the paid up share capital of the tenant therein was above Rs. 1 crore even on the date of filing of the suit. The controversy before this Court was about factual dispute about paid up share capital, which, according to the tenant was actually Rs. 93,74,000/-whereas this Court arrived at the conclusion that the same was above Rs. 1 crore. The Judgment therefore would have no application to the issue at hand.

70. Mr. Dani has relied upon judgment of Single Judge of this Court in *Pune Zilla Madhyawarti Sahakari Bank* (supra) in support of his contention that Court cannot enlarge scope of Section 3(1)(b) by interpretation. The case before this Court involved determination of status of co-operative bank not covered by explanation under Section 3(1)(b) and it was sought to be contended that since share capital of the company was in excess of Rs. 1 crore, it was covered by Section 3(1)(b). This Court repelled the contention holding that since the tenant was a Bank, it was necessary to prove that it was covered by explanation to Section 3(1)(b). The bank was not a public or private limited company and therefore its share capital was irrelevant. Thus the judgment has no application to the present case.

71. Thus entry by an entity in rent control sphere is not permissible once such entity has already lost the protection of Rent Act.

16) In *Depe Global Shipping*, this Court thereafter proceeded to decide the issue of relevance of change in status of a tenant on the date of filing of the suit and held that change in the status of the tenant on the date of filing of the suit is irrelevant as it is impermissible to regain lost protection of MRC Act on account of occurrence of subsequent events. This Court held in paragraphs-72 and 73 as under :

E. 6 Relevance of Changed Status of Tenant on the Date of Filing of Suit

72. Another debate sought to be created by the Respondent is about its status on the date of filing of the suit. It is sought to be contended that as on the date of filing of the suit i.e. on 25 July 2003, the paid up share capital of the Respondent had admittedly reduced to less than Rs. 1 crore. In my view, since

broader issue is answered in the present judgment about impermissibility to regain lost protection of MRC Act on account of happening of subsequent events, this debate sought to be raised on behalf of the Respondent is rendered unnecessary. Even otherwise, it is unfathomable that the landlord who becomes entitled to seek eviction of tenant, who is taken out of purview of MRC Act, would lose such right merely because he tolerates presence of the tenant for some time, during which the tenant unilaterally changes its status and claims regaining of protection under MRC Act. As observed above, in the present case, Revision Applicant could have filed suit for Respondent's ejectment during 1 April 2000 till 17 April 2001 (when the Scheme was sanctioned by this Court) and in that event, Respondent would not have been in a position to raise the defence of reduction of its paid up share capital. As rightly contended by Mr. Jagtiani, loss of protection of Rent Act is an event which occurred on 31 March 2000 and such event created right in favour of the Plaintiff-landlord to seek ejectment of the Defendant-tenant by serving notice under Section 106 of the Transfer of Property Act. Mere action of the Plaintiff in tolerating Respondent's presence in the suit premises would not result in permanent loss of that right. In this connection, reliance of Mr. Jagtiani on judgment of the Apex Court in *Central Bank of India v. National Rayon Corporation Limited* (supra) appears to be apposite. In case before the Apex Court, eviction notice was issued on 26 June 2007 after the tenant had lost rent act protection on 31 March 2000 on account of tenant's paid up share capital being in excess of Rs. 1 crore. In the light of this position, the Apex Court has held in para-7 as under:

7. As far as the present action initiated by Central Bank of India is concerned, the notice to evict was issued on 26-6-2007, much after the Maharashtra Rent Control Act came into force on 31-3-2000. This Act clearly lays down that it shall not apply to public limited companies having a paid-up share capital of rupees one crore or more. Section 3(1)(b) of the Act reads as follows:

"3. Exemption.—(1) This Act shall not apply

(a) ***

(b) to any premises let or sub-let to banks, or any public sector undertakings or any corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid-up share capital of rupees one crore or more."

73. Since it is held that it is not permissible to regain lost protection of MRC Act on account of occurrence of subsequent event, reliance by Mr. Dani on judgments in *MST. Subhadra* (supra) and *Vasudev Dhanjibhai Modi* (supra) is not relevant to the issue at hand which judgment seeks to deal with the issue of material date for ascertaining occurrence of an event.

17) This Court answered the issue formulated in paragraph-1 of the judgment by recording following conclusions:

F. Conclusions

76. The conspectus of the above discussion is that once protection under the Rent Act is lost by a company on account of its paid up share capital exceeding Rs. 1 crore, mere voluntary reduction of such paid up share capital below Rs. 1 crore by it would not result in regaining the lost Rent Act protection. By applying the economic criterion of 'affordability to pay market rent', it is held that Respondent is a 'cash rich entity' and is able to fend for itself, negotiate with premises owner and pay rent at market rates. The Small Causes Court and its Appellate Bench have committed palpable error in not appreciating the statutory scheme of MRC Act in its right perceptive. Both the Courts ought to have appreciated that Respondent had paid up share capital of Rs. 18.90 and cash reserves of Rs. 45 crores as on 31 March 2000, when the MRC Act came into effect. Respondent is thus a 'cash rich entity' excluded from provisions of MRC Act, under Section 3(1)(b) thereof.

18) In my view, the judgment in Depe Global Shipping squarely answers the issue involved in the present case. As on the date of coming into effect of the M.R.C. Act, the paid-up share capital of the Defendant-Company was admittedly above Rs.1 crore. As observed above, the reduction in the share capital as suggested before AAIFR came to be approved and was directed to be effected by the order of the AAIFR passed on 4 December 2007. Infact the factual situation in the present case is worse than the one involved in Depe Global Shipping. In that case, the paid-up share capital of the tenant-company was reduced below Rs.1 crore as on the date of filing of the suit. In the present case however, even on the date of filing of the suit on 1 March 2001, the paid-up share capital of the Defendant-Company was admittedly above Rs.1 crore.

19) It is faintly sought to be suggested that the AAIFR's order dated 4 December 2007 had the effect of application of updated sanctioned scheme with retrospective effect from 10 June 1996 and by virtue of that order, the paid-up share capital of the Petitioner also got reduced retrospectively w.e.f. 10 June 1996. I am unable to agree. The AAIFR in its order dated 4 December 2007 took note of certain steps suggested by M.A. during the intervening period when revival scheme was pending and suggested that share capital of the company be reduced. The AAIFR sanctioned the recommendation for reduction of paid-up share capital by 99% (both equity and preference) and accordingly ordered updation of the Scheme. It therefore cannot be contended that merely because the Scheme got updated by virtue of order dated 4 December 2007, the paid-up share capital of the Defendant got reduced retrospectively from 10 June 1996. Infact similar plea was sought to be raised in Depe Global Shipping where the Scheme of Arrangement got sanctioned w.e.f. the appointed date which was before coming into effect of the M.R.C. Act. This Court, however, rejected the contention that the paid-up share capital of the Company therein had reduced as on the date of coming into effect of the M.R.C. Act.

20) Coming to the first submission canvassed by Mr. Anturkar that the judgment

of this Court in Depe Global Shipping is not applicable to the facts of the present case, it is seen that the submission is essentially premised on the methodology adopted by the two companies for reduction of their paid-up share capital. In Depe Global Shipping, the reduction of paid-up share capital was voluntary through sanction of Scheme of Arrangement whereas in the present case, according to Mr. Anturkar, the same is non-voluntary and was required to be effected only for updating the scheme of revival. In my view, mere difference in methodology by which reduction in paid-up share capital of a company is effected would make no difference to the applicability of provisions of Section 3(1)(b) of the M.R.C. Act. As held in Depe Global Shipping, the legislative intention was to exclude cash rich entities who could fend for themselves and negotiate rent at market rates as on 31 March 2000 got excluded from rent control protection. Whatever may be the reason for subsequent reduction of paid-up share capital of the Company, once the Act become applicable as on 31 March 2000, it is impermissible for a Company to regain such lost protection only on account of the fact that subsequently the paid-up share capital got reduced below Rs.1 crore. The issue is squarely answered by me in the judgment in Depe Global Shipping. The submission made on behalf of the Revision Applicant that the judgment in Depe Global Shipping is inapplicable to the facts of the present case is therefore repelled.

21) The other alternate submission made by Mr. Anturkar is about reconsideration of view taken in Depe Global Shipping. His submission is essentially premised on failure on the part of this Court to take into account the ratio of the judgment in paragraphs-37, 40 and 42 in Carona Ltd. and the judgment in Pasupulethi Venkateswarlu. It is also urged that attention of this Court was not invited to the judgment of this Court in R. S. Madireddy, as well as to the judgment of the Apex Court in R.S. Madireddy.

22) Firstly, this Court is unable to appreciate the submission that this Court considered only selected paragraphs of the judgment in Carona Ltd. or that it ignored the findings in paragraphs-37, 40 and 42 as sought to be suggested on behalf of the Revision Applicant. Merely because the Court chooses to reproduce only selective paragraphs of a judgment, it does not mean that it has not considered the other paragraphs. When attention of a Court is invited to a judgment and various paragraphs thereof are considered by it, it may happen that for the purpose of reducing the length of the judgment, only necessary paragraphs are reproduced in the body of the judgment. This however, would not mean that the Court has ignored the other paragraphs of the judgment. Secondly, even if the findings recorded by the Apex Court in paragraphs-37, 40 and 42 are considered, in my view, there is no reason to take a different view than the one taken in Depe Global Shipping. It would be apposite to reproduce paragraphs-40, 41 and 42 of the judgment in Carona Ltd. on which strenuous reliance is placed by Mr. Anturkar :

40. The learned counsel for the tenant then submitted that it was obligatory on

the courts below including the High Court to take into consideration subsequent events. In support of the submission, our attention has been invited by the counsel to a leading decision of this Court in *Pasupuleti Venkateswarlu v. Motor & General Traders* [(1975) 1 SCC 770] . In that case, the plaintiff filed a suit for possession on the ground of personal requirement for starting business. A decree for possession was passed in his favour which was confirmed by the appellate court. At the stage of revision, however, due to subsequent event of acquisition of non-residential building by the plaintiff landlord, an application for amendment was made by the defendant tenant. The High Court allowed the amendment. The plaintiff challenged the said order by approaching this Court. It was contended that the High Court committed an error in taking cognizance of subsequent event which was “disastrous”. This Court, however, held that the High Court had not committed any illegality in doing so.

41. Referring to leading cases on the point, Krishna Iyer, J. stated: (*Pasupuleti* case [(1975) 1 SCC 770] , SCC pp. 772-73, para 4)

“4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the *lis* has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice—subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exits, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

(emphasis supplied)

42. In our judgment, the law is fairly settled. The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit. Thus, if the plaintiff has no cause of action on the date of the filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising subsequent to the filing of the suit. Conversely, no relief will normally be

denied to the plaintiff by reason of any subsequent event if at the date of the institution of the suit, he has a substantive right to claim such relief.

23) In paragraph-41 of the judgment in Carona Ltd., the Apex Court has discussed the ratio of the judgment in Pasupuleti Venkateswarlu. The above passages of the judgment in Carona Ltd. are relied upon by Mr. Anturkar essentially in support of his contention that the rights of the parties should be determined on the basis of date of institution of the suit. Similar contention is already rejected by this Court in Depe Global Shipping. However, so far as the present case is concerned, even the proposition that rights of the parties should be determined on the basis of date of institution of the suit, does not assist the case of the Petitioner as its paid-up share capital was above Rs.1 crore even on the date of institution of the suit. Faced with this situation, Mr. Anturkar submits that the status of parties on the date of delivery of the judgment cannot be ignored by the Court and in support he would rely upon the observations made by the Apex Court in para-4 of the judgment in Pasupuleti Venkateswarlu. In support of the same contention, Mr. Anturkar has relied on judgment of Division Bench of this Court in R.S. Madireddy as confirmed by the Apex Court. In Pasupuleti Venkateswarlu the Apex Court has held that the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceedings. In R.S. Madireddy though Air India Limited was an Instrumentality of the State as on the date of filing of the petitions, the Division of this Court held the Writ Petitions to be not maintainable on account of subsequent privatization of Air India Ltd. during pendency of the petitions. The view taken by the Division Bench of this Court is approved by the Apex Court. By relying on judgments in Pasupuleti Venkateswarlu and R.S. Madireddy, Mr. Anturkar has contended that the supervening event of reduction in paid-up share capital occurring on 4 December 2007 ought to have been taken into consideration by the Small Causes Court for upholding restoration of protection of Rent Control Act. I am unable to agree with the submissions of Mr. Anturkar. In Depe Global Shipping, this Court has held that the status of an entity as on the date of coming into effect of the M.R.C. Act for the purpose of application of its provisions is relevant and the legislative object behind incorporation of Section 3(1)(b) does not permit regaining of lost protection of Rent Control Act on account of subsequent reduction of paid-up share capital. Since this Court has already taken such a view, it would be impermissible for this Court to accept Mr. Anturkar's contention that the supervening event of 4 December 2007 resulting in reduction of paid-up share capital of the Defendant-Company would result in regaining lost protection of the Rent Control legislation. I am therefore not inclined to take a view different than the one taken by me in Depe Global Shipping.

24) The conspectus of the above discussion is that the Defendant-Company is that an entity covered by the provisions of Section 3(1)(b) of the M.R.C. Act no longer enjoys protection from rent escalation and eviction. Maharashtra Rent Control Act is a special legislation enacted with the objective of offering

protection from rent escalation and eviction only to selected person and entities. There is conscious legislative exclusion of entities like Defendant-Company from applicability of protection from rent escalation and eviction. Since Defendant-Company did not enjoy protection under the M.R.C. Act, its monthly tenancy became terminable by issuance of notice under Section 106 of the Transfer of Property Act. The tenancy of Defendant has rightly been terminated by the Plaintiff. Upon termination of its tenancy, the Defendant had no right to remain in possession of the suit premises. The Small Causes Court has rightly ordered eviction of the Defendant and there is no error on the part of the Appellate Bench in upholding the eviction decree. Infact, the Trial and Appellate Courts have rightly recorded findings about impermissibility to regain lost rent control protection on account of subsequent reduction of paid-up share capital below Rs.1 crore, which law is subsequently expounded by this Court in Depe Global Shipping. The findings recorded by the Trial and the Appellate Courts are in consonance with the law enunciated by this Court in Depe Global Shipping.

25) I therefore do not find any valid reason to interfere in the concurrent findings recorded by the Small Causes Court and its Appellate Bench. Revision Application is devoid of merits and is accordingly dismissed.