
(2013) 05 BOM CK 0075
In the Bombay High Court
Case No : First Appeal No. 61 of 2007

Mr. Guido Loyola Furtado

APPELLANT

Vs

M/s. National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 41 Rule 22, Order 41 Rule 22(1)
Constitution of India, 1950 — Article 14
Registration Act, 1908 — Section 17(1), 49
Transfer of Property Act, 1882 — Section 105, 106, 107

Citation : (2013) 4 ABR 197 : (2013) 5 ALLMR 624 : (2013) 6 MhLj 579

Hon'ble Judges : U.V. Bakre, J; R.P. Sondurbaldota, J

Bench : Division Bench

Advocate : J.E. Coelho Pereira, with Mr. J. Godinho, for the Appellant; U.R. Timble with Mr. V. Timble, for the Respondent

Judgement

U.V. Bakre, J.—This is plaintiff's appeal from Judgment, Order and Decree dated 28/11/2006 passed by the learned Civil Judge, Senior Division, at Panaji Goa (trial Court, for short) in Special Civil Suit No. 46/96/B. Parties shall hereinafter be referred to in the manner in which their names appear in the cause title of the said suit.

2. The Plaintiff had filed the said suit for recovery of vacant possession of the suit premises and for mesne profits calculated at the rate of Rs. 41,610.24/- per month w.e.f. 1/11/1995 until the defendant hands over effective possession of the suit premises to the plaintiff and along with interest on the said amount calculated at the rate of 18% per annum.

3. Case of the plaintiff, in short, is as follows:

The plaintiff is owner of part of the second floor of the premises at Diamond Chambers, 18th June Road, Panaji-Goa admeasuring about 2600 square feet (suit premises). The construction of the suit premises was completed in the first

week of November 1984 and occupancy certificate was granted on 11/12/1984. Therefore, when the suit was filed, the suit premises were not covered under the Goa, Daman and Diu Buildings (Lease Rent & Eviction) Control Act, 1969 (Rent Control Act, for short). By letters dated 29/4/1984 and 9/11/1984, the plaintiff had made an offer to the defendant for creation of lease in respect of the suit premises. By letter dated 22/1/1985, the defendant, inter alia, wrote to the plaintiff through its Divisional Manager, referring to the said letter, that the defendant's Head Office had approved creation of the said lease in respect of the suit premises, on payment of monthly rent of Rs. 12,015/- and that the lease was to be for 5+5 years with escalation in rent at the rate of 20%. The defendant was tenant of the suit premises w.e.f. 1/2/1985. At the time of lease, the defendant effected payment of Rs. 36,045/-. Though the defendant continued to occupy the suit premises for a period of 5 years with rent of Rs. 12,015/- per month, and subsequently on paying the rent of Rs. 14,418/- per month for a period from 1/2/1990 to 31/1/1995, no written instrument and/or registered lease was executed. The plaintiff considered the defendant as a month to month tenant. By letter dated 5/1/1995, the plaintiff informed the defendant that the lease was coming to an end by 31/1/1995. Due to inadvertence, in the said letter, the plaintiff wrote "2nd February, 1995" instead of "31/1/1995". The defendant was also informed, vide the said letter, to deliver vacant possession of the suit premises and in case the defendant desired to continue, it should pay lease rent at the prevailing rate fixed by the Government agencies which was Rs. 12/- per square feet. By letter dated 12/7/1995, the Divisional Manager of the defendant informed the plaintiff that the competent authority of the defendant has sanctioned enhancement of rent for the suit premises @ 20% for another 5 years. Thus, the rent would stand raised to Rs. 17,302/- and the defendant, accordingly, remitted the rent for the months from February to June 1995 by deducting therefrom 20% Income Tax deducted at source, as per the Income Tax Rules. The plaintiff accepted the cheque, but did not acknowledge receipt of the letter. Thereafter, by notice dated 19/9/1995, the plaintiff terminated the tenancy of the defendant w.e.f. 31/10/1995 and called upon the defendant to hand over the vacant possession of the suit premises on 1/11/1995 but the defendant continued to remit the amount by cheques, which the plaintiff returned along with covering letter dated 9/1/1996 informing the defendant that he was returning the said cheques because the defendant was illegally occupying the suit premises and there was no question of plaintiff accepting the said cheques. The plaintiff is entitled to be put in possession of the suit premises and also to mesne profits at the rate of Rs. 15.58/- per square feet towards illegal occupation of the suit premises by the defendant. Hence, the suit.

4. By way of written statement, the defendant alleged as follows:

The Civil Court has no jurisdiction to entertain and try the suit as the tenancy is governed by the provisions of Rent Control Act and that the defendant is a protected tenant. The wife of the plaintiff is a necessary party to the suit and in her absence the suit is bad for non-joinder of parties. It is true that no lease

deed was executed but this was because though the defendant insisted upon execution of the lease deed, the plaintiff always avoided to execute the same on one pretext or the other. By letter dated 5/1/1995, the plaintiff was demanding unreasonable enhancement in the rent which was not agreeable to the defendant. The receipt of cheque by the plaintiff shows acceptance of proposal mentioned in letter dated 12/7/1985, on the part of the plaintiff and the lease therefore stood automatically extended till the year 2000. The plaintiff is not entitled to cancel or terminate the lease subsequently. The notice dated 19/9/1995 is bad in law. The sole intention of the plaintiff is to force the defendant to agree for higher rents as demanded by the plaintiff. It is false that the defendant is illegally occupying the suit premises. The plaintiff is not entitled to the reliefs, as claimed by him.

5. Based on the rival contentions of the parties, learned trial Court framed various issues. In the course of trial, the plaintiff examined himself as PW. 1 and an architect by name Subhashchandra Bhohe as PW. 2. The defendant examined its Senior Divisional Manager, namely Mr. Bibhu Datta Choudhary as DW. 1.

6. Upon analysis of the entire evidence on record, the learned trial Court found that besides the letter dated 22/1/1985 of the defendant, which is at Exhibit 24, there is no other document on record to establish the nature of transaction between the plaintiff and the defendant with respect to the suit premises. She held that a perusal of the said letter dated 22/1/1985 revealed that the transaction was a "lease" for a period of 5+5 years, with escalation in rent at the rate of 20%, with monthly rent of Rs. 12,015/-. The trial Court, therefore, held that the claim of the plaintiff that the lease was on month to month basis was not tenable. The trial Court found that the defendant, vide its letter dated 12/7/1995 which is at Exhibit 26, informed the plaintiff that the competent authority had sanctioned enhancement in rent payable with respect to the suit premises at the rate of 20% for another 5 years and along with this letter had enclosed the cheque towards the arrears of rent from February to June 1995. The trial court further found that the said cheque was accepted by the plaintiff. The trial Court held that though by letter dated 5/1/1995, the plaintiff had informed the defendant that the lease was coming to an end and that if the defendant desired to continue with the occupation of the premises, the defendant should pay lease rent at the rate of Rs. 10/- per square feet, w.e.f. 2/2/1995, however, the escalation in the rent agreed was at the rate of 20% only and the proposal of lease of suit premises was accepted with the said clause in the letter dated 22/1/1985, which is at exhibit 24. The learned trial Court, therefore, held that since the plaintiff accepted the cheque in respect of the arrears of rent from February to June 1995, the lease stood renewed for a further period of 5 years, w.e.f. February, 1995. The trial Court held that the act of the plaintiff, of sudden issuance of notice of termination dated 19/9/1995, is not justified. She, therefore, held that there was no valid termination of lease by the plaintiff. She held that the occupation of the defendant with regard to the suit premises is not illegal. The learned trial Court further held that there is no sufficient evidence on

record to prove that the area of the suit premises is 2600 square feet. The trial Court held that since the plaintiff has not succeeded in establishing illegal occupation of the suit premises by the defendant w.e.f. 1/11/1995 and further since there is no sufficient evidence to arrive at the amount of mesne profits, fact that the plaintiff is entitled to mesne profits at the rate of Rs. 41,024/- is not proved.

7. The learned trial Court further held that the present building wherein the suit premises is situated was built in December 1984 when the occupation certificate was granted to it and therefore, as on the date of filing of the suit, the period of "15 years" stipulated in Clause (c) of sub-section (1) of Section 3 of the Rent Control Act was not complete and therefore the provisions of the Rent Control Act were not applicable to the suit premises. She further held that since the suit premises are used by the defendant for commercial purposes and since the monthly rent exceeds Rs. 5000/-, in terms of sub-clause (cc) of sub-section (1) of section 3 of the Rent Control Act, which provides that the Act would not apply to any building, whose monthly rent exceeds Rs. 5000/-, the Act is not applicable. The trial Court, therefore, held that the defendant is not a protected tenant. Consequently, it was held that the plaintiff is not entitled for recovery of vacant possession of the suit premises as well as mesne profits. Hence, the suit came to be dismissed with costs. The plaintiff is aggrieved by the impugned judgment and decree and has filed the present appeal.

8. Heard Mr. J.E. Coelho Pereira, learned Senior Counsel appearing on behalf of the plaintiff and Mr. U.R. Timble, learned counsel appearing on behalf of the defendant.

9. Learned Senior Counsel, appearing on behalf of the plaintiff, invited our attention to the definition of lease as given u/s 105 of the Transfer of Property Act, 1882, (T.P. Act, for short). He submitted that in terms of Section 107 of the T.P. Act, lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered deed and there being admittedly no registered lease deed in the present case, in terms of Section 106 of the T.P. Act, lease of suit premises becomes a lease from month to month, terminable on the part of either parties by giving notice of 15 days. He submitted that in view of the above provisions of law, the finding of the learned trial Court that the lease was not on month to month basis is erroneous. He further submitted that plaintiff issued notice dated 19/9/1995 thereby terminating the lease as from 31/10/1985 and directing the defendant to vacate the suit premises on 01/11/1995. According to him, since the suit premises are not covered under the Rent Control Act, there was no need to give any reason for termination. He, therefore, submitted that the finding of the trial Court that there was no reason for the plaintiff to terminate the lease, all of a sudden, w.e.f. 31/10/1995 and that termination of lease is not justified, is wrong. He submitted that the letter dated 12/7/1995 sent by the defendant was only a counter offer which was not accepted by the plaintiff. He submitted that after the lease period

of 5+5 years had expired, the tenancy could either be of holding over or on month to month basis, which has been validly terminated by the plaintiff. He further submitted that the trial Court rightly concluded that the suit premises were not covered by the provisions of the Rent Control Act and therefore, the defendant cannot be held to be protected tenant. He further submitted that the evidence of PW. 2 sufficiently proves the entitlement of the plaintiff to the mesne profits, as claimed. Learned Senior Counsel has relied upon:

(i) Anthony Vs. K.C. Ittoop and Sons and Others, .

(ii) Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others, .

10. On the other hand, learned counsel, appearing on behalf of the defendant, submitted that the finding of the trial Court that the defendant is not a protected tenant and that the suit premises are not covered under the Rent Control Act, is erroneous. He submitted that since the final decree is in favour of the defendant, the defendant can, without filing cross-objections, support the decree on grounds decided against it by the lower court and therefore, it is open for the defendant to assail the finding of the trial court regarding non-applicability of the Rent Control Act. In this regard, learned counsel relied upon:

(i) Choudhary Sahu (Dead) by Lrs Vs. State of Bihar, .

(ii) Nana Tukaram Jaikar Vs. Sonabai and Others, .

(iii) Shiv Shankar Prasad Vs. Union of India(UOI), .

11. The learned counsel appearing on behalf of the defendant submitted that the trial Court has not interpreted the amendment to Section 3 of the Rent Control Act properly. He pointed out that Clause (c) of Section 3(1) applies to any newly constructed building for a period of fifteen years from the date of its completion. According to him, the building consisting the suit premises is not newly constructed building. He submitted that the word "newly" is relevant and should be interpreted to mean that the said amended provision applies to a building constructed after 5/5/1994 from which date, by way of amendment, in place of word "four" the word "fifteen" was substituted. He submitted that prior to 1994, the said period in clause (c) was "four" years and that by way of Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1993 (Act 8 of 1994), which came into force w.e.f. 5/5/1994, the said word "four" was substituted by the word "fifteen". Prior to the said Amendment Act 8 of 1994, the Rent Control Act did not apply to any building for a period of 4 years from the date of its completion. He submitted that the construction of suit premises was admittedly completed in December 1984 and therefore, by the year 1990, the defendant had already become a protected tenant under the Rent Control Act and the right which has accrued to him cannot be taken away by subsequent amendment made to said clause (c) of Section 3(1). He submitted that the said amendment is prospective in nature. In this regard, on the point of interpretation of statutes, the learned counsel relied upon:-

(i) Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, .

(ii) Eknath Kira Akhadkar and Others etc. Vs. Administrative Tribunal and Others etc., .

12. Learned counsel, appearing on behalf of the defendant, further submitted that the amended provision of clause (cc) of Section 3(1) of the Rent Control Act, applies only to the building which is let out for the first time on or after 20/4/1994 and since the suit premises, in the present case, were let out much prior to that date i.e. in or about 1985, the said clause did not apply to the suit premises. The learned counsel submitted that the trial Court wrongly applied the provision of clause (cc) as was existing originally. According to him, the statement of Objects and Reasons for amending Section 3(1)(cc) clearly envisage that the said amendment is prospective in nature. In this regard, he relied upon:

(i) Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others,

(ii) Nasiruddin and Others Vs. Sita Ram Agarwal, .

13. Learned Counsel, appearing on behalf of the defendant, therefore, urged that the defendant was very much a protected tenant as on the date of filing of the suit and the provisions of the Rent Control Act were applicable to him, due to which the defendant cannot be evicted in view of Section 21 of the Rent Control Act, except in accordance with the provisions of Chapter V of the said Act.

14. In rejoinder, learned Senior Counsel appearing on behalf of the plaintiff submitted that the finding of the trial Court which is against the defendant is on jurisdiction of the Civil Court and hence the defendant ought to have filed cross-objection if he wanted to assail the said finding. On merits, learned Counsel submitted that the amendment to Clause (cc) to Section 3(1) by which the cut off date "20.4.1994" was introduced came into force by virtue of Amendment Act 24 of 1997 published in the Official Gazette dated 3/10/1997. He submitted that Clause (cc) of Section 3(1) as was initially inserted by Amendment 8 of 1994 published in the Official Gazette dated 5.5.1994, did not contain the said cut off date "20.4.1994". He pointed out that the plaintiff had filed the suit on 19/3/1996 that is after 5/5/1994 but before 3/10/1997 and therefore, the learned trial Court has rightly held that by virtue of sub clause (cc) of Section 3(1) of the Rent Control Act, the said Act would not apply to the suit premises as according to the said provision, the Act does not apply to any building whose monthly rent exceeds Rs. 5000/-, if such a building is used for commercial purpose. He pointed out that the suit premises is certainly used by the defendant for commercial purpose.

15. Learned Senior Counsel submitted that Section 3 of the Rent Control Act does not create any kind of substantive right in favour of the tenant, but it only provides for eventualities in which the Act would not apply. He urged that the

said provisions of Section 3 provide for protection or benefit. He further submitted that by amendment of Clause (c) of Section 3(1) of the Rent Control Act, which came into force w.e.f. 5/5/1994, the protection/benefit which was earlier given to the tenant about application of Rent Control Act under the said provision, prior to the said amendment, has been taken away. Learned counsel for the plaintiff pointed out that the plaintiff had filed the suit after the amendment to clause (c) when status of the defendant had again changed. He submitted that the provision that was applicable at the time of filing of the suit would prevail and that which was existing prior to the filing of suit and even subsequent change during pendency of the suit will not apply, since the said provision does not create any substantive right but only provides for protection. He, therefore, submitted that finding of the trial Court that the defendant is not a protected tenant and that the Rent Control Act is not applicable to the suit premises, is fully justified and not assailable. Learned Senior counsel has relied upon:

(i) Parripati Chandrasekharrao and Sons Vs. Alapati Jalaiah,

(ii) Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc.,].

16. We have gone through the records and proceedings of the Special Civil Suit No. 46/96/B. We have carefully considered the rival submissions made by the learned counsel for the parties and have also gone through the Judgments relied upon by both the parties.

17. Rule 22(1) of Order 41 of the CPC provides as under:

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour; and may also take any cross objection to the decree which he could have taken by way of appeal:

Provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation: A respondent aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

18. In the case of "Choudhary Sahu" (supra), the Apex Court, in relation to Rule 22 of Order 41 of C.P.C., has held thus:

The first part of this rule authorizes the respondent to support the decree not only on the grounds decided in his favour but also on any of the grounds decided against him in the court below. The first part thus authorizes the respondent only to support the decree. It does not authorize him to challenge the decree. If he wants to challenge the decree, he has to take recourse to the second part, that is, he has to file a cross-objection if he has not already filed an appeal against the decree. Admittedly, the State of Bihar had neither filed any appeal nor cross-objection. Obviously, therefore, on the strength of the first part of sub-rule (1) of Rule 22 of Order 41 the State of Bihar could only support the decree not only on the grounds decided in its favour but also on the grounds decided against it. The Commissioner however, has set aside the finding in favour of the appellant on the strength of Order 41, Rule 22(1). In our opinion this he could not do.

19. In the case of "Nana Tukaram Jaikar" (supra), the learned Single Judge of this Court has held that it is well settled that a respondent to an appeal may without filing cross-objections, support the decree on grounds decided against him by the lower court.

20. In the present matter, since the suit has been dismissed, the defendant neither could file appeal nor could he take cross-objection to the decree. It could only support the decree on the grounds decided in its favour as also on any of the grounds decided against it, by the lower Court. In view of the above, though the defendant has not filed any cross-objection, it can very well assail the finding of the trial Court, which is against it, for supporting the decree, which has been passed against the plaintiff.

21. The first point that arises for determination is whether the Rent Control Act is applicable to the suit premises and defendant is, thus, a protected tenant.

22. Section 3(1)(c) of the Rent Control Act, as is presently existing, provides that nothing in this Act shall apply to any newly constructed building for a period of "fifteen" years from the date of its completion. The word "fifteen" came to be substituted in place of the word "four" by virtue of amendment, which came into force as from 5.5.1994, in terms of Goa Buildings (Lease, Rent and Eviction) Control (Amendment) Act 1993 published in the Official Gazette Series I, No. 5 dated 5/5/1994. Except for the change of the period from four years to fifteen years, there is no other change in the said provision. There is no dispute that the expression "newly constructed building" was there in that provision even prior to the amendment of the said clause (c). The amendment does not add the words "as from the date of coming into force of this amendment" after the expression "newly constructed building". The expression "newly constructed building" cannot be read literally to mean a recently constructed building. The entire clause (c) should be read. Newly constructed building means a building in respect of which a period of fifteen years has not expired from the date of completion of its construction. Prior to coming into force of the amendment, newly constructed building meant a building which had not completed four years from the date of completion of its construction. The meaning of newly constructed building, for

the purposes of the Rent Control Act, has changed after the said amendment. Therefore, the submission of learned Counsel for the defendant that the word "newly" means from the date of amendment i.e. from 5/5/1994 is without merit. Further, the contention of learned counsel for the defendant that since the construction of the building consisting of suit premises was completed in December 1984 and defendant was inducted in the suit premises in the year 1985 and further since the period of four years from the date of completion of construction of the building, as contained in clause (c) of Section 3(1) of the Rent Control Act, prior to its amendment of 5/5/1994, had expired in December 1989, the defendant had already become a protected tenant since the Rent Control Act had become applicable to it, has no legal sanctity and cannot hold ground. Section 3 of the Rent control Act does not speak about accrual of any substantive right as a statutory tenant, under the Act but it deals with the non-applicability of the Act to certain buildings. The defendant had a right to take advantage and enjoy the said statutory protection as long as the provision remained in force and was applicable to it. As soon as the said provision changed, the defendant cannot claim to continue to have the old statutory protection. It was another thing if the plaintiff had filed the suit when the provision of Section 3(1)(c) of the Rent Control Act had the word "four" instead of "fifteen". In that case, the defendant could have taken advantage of the said provision to resist the eviction by the plaintiff.

23. In the case of "Mahadeolal Kanodia" (supra), relied upon by the learned counsel for the defendant, it has been held as follows:

8. The principles that have to be applied for interpretation of statutory provisions of this nature are well-established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words, or by necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary, even by modification of the language used"

The above judgment, in our view, is not applicable to the present case since it pertains to statutory provisions creating or taking away substantive rights. Section 3 of the Rent Control Act, as has been rightly contended by the learned

Senior Counsel appearing on behalf of the plaintiff, does not create any substantive rights in the tenant but it only provides for some protection or benefit, in certain eventualities mentioned therein. It imposes certain conditions for application of the Rent Control Act. The said protection or benefit can be utilized as long as it exists but a party cannot claim a vested right in the same and as soon as the said protection or benefit is taken away, the party cannot claim the same on the ground that it was previously existing. The plaintiff had not filed the suit prior to 5/5/1994, but had filed it on 19/3/1996. The beneficial provision as was existing on 19/3/1996, would apply.

24. In the case of "Eknath Kira Akhadkar and Ors", (supra), relied upon by the learned Counsel for the defendant, the relevant facts were that under the original unamended Section 22(2)(a) of the Rent control Act, a right had vested in the landlords to obtain an order of eviction on the failure of the tenant to pay the rent for a total period of three months and the landlords had actually instituted eviction proceedings on the ground of arrears of rent for a total period of three months. The amendment which came thereafter modified this right, subjecting it to the serving of a demand notice on the tenant on the latter's failure to pay or tender the arrears within thirty days from the service of the notice or of its refusal. The learned Single Judge of this Court held that the amended clause (a) imposed a new duty on the landlord and, therefore, once the landlords had already exercised their right, the new duty of serving of notice as a pre-condition to initiate eviction proceedings could not operate retrospectively. In the present case, if the plaintiff had instituted the suit prior to 5/5/1994, and during the period when the word "Four" was in operation in clause (c), things would have been different. The judgment in the case of "Eknath Kira Akhadkar"(supra), is therefore, not applicable to the facts of the present case.

25. In the case of "M/s. Punjab Tin Supply Co.,", (supra), relied upon the learned counsel for the defendant, a notification dated 31/1/1973 issued by the Chief Commissioner of Chandigarh u/s 3 of the East Punjab Urban Rent Restriction Act, 1949, as applicable to Chandigarh, directed that the "the Act shall not apply to buildings, constructed in the urban area of Chandigarh, for a period of five years with effect from the date the sewerage connection is granted in respect of such buildings by the competent authority under Rule 112 of the Punjab Capital (Development and Regulation) Building Rules, 1952". The question for consideration was whether on the issue of the said notification, buildings which were constructed prior thereto and to which the Act already applied, were taken out of operation of the Act? The Apex Court held that all laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. It has been held that the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. The

Hon"ble Supreme Court held that if the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not. In the case *supra*, it was found that the notification did not clearly indicate that the chief Commissioner intended to grant exemption in respect of any of the buildings constructed prior to January 31, 1973. While the notification referred to all the buildings to which sewerage connection is granted after the date of the notification, the same did not necessarily mean and include buildings which had been given sewerage connection within five years prior to that date. It was found that there was no compelling reason for giving exemption to buildings which had already been constructed as the object of issuing the notification was only to encourage construction of new buildings thereafter and not to take away the statutory protection already extended to the tenants of buildings which had come into existence prior to January 31, 1973. The Apex Court held that in the surrounding circumstances, the notification applied only to those buildings which were given sewerage connection or electric connection or which were occupied as the case may be, on or after January 31, 1973. The facts of the above case are totally different from the facts of the present case and hence the above judgment of the Apex Court cannot be applied to the present case.

26. In the case of "*Nasiruddin and others*"(*supra*), relied upon by the learned counsel appearing on behalf of the defendant, it has been held as follows:

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

The above principles laid down by the Apex cannot be disputed and we have taken them into consideration. However, the same do not help the defendant in any manner.

27. In our view, the case of "*Parripati Chandrasekharrao and Sons*" (*supra*), relied upon by the learned Senior Counsel appearing on behalf of the plaintiff, directly applies to the present case. The relevant facts of the case are as follows:- The suit premises were governed by the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 till 29/12/1983. On 4/2/1983 and

13/2/1983, the respondent/tenant filed variously three applications, namely (i) R.C. 15/83 for direction to permit him to deposit rent in the Court; (ii) R.C. No. 16/1983 for fixation of fair rent and (iii) R.C. No. 17/1983 to prevent inconvenience. The State Government issued notification dated 29/12/1983 exempting w.e.f. 26/10/1983 from all the provisions of the Act, among others, buildings whose monthly rent exceeded Rs. 1000/-. The definition of the "building" under the Act includes any tenanted premises and hence the suit premises stood exempted from the operation of the Act w.e.f. 26th October, 1983 since on the said date the monthly rent payable in respect of the premises was Rs. 1,300/-. The Rent Controller dismissed the tenant's applications by his order of 6th April, 1985 on the ground that the rent of the premises being in excess of Rs. 1,000/-, he had no jurisdiction to entertain and decide the applications after 26/10/1983. Against the said decision, the tenant preferred three appeals in the three applications, to the Appellate Court. The appeals were dismissed upholding the decision of the Rent Controller. Against the decision in appeal, the tenant preferred three revision petitions, viz. C.R.P. Nos. 624, 831 and 1043/91 in the High Court and the High Court by the impugned decision allowed the said petitions holding that the Rent Controller had jurisdiction to entertain and decide the applications since the notification in question did not apply to the pending proceedings. While the tenant's appeals were pending before the Appellate Judge, he had preferred a writ petition being W.P. No. 8081/86 in the High Court challenging the validity of Clause (b) of the said notification which states that the buildings fetching monthly rent exceeding Rs. 1,000/- stood exempted from the provisions of the Act. The learned Single Judge of the High Court dismissed the writ petition upholding the validity of the said provisions. The tenant preferred a writ appeal which also met the same fate. Against the decision in the writ appeal, the tenant preferred SLP in Supreme Court which was dismissed summarily at the admission stage without a speaking order. The learned counsel appearing for the appellant/landlord contended that on the coming into operation of the said notification from the 26th October, 1983, the protection given to the tenant stood withdrawn and, therefore, whatever rights he had under the provisions of the Act, stood extinguished on and from the said date. As against this, the learned counsel on behalf of the tenant argued that the tenant had acquired vested rights under the Act and they were alive when the applications were made and he could not be divested of the same by the notification which came into operation from the subsequent date, as held by the Division Bench of the High Court. The question for consideration before the Apex Court in the case supra was whether on coming in operation of the notification on 26/10/1983, issued by the State Government in exercise of the powers conferred upon it u/s 26 of the Act, the said three applications made by the tenant for relief under the Act survived or not? The Hon'ble Apex Court held that the argument that the tenants have acquired vested right prior to its amendment is without any substance. It has been held that prior to the amendment of Section 1(3) by the Amending Act of 1978, the provision, as it originally stood cannot be said to have conferred any vested right on the tenants. The provision, as it originally stood prior to its

amendment, might not have been constitutionally valid as the exemption, sought to be granted was for an indefinite period. The Apex Court observed that the above does not imply that any vested right in any tenant was thereby created. It has been held that the right claimed is the right to be governed by the Act prior to its amendment and if the legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right? It has been held that the question of acquiring any vested rights really does not arise. The Hon"ble Apex Court in the case *supra* has referred to the following observations made in the case of *D.C. Bhatia and Others Vs. Union of India (UOI) and Another*, :-

52. We are unable to uphold this contention for a number of reasons. Prior to the enactment of the Rent Control Act by the various State Legislatures, the legal relationship between the landlord and tenant was governed by the provisions of the Transfer of Property Act. Delhi Rent Control Act provided protection to the tenant from drastic enhancement of rent by the landlord as well as eviction, except on certain specific grounds. The legislature by the Amendment Act No. 57 of 1988 has partially repealed the Delhi Rent Control Act. This is a case of express repeal. By Amending Act the legislature has withdrawn the protection hitherto enjoyed by the tenants who were paying Rs. 3,500 or above as monthly rent. If the tenants were sought to be evicted prior to the amendment of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment. The tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection. It was observed by Tindal, C.J. in the case of *Kay v. Goodwin*, (1830) 6 Bing 576: 130 ER 1403 at 1405.

The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and, it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law.

53. The provisions of a repealed statute cannot be relied upon after it has been repealed. But, what has been acquired under the Repealed Act cannot be disturbed. But, if any new or further step is needed to be taken under the Act, that cannot be taken even after the Act is repealed.

54. In the case of *Kewal Singh v. Lajwanti*, vires of Section 25-B of the Delhi Rent Control Act was challenged. Section 25-B was inserted to provide the landlord with a speedy remedy of eviction in case of bona fide necessity of the landlord. A contention was raised on behalf of the tenants that the provisions of Section 25-B violated Article 14 of the Constitution. Fazal Ali, J., speaking on behalf of the Court, repelled this argument by observing (SCC p. 303, para 21)

Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest

that if the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law.

55. In the instant case the legislature has decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. The tenants had not acquired any vested right under the Delhi Rent Control Act, but had a right to take advantage of the provisions of the repealed Act so long as that law remained in force.

56. In the case of *Mohinder Kumar v. State of Haryana*, the validity of the Amending Act of 1978 by which Haryana Urban (Control of Rent and Eviction) Act, 1973, was amended was challenged. The Amending Act by which a category of newly constructed buildings were exempted from the provisions of the Act for a period of ten years, was challenged, inter alia, on the ground that the provisions operated retrospectively and sought to take away the vested rights of the tenants under the Act. This contention was repelled by this Court in the following words: (SCC p.231, para 17)"

The argument that the tenants have acquired a vested right under the Act prior to its amendment is without any substance. Prior to the amendment of section 1(3) by the amending Act of 1978, the provision as it originally stood cannot be said to have conferred any vested right on the tenants. The provision, as it originally stood prior to its amendment, might not have been constitutionally valid as the exemption, sought to be granted was for an indefinite period. That does not necessarily imply that any vested right in any tenant was thereby created. The right claimed is the right to be governed by the Act prior to its amendment. If the legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right? Obviously, they could not have; the question of acquiring any vested rights really does not arise.

28. It has been held in the case of "*Parripati Chandrasekharrao and Sons*" (*supra*) that there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. It has been further held that these rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continues in operation. Hence while it can legitimately be said that the landlord's normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant therefore the protection does not create any vested right which can operate beyond the period of protection or during the

period the protection is not in existence. It has been held that when the protection does not exist, the normal relations of the landlord and tenant come into operation and hence, the theory of the vested right which may validly be pleaded to support the landlord's case is not available to him.

29. In view of the above, it is well settled that mere protection/benefit given by the provision does give rise to any vested right. Therefore, merely because prior to 5/5/1994, the Rent Control Act did not apply to any newly constructed building for a period of four years from the date of completion and because the building consisting of suit premises had already completed the said period of four years, in or about 1989, it cannot be said that on account of the said protection of non-application of the Rent Control Act, a vested right, as protected tenant, accrued in favour of the plaintiff. If any proceedings for eviction were filed against the defendant prior to 5/5/1994, the defendant could have taken benefit of the said protection. However, as from 5/5/1994, the said provision of Clause (c) of Section 3(1) of the Rent Control Act changed and as per the amended provision, nothing in the Rent Control Act applies to any newly constructed building for a period of 15 years from the date of its completion. Admittedly, the building consisting of the suit premises was completed in December 1984. The suit was filed on 19/3/1996. The period of 15 years from the date of completion of the building had not expired as on the date of filing of the suit. Therefore, the Rent Control Act cannot apply to the suit premises.

30. Insofar as the provision of clause (cc) of Section 3(1) of the Rent Control Act is concerned, it came into force as from 3/10/1997 and only after 3/10/1997 that the said clause provided that nothing in the Rent Control Act would apply to any building let out or leased for the first time on or after 20/4/1994, whose monthly rent exceeds Rs. 5000/-, if such building is used for commercial purpose. As already stated above, the suit was filed on 19/3/1996 and as on that date, said clause (cc) of Section 3(1) provided that nothing in the Rent Control Act would apply to any building whose monthly rent exceeds Rs. 5000/-, if such building is used for commercial purpose. As on the date of filing of the suit, admittedly, the suit premises were used by the defendant for commercial purpose and the monthly rent exceeded Rs. 5,000/-. As on the date of filing of the suit, the date "20/4/1994" was not existing in the said clause (cc) of Section 3(1) of the Rent Control Act. The statement of Objects and Reasons, as mentioned in the Goa Buildings (Lease, Rent and eviction) Control (Amendment) Bill, 1997, for making the said amendment of adding the date "20/4/1994" is as under:

Certain difficulties are encountered in implementation of the provisions of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control, Act 1968, with reference to leases already entered into before the enforcement of the Amendment Act 8 of 1994. As normally the amendments are prospective in nature and applicable to tenancies that are created after the amendment Act came into force. However, in view of certain findings of the Apex Court in the matter, it is found expedient to strike a balance between the interest of the

landlord and also the tenant and to specify a particular date with reference to tenants who enjoy the statutory protection in the matter.

Thus, the above statement of Objects and Reasons show that the said amendment seeks to strike a balance between the interest of the landlord and also the tenant. The object cannot be to take away the benefit which was in favour of the landlord (plaintiff), as on the date of filing of the suit.

31. Therefore, the learned trial Judge has rightly relied upon the said provisions of clauses (c) and (cc) of section 3(1) of the Rent Control Act, as they were existing on the date of filing of the suit and has correctly held that on account of the said provisions, the Act does not apply to the defendant. In the circumstances above, the defendant cannot at all be considered as a protected tenant as the Rent Control Act does not apply to it.

32. The next question for determination is whether the tenancy of the defendant was on month to month basis and was validly terminated w.e.f. 31/10/1995.

33. Admittedly, there is no written registered lease executed between the plaintiff and the defendant in respect of the suit premises. In fact DW. 1, himself in his affidavit-in-evidence has stated that no lease deed was executed despite several requests by the defendant to the plaintiff. Section 105 of the T.P. Act defines lease as follows:

Lease defined.-

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

"Lessor", "lessee", "premium" and "rent" defined.- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Section 106 of the T.P. Act provides as under:

Duration of certain leases in absence of written contract or local usage-(1) In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Section 107 of the T.P. Act provides as under:

Leases how made.-

A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

34. In the case of "Anthony" (supra), the lease deed relied on by the plaintiff was intended to be operative for a period of five years, but it was unregistered instrument and the appellant was inducted into the possession of the building by the owner and was paying monthly rent or had agreed to pay rent in respect of the building. The Apex Court held that such lease deed could not create a lease on account of inhibiting provisions of Section 107 of the T.P. Act and Sections 17(1) and 49 of the Registration Act, 1908 and therefore, so far as the instrument of lease is concerned, there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Hon"ble Supreme Court has further held that non-registration of the document had caused only two consequences: one is that no lease exceeding one year was created and second is that the instrument became useless so far as creation of the lease is concerned. It has been held that nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remained unrebutted. In the present case, admittedly, there is not even an unregistered lease deed executed between the parties. In view of the above provisions of the T.P. Act, since admittedly there was no written registered or unregistered lease deed in respect of the suit premises, the tenancy in favour of the defendant was nothing

but month to month tenancy. By letter dated 22/1/1985, the defendant had informed the plaintiff that the Head Office of the defendant had approved the said proposal of lease of the suit premises for five plus five years with escalation in rent at the rate of 20%, with monthly rent of Rs. 12,015/-. Thus, the above was only a counter proposal made by the defendant, for which there was no acceptance from the plaintiff. Merely because by letter dated 12/7/1995 (Exhibit 26), the defendant had informed the plaintiff that the competent authority had sanctioned enhancement in rent payable with respect to the suit premises at the rate of 20% for another five years and had enclosed the cheque towards arrears of rent from February to June 1995 and because the plaintiff had encashed the said cheque, that did not mean that the lease transaction between the plaintiff and the defendant stood renewed for further five years w.e.f. February 1995. The said letter dated 12/7/1995, was again a one sided proposal made by the defendant but, not accepted by the plaintiff. The finding of the trial Court that the letter dated 22/1/1985 (Exhibit 24) shows that the transaction between the plaintiff and the defendant with respect to the suit premises was a lease for a period of five plus five years and therefore the claim of plaintiff that the lease was on month to month basis fails, is contrary to the above quoted provisions of T.P. Act and is not sustainable. Even otherwise, by said letter dated 12/7/1995, which is at Exhibit 26, according to the defendant, the competent authority had sanctioned enhancement of rent at the rate of 20% for another five years only and not for ten years. The said period of five years had come to an end in the year 2000.

35. Admittedly, the plaintiff had given a notice dated 19/9/1995 (Exhibit 27) to the defendant thereby terminating the lease w.e.f. From 31/10/1995 and directing the defendant to hand over vacant possession of the suit premises on 1/11/1995. It is not understood as to why the learned trial court has observed that there was no reason for the plaintiff to terminate the lease all of a sudden w.e.f. 31/10/1995. As was held by the learned trial court, the defendant was not a protected tenant under the Rent Control Act. This notice is in terms of Section 106 of the T.P. Act, since it terminates the lease w.e.f. the expiration of the month of tenancy i.e. as from 31/10/1985. No reasons were required to be given for terminating the lease,. In the case of "Bhagabandas Agarwalla", (supra), relied upon by the learned Senior Counsel appearing on behalf of the plaintiff, the Apex Court has held that it is now settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed *ut res magis valeat quam pereat*. The Supreme Court has observed that "The validity of a notice to quit", as pointed out by Lord Justice Lindley. L. J. in *Sidebothan V. Holland*, "ought not to turn on the splitting of a straw". It is further observed that it must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pedantism or over refined subtlety, but it must be construed in a common sense way. In the case *supra*, it has been held that u/s 106 of the T.P. Act, the notice to quit must expire with the end of the month of the tenancy, or in other words, it must terminate the

tenancy with effect from the expiration of the month of the tenancy. It has been held that if it terminates the tenancy with effect from the earlier date, it would be clearly invalid. In the present case, the tenancy has been terminated w.e.f. 31/10/1995.

36. In the circumstances above, the finding of the learned trial court that the tenancy was not validly terminated w.e.f. 31/10/1995 is erroneous. In our view, the tenancy has been validly terminated w.e.f. 31/10/1985 by the plaintiff by means of the said notice dated 19/9/1995 and the plaintiff is, therefore, entitled to vacant possession of the suit premises as also to mesne profits.

37. Insofar as the mense profits are concerned, no doubt the plaintiff has examined an Architect by name Subhashchandra Bhobe as PW. 2. However, as has been rightly held by the trial court, the testimony of PW. 2 is not sufficient for calculation of the amount of mense profits. Therefore, the question of determination of mesne profits has to be kept open to be decided by the trial court after holding due inquiry, as provided by Order 20, Rule 12 of C. P. C.

38. In view of the above, the finding of the learned trial court to the effect that the defendant is not a protected tenant and that the suit premises were not covered under the Rent Control Act is proper and cannot be faulted and we maintain the same. However, the finding of the learned trial court that the tenancy with the defendant was not validly terminated w.e.f. 31/10/1995 cannot be sustained. The same is not in accordance with the settled principles of law. Therefore, interference with the judgment and order is warranted.

39. The learned Counsel for the parties have relied upon many more authorities. We do not deem it necessary to refer to all of them since we have taken into consideration the principles laid down therein, for determining the questions involved in the present matter.

40. In the result, the appeal is partly allowed. The impugned judgment and order is quashed and set aside. The suit of the plaintiff is partly decreed.

(a) The defendant is directed to hand over vacant possession of the suit premises to the plaintiff within a period of 30 days from today.

(b) The learned trial Court shall hold an inquiry with respect to the mesne profits, which the plaintiff is entitled to receive from the defendant and pass a final decree in accordance with the result of such inquiry.

(c) Parties to appear before the learned trial court for the purpose of determination of mesne profits on 17/6/2013, at 10.00 a.m.

The appeal stands disposed of accordingly.