

(1961) 12 GUJ CK 0005
In the Gujarat High Court

Pinjare Karimbhai Dedubhai

APPELLANT

Vs

Shukla Hariprasad Manishankar

RESPONDENT

Date of Decision : 05-12-1961

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(1), 12(2), 12(3)(b), 21
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1962) 3 GLR 529

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.N. Bhagwati, J.—This application for revision arises out of a suit filed by the plaintiff against the defendant for recovering possession of a shop together with arrears of rent in the Court of the Civil Judge Junior Division Sidhpur. In order to appreciate the contentions which have been urged before me in this Revision Application it is necessary to set out briefly the facts giving rise to this litigation. The facts are few and for the most part undisputed and may be briefly stated as follows:

2. The plaintiff is the owner of a shop situate on the ground-floor of a building in Sidhpur. The defendant was at all material times a tenant of the plaintiff in respect of the shop. The contractual rent of the shop was Rs. 8/per month. The defendant paid the rent of the shop at The contractual rate of Rs. 8/per month up to 4th January 1954 and thereafter failed and neglected to pay any rent to the plaintiff. The plaintiff gave notice to the defendant on 4th February 1956 calling upon the defendant to pay up the arrears of rent and also terminated the tenancy of the defendant. The defendant however did not pay any amount to the plaintiff in respect of the arrears of rent even though a period of one month expired from the date of service of the notice on the defendant nor did the defendant make any application to the Court before the expiry of the period of one month for fixing the standard rent of the shop. The defendant also did not hand over possession of the shop to the plaintiff pursuant to the notice to quit.

The plaintiff therefore filed the present suit against the defendant on 5th May 1956 to recover possession of the shop as also arrears of rent and mesne profits. The plaintiff contended that the tenancy of the defendant having been terminated by a valid and proper notice to quit the defendant was liable to hand over possession of the shop to the plaintiff. The plaintiff also urged that since the defendant was in arrears of rent for a period of six month and more and the defendant had neglected to make payment thereof until the expiration of the period of one month after the service of the notice on the defendant the defendant was not entitled to the protection of the Bombay Rents Hotel and Lodging House Rates (Control) Act 1947 (hereinafter referred to as the Rent Act) and the plaintiff was therefore entitled to recover possession of the shop from the defendant. The defendant in his written statement raised various contentions the chief contention being that the standard rent of the shop was less than the contractual rent of Rs. 8/per month. It appears that before the suit was filed the defendant served a notice on the plaintiff u/s 21 of the Rent Act requiring the plaintiff to furnish to the defendant a statement giving full particulars of the amount of standard rent of the shop and of the permitted increases. The notice was served by the defendant on the plaintiff on the 18th February 1956 but the plaintiff did not give any reply to the notice and instead filed the present suit. After the suit was filed the defendant made an application to the Court on 21st December 1956 for fixing the standard rent of the shop and in the application the Court made an order specifying Rs. 6-8-0 per month as the amount of rent to be paid by the defendant pending the final decision of the application. This order specifying Rs. 6 per month as the amount of rent to be paid by the defendant to the plaintiff pending the final decision of the application was made on 19th January 1957. The defendant thereafter paid in Court on 5th February 1957 a sum of Rs. 234/representing the arrears of rent at the rate of Rs. 6-8-0 per month from 4th January 1954 to 5th February 1957. The defendant also paid a further sum of Rs. 19-50 nP. on 19th April 1957 This covered the rent of the shop up to 5th May 1957 at the rate of Rs. 6 per month. The suit was ultimately heard and disposed of on 30th April 1957. The trial Court came to the conclusion that the standard rent of the shop was Rs. 7-8-0 per month and passed a decree for arrears of rent against the defendant based on the standard rent being Rs. 7-8-0 per month. The trial Court also passed a decree for possession of the shop against the defendant.

3. The defendant being aggrieved by the decree passed against him by the trial Court preferred an appeal against the same in the Court of the District Judge Mehsana. Now what happened at the hearing of the appeal before the learned District Judge is rather important. The learner advocates appearing on behalf of the defendant stated at the commencement of the hearing of the appeal that to abandoned all his contentions save and except the contention that the defendant had paid the standard rent of the shop on or before the first date of hearing of the suit and that to decree for possession could therefore be passed against the defendant. The learned advocate on behalf of the defendant accordingly urged

only one contention before the learned District Judge namely that the defendant had paid the standard Rent of the shop on or before the first date of hearing of the suit and was therefore not liable to be excited from the shop. This contention was obviously based on the provisions of Section 12 of the Rent Act. This contention was negated by the learned district Judge and since this was the only contention urged before the learned District Judge the learned District Judge dismissed the appeal with costs. The defendant thereupon approached this Court by filing the present Revision Application.

4. Mr. B.R. Shah learned advocate appearing on behalf of the defendant urged various contentions before me in support of the Revision Application. These contentions have given rise to very interesting questions relating to the interpretation of Section 115 of the CPC and Section 12 of the Rent Act and I must state that but for the able assistance rendered by the advocates appearing before me - my task would have been rendered considerably more difficult. I shall now proceed to examine these contentions urged Mr. B.R. Shah in the order in which they were pressed before me.

5. The first contention of Mr. B.R. Shah was that the standard rent of the shop had been erroneously fixed by the trial Court at Rs. 6-8-0 per month and that the trial Court had acted illegally in so fixing it. Mr. S.B. Vakil learned advocate on behalf of the plaintiff however raised an objection that it was not open to me in revision to entertain this plea urged on behalf of the defendant since this plea had not been raised on behalf of the defendant before the learned District Judge. The argument of Mr. S.B. Vakil was that sitting as a Court of Revision all that I was entitled to consider was whether the decree sought to be revised suffered from any of the defects specified in Section 115 of the Code of Civil Procedure. Mr. S.B. Vakil contended that the decree sought to be revised in the present case was the decree passed by the learned District Judge and unless it was shown that in passing that decree the learned District Judge had exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested or had acted in the exercise of his jurisdiction illegally or with material irregularity I could not be asked to exercise my revisional powers. Since the contention as regards the standard rent of the shop was abandoned on behalf of the defendant before the learned District Judge there was admittedly no question of exercise of any jurisdiction not vested in the learned District Judge nor there any question of failure to exercise a jurisdiction so vested in him. The only ground on which Mr. B.R. Shah attacked the standard rent was that there was illegality in the fixation of the standard rent. Mr. S.B. Vakil's answer was that the contention as regards standard rent having been expressly abandoned before the learned District Judge how could it be said that the learned District Judge had acted illegally in not interfering with the standard rent fixed by the trial Court? Mr. B.R. Shah rejoined by contending that even though the contention as regards standard rent was abandoned on behalf of the defendant before the learned District Judge it was open to me sitting as a Court of Revision to consider whether on the facts as found by the trial Court the standard rent which was fixed by the trial Court and

which was confirmed by the learned District Judge as a result of the dismissal of the appeal was fixed in breach of the provisions of law and that if I came to the conclusion that the standard rent was fixed illegally I would be justified in exercising my revisional powers. These were broadly the rival arguments urged in regard to the objection raised by Mr. S.B. Vakil and since the same objection was also raised by Mr. S.B. Vakil in regard to some other contentions urged by Mr. B.R. Shah I think it right and proper that I should consider the validity of this objection in some detail.

6. The revisional jurisdiction of the High Court is to be found in Section 115 of the Code of Civil Procedure. There are numerous decisions of various High Courts in this country dealing with the scope and ambit of the revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure. But it is not necessary for me to refer to any of them for there is a decision of the Supreme Court reported in *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, which lays down finally so far as Courts in India are concerned the true position as regards the exercise of revisional jurisdiction. The following observations of the Supreme Court in that case define the limits of the revisional jurisdiction of the High Court in clear and precise terms:

Section 115 Civil P.C. empowers the High Court in cases where no appeal lies to satisfy itself on three matters: (a) that the order made by the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise its jurisdiction; (c) that in exercising the jurisdiction the Court has not acted illegally that is. in breach of some provision of law or with material irregularity that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. Per Sir John Beaumont in AIR 1949 156 (Privy Council) Therefore if an erroneous decision of a subordinate Court resulted in its exercising jurisdiction not vested in it by law or failing to exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction the case for the exercise of powers of revision by the High Court is made out.

xxx In *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, both these Judgments of the Privy Council as also the previous judgments in *Amir Hassan Khan v. Sheo Bakshi Singh* 11 Ind. App. 237 and *Balakrishna Udayar v. Vasudeva Aiyer* 44 Ind. App. 261 : AIR 1917 P.C 71 were reviewed and It was held that sec 115 Civil P.C. applies to matters of jurisdiction alone the irregular exercise or non-exercise of it or the illegal assumption of it. Thus if a subordinate Court had jurisdiction to make the order it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected the ultimate decision then the High Court has no power to interfere. But if on the other hand it decides a jurisdictional fact erroneously and thereby assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested then the power of interference u/s 115 Civil P.C. becomes operative.

7. I shall have occasion to refer to this decision again in connection with another

contention urged by Mr. B.R. Shah; but for the present it is enough to state that u/s 115 of the CPC the High Court can examine the decree or order sought to be revised only as regards three matters namely (a) that the decree or order made by the subordinate Court is within its jurisdiction; (b) that the subordinate Court has in making the decree or order not failed to exercise jurisdiction vested in it; and (c) that in exercising the jurisdiction the subordinate Court has not acted illegally that is in breach of some provision of law or with material irregularity that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the decree or order made by the subordinate Court cannot be attacked in respect of any of these three matters the High Court would have no power to revise the decree or order and the application to the High Court to exercise its revisional powers would fail. It is this test which I must apply in deciding whether I can interfere with the decree passed by the learned District Judge in so far as standard rent is concerned.

8. It has not been urged before me by Mr. B.R. Shah that so far as the standard rent is concerned the decree passed by the learned District Judge was without jurisdiction or that the learned District Judge failed to exercise jurisdiction vested in him. It is obvious that the learned District Judge hearing the appeal from the decision of the trial Court had jurisdiction to decide the standard rent of the shop. There is in the present case no question of non-exercise of jurisdiction or illegal assumption of it. The only ground on which Mr. B.R. Shah attacked the standard rent fixed by the trial Court and confirmed by the learned District Judge was that in fixing the standard rent there was an illegality that is a breach of the provisions of the Rent Act and that I should therefore interfere with the standard rent so fixed. The argument of Mr. B.R. Shah was that the trial Court had acted illegally in fixing the standard rent in the manner it had done and that since the learned District Judge had by dismissing the appeal confirmed the standard rent fixed by the trial Court the same illegality vitiated the confirmation of the standard rent by the learned District Judge and that the condition was therefore satisfied for invoking the revisional jurisdiction of the High Court. The argument though at first blush attractive is on closer scrutiny devoid of merit. As I have already pointed out above the question which I must consider in deciding whether I would be justified in exercising my revisional jurisdiction in the matter of standard rent is whether the learned District Judge acted illegally that is in breach of some provision of law in confirming the standard rent fixed by the trial Court. It is the decree passed by the learned District Judge which is sought to be revised in this Revision Application and it is in relation to this decree that I must see whether there is any illegality that is any breach of some provision of law. Examined from this point of view the question does not present any difficulty. The standard rent was fixed by the trial Court and on the basis of the standard rent so fixed a decree for arrears of rent was passed by the trial Court against the defendant. The decree also ordered possession of the shop to be handed over by the defendant to the plaintiff. The defendant appealed against the decree

and in the appeal it was open to the defendant to accept or to challenge the standard rent fixed by the trial Court. If the defendant challenged the standard rent fixed by the trial Court the learned District Judge would have had to consider whether the challenge was justified and if the learned District Judge came to the conclusion that the standard rent fixed by the trial Court was correct and in the process of coming to that conclusion the learned District Judge acted illegally that is in breach of some provision of law it would have been open to the defendant to contend before me; that in confirming the standard rent fixed by the trial Court the learned District Judge had acted illegally that is in breach of some provision of law so as to merit interference in revisional. But unfortunately for the defendant the contention regarding standard rent was expressly abandoned by his advocate with the result that the learned District Judge was not called upon to consider whether the standard rent fixed by the trial Court was correct and proper. The learned District Judge by dismissing the appeal confirmed the standard rent fixed of the trial Court because the defendant did not challenge it before the learned District Judge and did not ask the learned District Judge to consider the correctness or otherwise of the standard rent. If the defendant did not challenge the standard rent and expressly abandoned his contention as regards standard rent there could possibly be no obligation on the learned District Judge to consider whether the standard rent was correct and proper. As a matter of fact the defendant having withdrawn his challenge to the standard rent the learned District Judge could not possibly consider the propriety or correctness of the standard rent. The learned District Judge had no option but to dismiss the appeal once he came to the conclusion that the only contention urged by the defendant was without substance. I fail to see how it can possibly be contended that the learned District Judge acted illegally in confirming the standard rent fixed by the trial Court when the defendant did not challenge the correctness or propriety of the standard rent before him and actually invited him to proceed on the basis that the standard rent fixed by the trial Court was correct and proper. I do not know of any provision of law which required the learned District Judge to consider the correctness or propriety of the standard rent fixed by the trial Court even though the standard rent so fixed was not challenged by the defendant before the learned District Judge and was accepted by the defendant. The contention of Mr. B.R. Shah pushed to its logical conclusion must come to this namely that even though a defendant does not challenge a finding recorded against him by the trial Court the appellate Court should on its own consider whether the finding is correct or not and set aside the finding if it is of opinion that the finding is not correct. No such duty is as far as I can see laid on the appellate Court. In my opinion the learned District Judge cannot be said to have acted illegally in not deciding a point which was not raised before him and in proceeding on a basis on which he was invited to proceed. There was no illegality committed by the learned District Judge in not interfering with the standard rent fixed by the trial Court and confirming the same by dismissing the appeal.

9. I find that the same view has been taken by a Division Bench of the Bombay High Court in a decision reported in *Haridas v. Ratansey* 23 BomLR 802. In that case a point of law regarding the plaintiffs title to maintain the suit was sought to be taken for the first time in the Court of Revision and dealing with that point Macleod C.J. observed as follows:

A new question has been raised before us whether when the plaintiffs gave notice to the defendant the plaintiffs title had been determined. The defendant relies on the explanation to Section 48 of the Presidency Small Causes Court Act. He never raised that point in the Small Causes Court and never attempted to prove that plaintiffs title had been determined prior to the date of the application to the Small Causes Court for possession. No doubt it appears that the plaintiffs had received notice from his landlord but we are not aware of what nature the notice was and it is not the function of this Court in revision to entertain a point of law which has not been taken in the Court below. None of the provisions of Section 115 of the CPC apply to such a case. If a party does not choose to take a point of law in the Court below then it cannot be said that the lower Court has acted illegally or with material irregularity in deciding the case without taking into consideration a point of law that was never raised before it. If we entertain this application on that ground we should be exceeding the powers that are granted to the High Court to exercise revisional jurisdiction over the decision of the lower Courts. The application must be refused.

10. Mr. B.R. Shah attempted to distinguish this decision of the High Court of Bombay. Mr. B.R. Shah contended that in the case before the High Court of Bombay a point was sought to be raised which had not been taken in the Court below and which involved the investigation of fresh facts and according to him that was the reason why the learned Judges who decided that case held that the defendant could not be allowed to urge that point for the first time before the Court of revision. I do not think Mr. B.R. Shah is right in this contention. The learned Judges who decided that case no doubt observed as is clear from the passage quoted above that the defendant never attempted to prove that the plaintiffs title had been determined prior to the date of the application to the Small Causes Court for possession and that there was nothing on record to show what was the nature of the notice received by the plaintiffs from their landlord but they did not rest their judgment on this ground. They proceeded to consider the applicability of the provisions of Section 115 of the CPC and held that if a party does not choose to take a point of law in the Court below then it cannot be said that the lower Court has acted illegally or with material irregularity in deciding the case without taking into consideration the point of law that was never raised before it. This decision covers the entire ground of the argument urged before me and the distinction sought to be made by Mr. B.R. Shah is clearly unjustified.

11. Before I part with this question I must mention another argument addressed to me by Mr. B.R. Shah on behalf of the defendant. Mr. B.R. Shah contended that

the decision fixing the standard rent operated as a decision in rem and that even if the defendant did not challenge the correctness or propriety of the standard rent fixed by the trial Court it was open to the defendant to contend before me sitting as a Court of revision that the standard rent had been fixed by the trial Court in breach of the provisions of the Rent Act. This contention of Mr. B.R. Shah suffers from two infirmities. In the first place I do not understand how this contention can possibly help Mr. B.R. Shah in getting over the provisions of Section 115 of the CPC. The revisional jurisdiction which is invoked by the defendant is of a limited nature as already pointed out by me above and whatever be the character of the decision as regards standard rent I do not see how the defendant can bring his case within the provisions of Section 115 of the CPC unless he shows that the learned District Judge acted illegally that is in breach of some provision of law in dismissing the appeal and thereby confirming the standard rent fixed by the trial Court. The learned District Judge was under no obligation to set aside or modify the standard rent fixed by the trial Court when the standard rent so fixed was not challenged by the defendant. The learned District Judge could as a matter of fact follow no other course than that adopted by him namely dismissing the appeal when he came to the conclusion that the only contention urged by the defendant was not sound. This conclusion would follow irrespective of the nature of the decision as regards standard rent. It would not matter at all whether the decision as regards standard rent is a decision in rem or a decision in personam for in either case the limits of exercise of the revisional jurisdiction would be the same and I would not be entitled to interfere in revision even if the trial Court fixed the standard rent on any erroneous basis. But apart from this answer to the contention of Mr. B.R. Shah there was another equally effective answer made by Mr. S.B. Vakil on behalf of the plaintiff. Mr. S.B. Vakil pointed out that it was open to the defendant to accept the standard rent fixed by the trial Court and not to challenge it in the appellate Court and that if the defendant did so the defendant could not thereafter complain in the Court of Revision. Mr. S.B. Vakil contended that there was nothing so sacrosanct about standard rent that it could not be fixed by the Court as a result of a compromise between the parties and if the standard rent could be fixed by the Court as a result of a settlement arrived at between the parties there was nothing wrong or illegal if the tenant accepted the standard rent fixed by the trial Court and did not appeal against the decision fixing the standard rent or having appealed abandoned his contention as regards the standard rent so fixed. Mr. S. B. Vakil relied for this proposition on a decision of the Bombay High Court reported in *Popatlal Ratansey v. Kalidas* 59 BomLR 860. What happened in that case was that in a previous proceeding for fixation of standard rent, a compromise was arrived at between the landlord and the tenant and on the basis of the compromise the Court fixed the standard rent at Rs. 91/ per month. Thereafter the tenant tried to re-agitate the question of standard rent in the suit filed by the landlord to recover possession of the premises from the tenant. The landlord urged that the issue as regards standard rent was barred by *res judicata*. Dealing with that contention the High Court observed as follows:

It is true that under the Act if a dispute arises between a landlord and a tenant regarding standard rent it is the Court or the Controller under the Bombay Rent Restriction Act 1939 or the Bombay Rents Hotel and Lodging House Rates Control Act 1947 who is to determine that dispute. But there is nothing in the Act which prevents a tenant from abandoning the dispute at any stage of a proceeding and agreeing that the rent proposed by the landlord should be decided to be the proper standard rent. If the tenant says at any stage of the proceeding that the landlords figure might be accepted as the fair figure of the standard rent there is no prohibition imposed by the Act forbidding the Court from passing a decree upon that footing. It is always open under the law to the parties to a dispute to settle the dispute by an agreement and if they do so settle it and if it appears to the Court that the settlement is fair and just and not against law nor against the provisions of a statute the Court accepts the settlement and passes a decree upon it.

12. It is therefore clear from the aforesaid passage that it is open to the tenant to abandon the dispute as regards standard rent at any stage of the proceeding. The tenant may settle the dispute as regards standard rent by agreeing to a figure mutually acceptable to the landlord and the tenant or by accepting the standard rent fixed by the trial Court and not appealing against it or abandoning the dispute as regards standard rent in the appeal. This contention of Mr. B.R. Shah must therefore fail.

13. There was one other contention urged by Mr. B.R. Shah and it was put in the following form. Mr. B.R. Shah contended that it is no doubt true that the learned advocate appearing on behalf of the defendant abandoned all the contentions of the defendant excepting the contention based on the provisions of Section 12(3) (b) of the Rent Act and the contentions abandoned included the contention as regards standard rent fixed by the trial Court; but the abandonment of the contention as regards standard rent amounted merely to a concession by the learned advocate on a point of law and such concession was not binding on the defendant. I agree with Mr. B.R. Shah that if an advocate of a party which has appealed accepts a finding recorded by the trial Court against the party and the finding is a finding on a point of law it can only amount to an admission on a point of law which would not be binding on the party or the Court and that it would be open to the party to ask the Court before which the admission is made or any higher appellate Court to decide the rights of the parties according to the true position in law irrespective of the admission made by the advocate. No authority is needed in support of this proposition but if any authority were needed it is to be found in the decision of the Judicial Committee of the Privy Council reported in AIR 1940 90 (Privy Council) where Lord Atkin delivering the judgment of the Judicial Committee observed as follows:

...But if counsel did accept such a finding it could only amount to an admission of a point of law which cannot be binding upon a Court: and their Lordships do not consider themselves precluded from deciding the rights of the parties on a true

view of the law.

It must however be remembered that this principle can apply only when there is an admission on a point of law. If the finding which is accepted by the advocate on behalf of the party is a finding on a point of law such acceptance will not bind the party and notwithstanding such acceptance the party would be entitled to attack the finding either in the Court before which the acceptance is made or in the higher appellate Court. But if the finding is a finding on a question of fact or a mixed question of law and fact the acceptance by the advocate of the finding would not amount to an admission on a point of law and the principle mentioned above would not apply. The finding in the present cases regards standard rent cannot possibly be said to be a finding on a question of law and Mr. B.R. Shah cannot with any justification ask me to apply to this finding the principle which applies only to admissions on a point of law. But apart from this there is another more fundamental objection to the contention urged by Mr. B.R. Shah. Here there is no question of any admission of the advocate being binding on the defendant. The argument of Mr. S.B. Vakil which has found favour with me is not that the defendants advocate having abandoned the contention regarding standard rent and accepted the finding of the trial Court on the question of standard rent such acceptance is binding on the defendant and that the defendant should therefore be precluded from urging the question of standard rent before me. The objection of Mr. S.B. Vakil is based upon an entirely different ground. The objection is raised not because the defendants advocate having made an admission the defendant cannot be allowed to go back upon it but because even if the defendant were held not bound by the admission made by the advocate the defendant cannot question the standard rent in this revision application since the case does not come within the four corners of Section 115 of the Code of Civil Procedure. The Court cannot entertain the plea as regards standard rent in this revision application not by reason of any binding character attaching to the admission made by the advocate on behalf of the defendant but by reason of the limited character of the revisional jurisdiction enjoyed by the Court. The decision of the Privy Council mentioned above cannot therefore help Mr. B.R. Shah and the present contention of Mr. B.R. Shah must be negated. I must in the circumstances hold that the defendant cannot urge in this Revision Application that the standard rent was fixed by the trial Court illegally or contrary to the provisions of the Rent Act.

14. The next contention urged by Mr. B.R. Shah was that on the facts the defendant was ready and willing to pay the standard rent and that the plaintiff was therefore by reason of the provisions of Section 12(1) of the Rent Act precluded from recovering possession of the shop from the defendant. This contention also cannot be entertained by me in this Revision Application. The same objection which was urged by Mr. S.B. Vakil in relation to the contention as regards standard rent applies with equal force to this contention and for the reasons which I have given in the preceding paragraphs of this judgment I am of the opinion that this contention cannot form a valid ground of attack against the

decree passed by the learned District Judge. It was open to the defendant to urge before the learned District Judge that the defendant was on the evidence on record ready and willing to pay the standard rent and that the plaintiff was therefore not entitled to recover possession of the shop from the defendant. But the defendant did not choose to attack the decree passed by the trial Court on that ground. The defendant expressly abandoned the contention as regards readiness and willingness to pay the standard rent and I do not see what under these circumstances the learned District Judge could do except to confirm the decree passed by the trial Court. It cannot be urged that the learned District Judge was bound by any provision of law to consider on his own whether the defendant was ready and willing to pay the standard rent even though the defendant did not contend before him that the defendant was ready and willing to pay the standard rent and to set aside the decree passed by the trial Court on any such ground. Apart from this it must be remembered that the question whether the defendant was ready and willing to pay the standard rent was a question of fact and the defendant having expressly abandoned the contention as regards his readiness and willingness to pay the standard rent I do not see how the defendant can be permitted to raise the question before me in this Revision Application. I am therefore of the view that sitting as a Court of Revision I cannot permit the defendant to urge before me the plea as regards his readiness and willingness to pay The standard rent so as to bar the plaintiffs right to recover possession of the shop from the defendant.

15. The next contention of Mr. B.R. Shah turned on the provisions of Sub-section (3)(b) of Section 12 of the Rent Act. In order to appreciate this contention it would be necessary to refer to certain provisions of the Rent Act. The material provisions of the Rent Act which bear on this contention are Sections 5(10) 11 and 12 and they may for the sake of convenience be set out as follows:

5 (10) standard rent in relation to any premises means

(a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act 1939 (Bom. XVI of 1939) or the Bombay Rents Hotel and Lodging House Rates (Control) Act 1944 Bom. VII of 1944 such standard rent; or

(b) where the standard rent is not so fixed-subject to the provisions of Section 11

(i) the rent at which the premises were let on the first day of September 1940 or

(ii) where they were not let on the first day of September 1940 the rent at which they were last let before that day or

(iii) where they were first let after the first day of September 1940 the rent at which they were first let or

(iv) in any of the cases specified in Section 11 the rent fixed by the Court;

x x x x x x x x x x 11 (1) In any of the following cases the Court may upon an

application made to it for that purpose or in any suit or proceeding fix the standard rent at such amount as having regard to the provisions of this Act and the circumstances of the case the Court deems just

(a) where any premises are first let after the first day of September 1940 and the rent at which they are so let is in opinion of the Court excessive; or

(b) where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in Sub-Clause (i) to (iii) of Clause (b) of Sub-section (10) of Section 5; or

(c) where by reason of the premises having been let at one time as a whole or in parts and at another time in parts or as a whole or for any other reason any difficulty arises in giving effect to this Part; or

(d) where any premises have been or are let rent-free or at a nominal rent or for some consideration in addition to rent; or

(e) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

(2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increases the Court may determine such amount.

(3) If an application for fixing the standard rent or for determining the permitted increases is made by a tenant who has received a notice from his landlord under Sub-section (2) of Section 12 the Court shall forthwith make an order specifying the amount of rent or permitted increases to be paid by the tenant pending the final decision of the application and a copy of such order shall be served upon the landlord.

12 (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases if any and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act 1882

(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2) the Court may pass a decree for eviction in any such suit for recovery of possession (b) In any other case no decree for eviction shall be passed in any sub suit if on the first day of hearing of the suit or on or

before such other date as the Court may fix the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court

(4) Pending the disposal of any such suit the Court may out of any amount paid or tendered by the tenant pay to the land-lord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.

Explanation: In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if before the expiry of the period of one month after notice referred to in Sub-section (2) he makes an application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the Order made by the Court.

Sub-section (10) of Section 5 defines standard rent to mean inter alia the rent fixed by the Court in any of the cases specified in Section 11. Section 11 provides for the fixation of standard rent by the Court in various cases. In these cases the Court may fix the standard rent either on an application made to it for that purpose or in any suit or proceeding. Sub-section (3) of Section 11 provides that if an application for fixing the standard rent is made by a tenant who has received notice from his landlord under Sub-section (2) of Section 12 the Court shall forthwith make an order specifying the amount of rent to be paid by the tenant pending the final decision of the application. This provision has obviously reference to the Explanation to Section 12 as will presently appear when I turn to the provisions of Section 12. Before I proceed to examine the language of Section 12 I must notice a distinction made in Sub-section (3) of Section 11 as regards the terminology used in connection with interim rent and standard rent. The standard rent is fixed by the Court while the interim rent is specified in the order made under Sub-section (3) of Section 11. The interim rent is specified in the order as the amount of rent to be paid by the tenant pending the final decision of the application for fixing the standard rent. The standard rent fixed by the Court as a result of the final disposal of the application may be more or less than the interim rent specified in the order made under Sub-section (3) of Section 11. This would become rather material when I consider the language of Section 12. Section 12 has four sub-sections and an Explanation. Sub-section (3) is divided into two Clauses (a) and (b). Section 12 appears to have been enacted for protecting the tenant against dispossession by the landlord. Under the ordinary law of landlord and tenant the landlord is entitled to evict the tenant as soon as the contractual tenancy comes to an end. The tenant is not entitled to continue in possession after the determination of the contractual tenancy. Section 12 protects the possession of the tenant if certain conditions are fulfilled and imposes certain restrictions on the right of the landlord to recover possession of the premises from the tenant. Sub-section (1) of Section 12

provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases if any and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Rent Act. A general restriction is therefore placed on the right of the landlord under the ordinary law of landlord and tenant to recover possession of the premises from the tenant. If the tenant satisfies the Court that he is paying or is ready and willing to pay the amount of the standard rent and the permitted increases and is observing and performing the other conditions of the tenancy then notwithstanding the determination of the contractual tenancy the landlord cannot recover possession of the premises from the tenant. If the tenant does not fulfill the conditions specified in Sub-section (1) of Section 12 the tenant would not be entitled to the benefit of the protection afforded by that sub-section and but for the other provisions of the Rent Act the landlord if otherwise entitled to recover possession of the premises from the tenant under the ordinary law of landlord and tenant would be able to enforce that right against the tenant. Sub-section (2) of Section 12 makes a further inroad on the right of the landlord to recover possession of the premises from the tenant. That subsection provides that no suit for recovery of possession shall be instituted by the landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act. It is therefore clear that before the landlord can enforce his right under the ordinary law of landlord and tenant to recover possession of the premises from the tenant the landlord must give notice in writing of the demand of the standard rent or permitted increases and wait for a period of one month before filing the suit for recovery of possession. A yet another limitation on the right of the landlord to recover possession of the premises from the tenant is to be found in Sub-section (3)(b) of Section 12. But in order to understand the provision enacted in Sub-section (3)(b) of Section 12 it is necessary to refer to Sub-section (3)(a) of that section. Sub-section (3)(a) of Section 12 provides that where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2) the Court may pass a decree for eviction against the tenant. The word may in this sub-section has received judicial interpretation and has been held by a decision of the Bombay High Court reported in *Kurban Hussein v. Ratikant* 59 BomLR 158 to mean shall. If the tenant is in arrears of standard rent or permitted increases for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2) of Section 12 the Court would be bound to pass a decree for eviction in favour of the landlord against the tenant. 23rd this provision would apply only when there

is no dispute regarding the amount of standard rent or permitted increases. If however there is a dispute regarding the amount of standard rent or permitted increases the provision contained in Sub-section (3)(b) of Section 12 would apply. In such case even though the tenant had not paid and was not ready and willing to pay the standard rent and permitted increases and was therefore not entitled to the benefit of the protection conferred by Sub-section (1) of Section 12 he would still be entitled to resist eviction if on the first day of hearing of the suit or on or before such other date as the Court may fix he pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court. The conditions set out in Sub-section (1) of Section 12 are conditions which should be fulfilled by the tenant at the date of the filing of the suit by the landlord. What the Court has to see under Sub-section (1) of Section 12 is whether at the date of the suit the tenant has complied with the conditions laid down in that sub-section. That this is the legal position is amply borne out by several judgments of the High Court of Bombay including the judgment delivered by Chagla C.J. as he then was in Civil Revision Application No. 785 of 1952 on 13th February 1953 and the judgment of Gajendragadkar and Chainani JJ. in *Kurban Hussein v. Ratikant* (supra). If the tenant satisfies the conditions specified in Sub-section (1) of Section 12 at the date of the suit the tenant would no doubt get the protection afforded by that sub-section but even if those conditions are not satisfied the tenant would yet be protected if he complies with the requirements of Sub-section (3)(b) of Section 12. The requirements of Sub-section (3)(b) of Section 12 relate to a stage subsequent to the filing of the suit. Even if the tenant did not pay and was not ready and willing to pay the amount of the standard rent and permitted increases till the date of the suit the tenant can on the first day of hearing of the suit or on or before such other date as the Court may fix pay or tender in Court the standard rent and permitted increases then due and thereafter continue to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pay costs of the suit as directed by the Court and if the tenant does so he cannot be evicted by the landlord. Then comes Sub-section (4) of Section 12 which merely provides for payment to the landlord out of the amount paid or tendered by the tenant. Then follows the Explanation. The Explanation provides that in any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under the Rent Act the tenant shall be deemed to be ready and willing to pay such amount if before the expiry of the period of one month after notice referred to in Sub-section (2) he makes an application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court. The Explanation creates a legal fiction and enacts that if the tenant satisfies certain conditions he shall be deemed to be ready and willing to pay the amount of standard rent and permitted increases so that in such event the landlord shall not be entitled to recover possession of the premises from the tenant by reason of the provisions

contained in Sub-section (1) of Section 12. These are broadly the provisions enacted in Section 12 and I will now proceed to consider the validity of the arguments advanced by Mr. B.R. Shah in the light of these provisions.

16. The contention of Mr. B.R. Shah was that the defendant had complied with the requirements of Sub-section (3)(b) of Section 12 inasmuch as the defendant had deposited in Court the entire amount of rent upto the date of the decree passed by the trial Court on the basis of the interim rent specified by the trial Court under Sub-section (3) of Section 11. Mr. B.R. Shah contended that the interim rent specified by the Court under Sub-section (3) of Section 11 should be deemed to be the standard rent so far as pending proceedings are concerned and that since the defendant had deposited the entire amount calculated on the basis of the interim rent specified by the trial Court under Sub-section (3) of Section 11 the defendant should be deemed to have deposited the standard rent within the meaning of Sub-section (3)(b) of Section 12 so as to operate as a bar against the plaintiffs right to recover possession of the shop from the defendant. This contention is in my opinion devoid of merit and is contrary to the plain language of the enactment. This contention is based on a wrong attempt to equate interim rent specified in the order made under Sub-section (3) of Section 11 with standard rent which might be fixed under Sub-section (1) of Section 11. Sub-section (3)(b) of Section 12 refers to standard rent and provides that the tenant shall be entitled to the protection conferred by that sub-section if on the first day of hearing of the suit or on or before such other date as the Court may fix the tenant pays or tenders in Court inter alia standard rent then due and thereafter continues to pay or tender in Court regularly standard rent till the suit is finally decided. Now standard rent is defined in Sub-section (10) of Section 5 and in any of the cases specified in Section 11 standard rent means the rent fixed by the Court. In the present case the defendant made an application to the Court for the purpose of fixing the standard rent and he also claimed in the written statement that the standard rent should be fixed by the Court. The standard rent in the context of these facts could mean only the rent fixed by the Court either on the application made by the defendant for that purpose or in the suit filed by the plaintiff against the defendant. The interim rent specified by the Court in the order made under Sub-section (3) of Section 11 could not possibly be equated with the standard rent fixed by the Court on the application made by the defendant for that purpose or in the suit. The interim rent specified by the Court under Sub-section (3) of Section 11 represented merely the amount of rent to be paid by the tenant pending the final decision of the application for fixation of the standard rent and the standard rent fixed by the Court on the application could be more or less than the interim rent. I do not see how under these circumstances the expression standard rent in Sub-section (3)(b) of Section 12 could possibly include within its connotation the interim rent specified by the Court under Sub-section (3) of Section 11. Mr. B.R. Shah contended that under Sub-section (10) of Section 5 standard rent meant in any of the cases specified in Section 11 the rent fixed by the Court and according to him the

interim rent specified by the Court under Sub-section (3) of Section 11 was also fixed by the Court and therefore fell within the definition of standard rent. This contention of Mr. B.R. Shah overlooks the distinction between standard rent and interim rent which is made in Sub-section (3) of Section 11. Sub-section (3) of Section 11 in terms makes a distinction between standard rent which might be fixed on the application for fixation of standard rent and interim rent which might be specified by the Court under that sub-section as the amount of rent to be paid by the tenant pending the final decision of the application. When Sub-section (3) of Section 11 itself makes a distinction between standard rent and interim rent I do not see how it can possibly be contended that interim rent is standard rent within the meaning of the definition of that term contained in Sub-section (10) of Section 5. There is also another distinction which the contention of Mr. B.R. Shah ignores. Sub-section (10) of Section 5 defines standard rent as the rent fixed by the Court while the interim rent referred to in Sub-section (3) of Section 11 is not fixed by the Court but is specified by the Court in the order made under that sub-section. The interim rent specified by the Court in the order made under Sub-section (3) of Section 11 cannot therefore in my opinion be equated with the standard rent and the defendant cannot be considered to have fulfilled the requirements of Sub-section (3)(b) of Section 12 by paying or tendering in Court the interim rent up to the date of the decision of the suit unless of course the standard rent fixed by the Court ultimately turns out to be the same - as the interim rent or less than the interim rent.

17. Realising this difficulty Mr. B.R. Shah relied on the Explanation to Section 12. Mr. B.R. Shah contended that the defendant had made an application to the Court under Sub-section (3) of Section 11 and had thereafter deposited in Court the amount of interim rent specified in the order made by the Court under that subsection and that the defendant should therefore be deemed to have complied with the requirements of Sub-section (3)(b) of Section 12. This contention of Mr. B.R. Shah must also be rejected. I do not see how the Explanation to Section 12 can possibly help the defendant. In the first place in order to avail of the Explanation the tenant must make an application to the Court under Sub-section (3) of Section 11 before the expiry of the period of one month after notice is served upon him under Sub-section (2) of Section 12. In the present case it is admitted that no such application was made to the Court within the period of one month after service of the notice on the defendant. The application for fixation of standard rent was made by the defendant to the Court on 21st December 1956 long after the period of one month from the date of service of the notice on the defendant had expired. In fact the application was made after the suit was filed by the plaintiff the written statement was filed by the defendant and the issues were raised by the Court. The defendant cannot therefore possibly derive any support from the Explanation. But apart from this I do not see any relation between the explanation and Sub-section (3)(b) of Section 12. The Explanation though it occurs at the end of Section 12 is in reality an Explanation to Sub-section (i) of Section 12. The Explanation creates a legal fiction and provides that

if certain conditions are fulfilled the tenant shall be deemed to be ready and willing to pay the standard rent and permitted increases. Under Sub-section (1) of Section 12 the tenant is protected from dispossession if he is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy. By reason of the legal fiction enacted in the Explanation even if the tenant was not in fact ready and willing to pay the amount of the standard rent and permitted increases he shall be deemed to be ready and willing to pay the amount of the standard rent and permitted increases if the conditions specified in the Explanation are fulfilled. Now it is no doubt true that full effect must be given to a statutory fiction and it should be carried to its logical conclusion and as observed by Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1952).

If you are bidden to treat an imaginary state of affairs as real you must surely unless prohibited from doing so also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed must inevitably have flowed from or accompanied it. The statute says that you must not imagine a certain state of affairs; it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

18. But it must be remembered that the statutory fiction is created for some definite purpose. When a statute enacts that something shall be deemed to have been done which in truth and fact was not done the Court must ascertain for what purpose the statutory fiction is not to be resorted to and the statutory fiction must be limited to the purpose for which it is created and should not be extended beyond its legitimate field. Here the avowed purpose of the Explanation is to add to the classes of cases covered by Sub-section (1) of Section 12 a further class of cases namely where the tenant before the expiry of the period of one month after notice referred to in Sub-section (2) of Section 12 makes an application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court under that subsection. The Explanation cannot be projected into Sub-section (3)(b) of Section 12. The Explanation does not say that if the tenant pays or tenders the amount of rent or permitted increases specified by the Court under Sub-section (3) of Section 11 such payment or tender shall be deemed to be compliance with the requirements of Sub-section (3)(b) of Section 12. The Explanation creates a legal fiction only for the purpose of Sub-section (1) of Section 12 and if the conditions set out in the Explanation are fulfilled the Explanation has the effect of bringing the case within the protection of Sub-section (1) of Section 12 and not within the protection of Sub-section (3)(b) of Section 12. The Explanation is not related at all to Sub-section (3)(b) of Section 12 and it must therefore follow as a logical conclusion that the Explanation cannot avail the defendant in so far as he seeks to rely on the provisions of Sub-section (3)(b) of Section 12. If the defendant had fulfilled the conditions set out in the Explanation the defendant could have contended that he was by reason of

the legal fiction enacted in the Explanation ready and willing to pay the amount of the standard rent and permitted increases within the meaning of Sub-section (1) of Section 12 and that the plaintiff was therefore not entitled to recover possession of the shop from him. But the defendant admittedly did not comply with the conditions specified in the Explanation and the Explanation cannot therefore assist the defendant in resisting the plaintiffs claim for possession of the shop. Sub-section (3)(b) of Section 12 also cannot help the defendant because the defendant did not pay or tender in Court the standard rent and permitted increases due up to the date of the decision of the suit. The defendant paid only the interim rent specified by the Court under Sub-section (3) of Section 11 but that was less than the standard rent and there was therefore obviously no compliance with the requirements of Sub-section (3)(b) of Section 12. The contention of Mr. B.R. Shah based on Sub-section (3)(b) of Section 12 must therefore be negated.

The next contention of Mr. B.R. Shah was that the notice given by the plaintiff to the defendant was not a valid notice in accordance with the requirements of Sub-section (2) of Section 12 and that the learned District Judge had therefore no jurisdiction to award possession of the shop to the plaintiff. Mr. B.R. Shah contended that the fact that a valid and proper notice was given by the plaintiff to the defendant was a jurisdictional fact on the existence of which depended the jurisdiction of the learned District Judge to award possession to the plaintiff and that if it could be shown by the defendant from the evidence on record that no valid or proper notice was given by the plaintiff to the defendant the defendant was entitled to raise the contentions as regards the validity or propriety of the notice before me sitting as a Court of Revision even though such contention has not raised by the defendant before the learned District judge The argument was that if the notice given by the plaintiff to the defendant was not a valid End proper notice the Court under the Rent Act had no jurisdiction to entertain the suit and that even if the contention regarding the validity or propriety of the notice was not raised before the learned District Judge it was open to me sitting as a Court of Revision to consider the contention because it was a contention which affected the jurisdiction of the learned District Judge. Mr. B.R. Shah urged that even if the case might not fall within the provisions of Clause (c) of Section 115 of the CPC since the defendant did not raise the convention regarding the validity or propriety of the notice before the learned District Judge the case would yet fall within the provisions of Clause (a) of Section 115 of the CPC since the learned District Judge could be legitimately said to have exercised jurisdiction not vested in him by law if the notice was not valid and proper in accordance with the requirements of Sub-section (2) of Section 12 Mr. B.R. Shah relied upon the decision of the Supreme Court reported in *Chaube Jagdish Pd. v. Ganga Prasad* (supra) in support of this contention. I have already referred to this decision earlier and quoted certain passages from this decision; but for reasons which I shall presently mention I do not see how this decision can be of any help to the defendant.

19. In order to appreciate the contention it would be well to remember that there are two types of cases which may arise before subordinate Courts. Lord Esher M.R. in *Reg. v. Commissioner of Income Tax* (1888) 21 Q.B.D. 313 classified the two categories of cases as follows:

When an inferior court or tribunal or body which has to exercise the power of deciding facts is first established by Act of Parliament the legislature has to consider what powers it will give that tribunal or body. It may in effect say that if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists and if they exercise the jurisdiction without its existence what they do may be questioned and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction on finding that it does exist to proceed farther or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction they also have to consider whatever jurisdiction they give them whether there shall be any appeal from their decision for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist because the legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide without any appeal being given there is no appeal from such exercise their jurisdiction.

These observations show that there are two classes of cases dealing with the power of a subordinate Court namely (1) where the legislature entrusts the subordinate Court with jurisdiction including the jurisdiction to determine whether the preliminary state of facts on which the exercise of its jurisdiction depends exists and (2) where the legislature confers jurisdiction on the subordinate Court to proceed in a case where a certain state of facts exists or is shown to exist, the difference between the two classes of cases is that in the former case the subordinate Court has power to determine the facts which give it jurisdiction and even if the subordinate Court makes a mistake in the determination of such facts the wronged party can only take the course prescribed by law for setting matters right inasmuch as the Court has jurisdiction to decide rightly as well as wrongly while in the latter case the subordinate Court has only to see that a certain state of facts exists. In the first case the preliminary facts on the existence of which depends the jurisdiction of the subordinate Court are facts in issue the determination of which is entrusted by the legislature to the subordinate Court and the subordinate Court having jurisdiction to determine the preliminary facts the only ground on which the High Court can interfere in revision with the determination of the subordinate Court

would be that under Clause (c) of Section 115 of the Code of Civil Procedure. The grounds specified in Clauses (a) and (b) of Section 115 of the CPC would not avail the aggrieved party challenging the determination of the subordinate Court. In the second case however the preliminary facts on the existence of which the jurisdiction of the subordinate Court depends are collateral to the actual matter which the subordinate Court has to try and are conditions precedent to the assumption of jurisdiction by the subordinate Court and it is settled law that no Court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of its jurisdiction depends. The erroneous determination of the preliminary facts by the subordinate Court in such case would result in the subordinate Court exercising jurisdiction not vested in it by law or failing to exercise jurisdiction so vested and in that event a case for revision would arise under Clause (a) or Clause (b) regardless of Clause (c) of Section 115 of the Code of Civil Procedure. The High Court would in revision examine the Correctness of the decision of the subordinate Court as regards the preliminary facts and if the High Court finds that the decision is erroneous the High Court would interfere in revision on the ground that the subordinate Court has exercised jurisdiction not vested in it by law or failed to exercise jurisdiction so vested It would not be necessary to resort to Clause (c) of Section 115 of the Code of Civil Procedure. It is therefore clear that if the defendant can show that in confirming the decree passed by the trial Court the learned District Judge exercised jurisdiction not vested in him by law or failed to exercise jurisdiction so vested the defendant would be entitled to ask me sitting as a Court of Revision to interfere with the decree passed by the learned District Judge and the objection raised by Mr. S.B. Vakil based on the provisions of Clause (c) of Section 115 of the CPC would not stand in the way of the defendant. The question however is whether the learned District Judge can be said to have exercised jurisdiction not vested in him by law or failed to have exercised jurisdiction so vested The contention of Mr. B.R. Shah was that the present case fell within the second class of cases mentioned above inasmuch as the fact that a valid and proper notice was given by the plaintiff to the defendant was a fact on the existence of which depended the jurisdiction of the subordinate Court to award possession and that this fact was a jurisdictional fact and not a fact in issue. Mr. B.R. Shah urged that since the fact that a valid and proper notice was given by the plaintiff to the defendant was a jurisdictional fact the learned District Judge had no jurisdiction to confirm the decree passed by the trial Court unless and until the jurisdictional fact existed or was shown to exist. The argument was that the evidence on record did not establish that the jurisdictional fact namely that a valid and proper notice was given by the plaintiff to the defendant existed and the learned District Judge had therefore clearly no jurisdiction to award possession to the plaintiff and the learned District Judge accordingly exercised jurisdiction not vested in him by law in confirming the decree passed by the trial Court. This argument of Mr. B.R. Shah is fallacious and cannot be accepted by me for reasons which I shall immediately proceed to state.

20. I have grave doubt whether the fact that a valid and proper notice is given by the landlord to the tenant under Sub-section (2) of Section 12 can be said to be a fact on the existence of which depends the jurisdiction of the Court for the jurisdiction of the Court is derived from Section 28 of the Rent Act and the only conditions which are required to be satisfied under that section before the Court can have competence to entertain the suit are that the suit should be between landlord and tenant and should be either for recovery of possession or for arrears of rent. The condition which requires that a valid and proper notice should be given by the landlord to the tenant is not a condition which affects the jurisdiction of the Court in the sense that the Court would be without jurisdiction if the condition is not performed or fulfilled but is merely a condition which if not performed or fulfilled would result in irregularity in the exercise or assumption of jurisdiction capable of being waived by the tenant. I therefore entertain considerable doubt whether it can be said that the jurisdiction of the Court depends on the existence of the fact that a valid and proper notice is given by the landlord to the tenant under Sub-section (2) of Section 12. But for the purpose of the present argument I will assume with Mr. B.R. Shah that the fact that a valid and proper notice is given by the landlord to the tenant in accordance with the requirements of Sub-section (2) of Section 12 is a fact on the existence of which depends the jurisdiction of the Court to pass a decree for possession against the tenant. Even so Mr. B.R. Shah in my opinion cannot succeed in his contention. The contention of Mr. B.R. Shah is based upon an assumption which is entirely unjustified. The assumption is that the fact that a valid and proper notice was given by the plaintiff to the defendant is a jurisdictional fact and not a fact in issue. I do not however agree that on a true construction of the provisions of the Rent Act the fact that a valid and proper notice was given by the plaintiff to the defendant is a jurisdictional fact. It is in my opinion clearly a fact in issue to be determined by the Court under the Rent Act. The jurisdiction of the Court under the Rent Act is to be found in Section 28 and in the exercise of that jurisdiction the Court can decide all questions which arise under the Rent Act. One of the questions which may arise under the Rent Act is whether the landlord who seeks to evict the tenant has given to the tenant a valid and proper notice as required by the provisions of Sub-section (2) of Section 12 and the Court has certainly jurisdiction to decide that question. The determination of that question has been entrusted by the Legislature to the Court under the Rent Act. It is not a question which is collateral to the actual matter which the Court under the Rent Act has to try but is itself one of the questions which the Court under the Rent Act has jurisdiction and is empowered to try. If the determination of the question by the Court under the Rent Act is erroneous there is an appeal provided u/s 29 and the appellate Court can correct the error in appeal. If the appellate Court acts illegally or with material irregularity in determining the question the High Court can interfere with the decision in exercise of its revisional jurisdiction. But the decision cannot be attacked on the ground that it is an erroneous decision which has resulted in the Court exercising jurisdiction not vested in it by law or failing to exercise

jurisdiction so vested. If therefore the defendant did not raise the question of the validity or propriety of the notice before the learned District Judge and expressly abandoned his contention as regards that question I do not see how the defendant can contend before me in revision that the learned District Judge erroneously assumed jurisdiction not vested in him by law when he confirmed the decree passed by the trial Court. I therefore reject the present contention of Mr. B.R. Shah. The last contention urged by Mr. B.R. Shah was that even if the conditions specified in Sub-section (3)(b) of Section 12 were not complied by the defendant the Court had jurisdiction apart from the provisions of the Rent Act to grant relief to the defendant against dispossession and that the learned District Judge had failed to exercise such jurisdiction and that I was therefore entitled to interfere in revision with the decree passed by the learned District Judge. This argument postulates the existence of a jurisdiction in the Court to grant relief against dispossession apart from the provisions of the Rent Act. Mr. B.R. Shah cited various decisions of the High Court of Bombay before me in support of the existence of such a jurisdiction in the Court and contended that if such a jurisdiction was there the learned District Judge had failed to exercise the same and that the case was therefore covered by Clause (b) of Section 115 of the Code of Civil Procedure. The question raised by Mr. B.R. Shah is of considerable importance and requires careful consideration. But I may state at once that the preliminary objection which was raised by Mr. S.B. Vakil to the other contentions urged by Mr. B.R. Shah applies equally though in a slightly different form to the present contention urged by Mr. B.R. Shah. The defendant expressly abandoned all the contentions before the learned District Judge except the contention based on the provisions of Sub-section (3)(b) of Section 12. The defendant did not contend before the learned District Judge that even if it was held that the conditions of Sub-section (3)(b) of Section 12 were not fulfilled by him he was yet not liable to be evicted by the plaintiff and that the Court had discretion whether to grant or not to grant a decree for possession to the plaintiff and that in the exercise of such discretion no decree for eviction should be passed against him. The defendant did not apply to the learned District Judge for relief against dispossession and abandoned all his contentions against the validity of the decree passed by the trial Court except the contention based on the provisions of Sub-section (3)(b) of Section 12. The learned District Judge could not therefore possibly consider the validity of the decree passed by the trial Court on any other ground and no sooner the learned District Judge came to the conclusion that the contention of the defendant based on the provisions of Sub-section (3)(b) of Section 12 was untenable the learned District Judge obviously could not do anything but dismiss the appeal and confirm the decree passed by the trial Court. There was no obligation on the learned District Judge to consider on his own whether the trial Court should have granted relief to the defendant against dispossession even though he did not fulfill the conditions laid down in Sub-section (3)(b) of Section 12 nor was there any obligation on the learned District Judge to set aside the decree passed by the trial Court and to relieve the defendant against dispossession when the defendant did not himself attack the

decree passed by the trial Court on that ground and did not apply for relief against dispossession to the learned District Judge. I do not see how under these circumstances it can be contended that the learned District Judge failed to exercise jurisdiction vested in him by law in not granting relief against dispossession to the defendant and confirming the decree for eviction against the defendant.

21. But apart from this objection to the contention urged by Mr. B.R. Shah I do not I see any merit in this contention. I cannot assent to the proposition that apart from the provision of the Rent Act there is any discretion in the Court to grant relief to the tenant against dispossession in a case where the landlord has terminated the tenancy of the tenant by any mode other than forfeiture and the landlord seeks to recover possession of the premises from the tenant after such termination of tenancy. I shall first examine this question on principle and then turn to the various authorities which were cited before me in this connection by Mr. S.B. Vakil and Mr. B.R. Shah. There are various modes by which the tenancy of the tenant can be determined by the landlord. These modes are set out in section HI of the Transfer of Property Act which is the statute which embodies the ordinary law of landlord and tenant. One of the modes of termination of tenancy is forfeiture and that is provided in Sub-section (g) of Section 111 of the Transfer of Property Act. Now forfeiture can only be of an existing term which would continue but for the forfeiture. When the tenant breaks an express condition which provides that on breach thereof the landlord may re-enter or the tenant renounces his character as such by setting up a title in a third person or by claiming title in himself or the tenant is adjudicated an insolvent and the lease provides that the landlord may re-enter on the happening of such event; and in any of these cases the landlord or his transferee gives notice in writing to the tenant of his intention to determine the tenancy the tenancy is said to be determined by forfeiture. The landlord is thus given the right to forfeit the existing term of tenant if certain conditions are fulfilled. This mode of termination of tenancy was always recognised at law. From early times however equity intervened and the Courts exercising equitable jurisdiction granted relief against forfeiture in cases where the tenant broke an express condition of the tenancy by non-payment of rent. The Courts exercised the equitable jurisdiction to grant relief in cases of nonpayment of rent on the principle that the condition of re-entry was in substance merely security for payment of rent and that if the landlord was paid rent and all expenses by the tenant the object of the clause conferring right of entry would be fulfilled and the landlord would get the full benefit of the contract as originally framed. This equitable principle of relief against forfeiture later found statutory recognition in England and was extended to cases of breaches of other covenants by the tenant. It is not necessary for me for the purpose of this Revision Application to trace the history of this equitable jurisdiction in England beyond stating that relief against forfeiture is now granted in England under various statutory enactments. The principle of relief against forfeiture is also the subject matter of statutory enactment in India and is to be

found in Section 114 and 114-A of the Transfer of Property Act. It may be that apart from these statutory enactments the equitable jurisdiction to relieve against forfeiture still remains but I need not concern myself with the question whether any such equitable jurisdiction exists or does not exist in the Court. Whether the jurisdiction to relieve the tenant against forfeiture is the jurisdiction derived from statutory enactments or is the general equitable jurisdiction not owing its existence to any statutory enactments one thing is clear that the jurisdiction is to relieve the tenant against forfeiture of an existing term which would continue but for the forfeiture. There can be no scope for the exercise of the jurisdiction to relieve against forfeiture in cases where the tenancy is not determined by forfeiture. If the tenancy is for instance determined by a notice to quit the interest of the tenant in the premises comes to an end and the landlord is entitled to recover possession of the premises from the tenant. In such a case there is no scope for the application of the doctrine of relief against forfeiture for there is obviously no forfeiture to be relieved. The principle underlying the doctrine of relief against forfeiture cannot apply in such a case. There cannot therefore be anything like relief against forfeiture in a case where the tenancy of the tenant is determined by the landlord by a mode other than forfeiture. It is this fundamental principle which must be borne in mind in considering whether there is any jurisdiction in the Court apart from the provisions of the Rent Act to grant relief against dispossession to the tenant in cases where the landlord has determined the tenancy of the tenant by any mode other than forfeiture.

It is clear that under the ordinary law of landlord and tenant as soon as the landlord determines the tenancy of the tenant by any mode other than forfeiture the landlord is entitled to recover possession of premises from the tenant and the tenant cannot possibly resist the landlords claim for possession. It was for this reason that the Rent Act was put on the statute book. The avowed purpose of enacting the Rent Act was to afford protection to the tenant against dispossession by the landlord. The tenant was under the ordinary law of landlord and tenant at the mercy of the landlord once his tenancy was determined by the landlord by any mode other than forfeiture. The legislature therefore placed certain restrictions on the right of the landlord to recover possession of premises from the tenant. One such restriction was imposed by Sub-section (1) of Section 12 which enacted that so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy the landlord cannot recover possession of premises from the tenant. Another such restriction was imposed by Sub-section (2) of Section 12 which provided that no suit for recovery of possession can be instituted by the landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due until the expiration of one month next after notice in writing of the demand is served upon the tenant as specified in that sub-section. The Legislature also provided another safeguard to the tenant in the shape of the original Sub-section (3) of Section 12 which provided that no decree for eviction shall be passed in any suit for

recovery of possession by the landlord against the tenant if at the hearing of the suit the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit. This section was interpreted by the High Court of Bombay to mean that the tenant could pay or tender the standard rent or permitted increases together with the costs of the suit even at the hearing of the appeal and save himself from dispossession because the expression suit includes an appeal. The legislature however substantially altered this provision by substituting Sub-sections (3)(a) and (3)(b) for the original Sub-section (3) by Act 61 of 1953. The legislature provided by Sub-section (3)(a) of Section 12 that where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2) of Section 12 the landlord would be entitled to a decree for eviction against the tenant. Sub-section (3)(b) of Section 12 enacted that in any other case no decree for eviction shall be passed if on the first day of hearing of the suit or on or before such other date as the Court may fix the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court. The tenant was thus given a *locus penitentiae* by this provision contained in Sub-section (3)(b) of Section 12 and even if he was in arrears of rent or permitted increases at the date of the suit and could not thus be said to be ready and willing to pay the amount of the standard rent and permitted increases so as to attract the benefit of the provision contained in Sub-section (1) of Section 12 he could yet after the date of the filing of the suit pay or tender in Court the standard rent and permitted increases then due on the first day of hearing of the suit or on or before such other date as the Court might fix and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit was finally decided and also pay costs of the suit as directed by the Court and by doing so successfully protect his possession. The Explanation to Section 12 also provided a safeguard to the tenant by enacting that in any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under the Rent Act the tenant shall be deemed to be ready and willing to pay such amount if before the expiry of the period of one month after notice referred to in Sub-section (2) of Section 12 he makes an application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court. The Legislature thus by enacting the provisions contained in Sub-sections (1)(2) and (3)(b) of Section 12 and the Explanation to that section placed certain restrictions on the right of the landlord to recover possession of premises from the tenant and provided certain safeguards to the tenant against dispossession by the landlord. These provisions made an inroad on the right of the landlord under the ordinary law of landlord and tenant to recover possession of premises from the tenant on the determination of the tenancy. The result

therefore is that even though under the ordinary law of landlord and tenant the landlord is entitled to recover possession of premises from the tenant on the tenancy coming to an end by any of the modes mentioned in Section 111 of the Transfer of Property Act the tenant can successfully resist the landlords claim for possession if he can bring his case within the four corners of any of these provisions. These provisions confer a status of irremovability on the tenant subject to the conditions set out in these provisions. This status of irremovability is commonly referred to as statutory tenancy for the tenant who claims to retain possession of premises after the determination of his tenancy by virtue of the protection afforded by these provisions of the Rent Act is not a tenant in the sense in which the term "tenant" is understood under the ordinary law of landlord and tenant but he has a personal right conferred by the statute to remain in possession of premises so long as he complies with the provisions of the statute. The statutory tenant in such a case has no estate or property as a tenant at all for that comes to an end by the determination of the tenancy and all that the statute gives him is a purely personal right to be free from disturbance by the landlord on certain conditions. But for the statute the tenant whose tenancy is determined in accordance with the manner prescribed by law would not be a tenant at all and he would be entitled to continue in possession only so long as he complies with the provisions of the statute. He must find his protection if any with the four corners of the statute and if none can be found in the provisions of the statute he cannot refuse to yield up possession of premises to the landlord unless he has any such right to retain possession under the ordinary law of landlord and tenant or under any other statute. If the Rent Act does not confer any protection on the tenant from dispossession at the instance of the landlord the landlord would be entitled to recover possession of premises from the tenant under the ordinary law of landlord and tenant unless there is something in the ordinary law of landlord and tenant or in any other statute which protects the tenant. If the tenant is entitled to continue in possession of premises under the ordinary law of landlord and tenant or under any other statute apart from the Rent Act such right of the tenant is not affected by any of the provisions contained in Sub-sections (1)(2) and (3)(b) of Section 12 or the Explanation to that section and even if the conditions specified in any of these provisions are not fulfilled so as to entitle the tenant to the benefit of the protection conferred by these provisions the tenant would still be entitled to resist the landlords claim for possession of premises in assertion of such right. And for the following reasons:

22. The Rent Act is a beneficent piece of legislation which has been passed for the protection of tenants and restricts the rights of landlords under the ordinary law of landlord and tenant. Unless therefore there is express provision or it is clear by necessary intendment the provisions of the Rent Act cannot be construed so as to take away any rights which the tenant possesses under the ordinary law of landlord and tenant apart from the Rent Act. Sub-section (1) of Section 12 enacts as I have pointed out above that the landlord shall not be

entitled to recovery of possession of premises so long as the tenant is ready and willing to pay the amount of the standard rent and permitted increases if any and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Rent Act. But that does not mean that if the conditions specified in this sub-section are not fulfilled the landlord must get a decree for eviction against the tenant. If the tenant has otherwise a right to remain in possession of premises such right is not affected by the provision contained in Sub-section (1) of Section 12. The provision enacted in Sub-section (1) of Section 12 is a negative provision inasmuch as it bars the landlords right to recover possession of premises from the tenant under certain circumstances but it does not provide that if those circumstances do not exist the landlord shall be entitled to recover possession of premises from the tenant; for that one must turn to the provisions of the ordinary law of landlord and tenant or any other statute which may govern the relationship between the parties and if under such law or statute the landlord is not entitled to recover possession of premises from the tenant the landlord must fail. So also in the case of Sub-section (2) of Section 12. That sub-section also debars the landlord from filing a suit for recovery of possession of premises from the tenant unless a certain condition is fulfilled. But again it does not mean that if that condition is fulfilled the landlord must be held entitled to recover possession of premises from the tenant. Turning to Sub-section (3)(b) of Section 12 there also the same position obtains. If the tenant complied with the conditions specified in Sub-section (3)(b) of Section 12 the Court is deprived of its jurisdiction to pass a decree for eviction against the tenant but if the tenant does not comply with those conditions it does not necessarily follow that a decree for eviction should be passed by the Court against the tenant. The tenant may still contend that the landlord is not entitled to recover possession of premises from him and the Court would not pass a decree for eviction if the contention of the tenant is well-founded. I need not consider the Explanation to Section 12 separately since it merely creates a fiction for the purpose of bringing the case within the provisions of Sub-section (1) of Section 12. This discussion clearly shows that if the tenant has any right to remain in possession of premises under the ordinary law of landlord and tenant or under any other statute apart from the Rent Act such right is not in any way affected by the provisions contained in sub-sections (1)(2) and (3)(b) of Section 12 or the Explanation to that section and even if the conditions specified in these provisions are not fulfilled so as to entitle the tenant to the benefit of these provisions the tenant can yet in exercise of such right resist the landlords claim for recovery of possession of premises. In every suit by the landlord against the tenant for recovery of possession what must therefore be considered is whether the tenant whose tenancy is determined is entitled to the protection conferred by the provisions of the Rent Act. If the tenant is not entitled to such protection the landlord would be entitled to recover possession of premises from the tenant unless the tenant can show that he is entitled to continue to remain in possession of premises either under the ordinary law of landlord and tenant or under any other statute.

23. Now it is elementary that when the tenancy of the tenant is determined by any mode other than forfeiture there is no provision in any law apart from the Rent Act which would entitle the tenant to continue in possession notwithstanding the determination of the tenancy. The tenant must in such a case give up possession of premises in favour of the landlord unless he can bring his case within the provisions of the Rent Act. It is only when the determination of the tenancy is by forfeiture that the tenant has a right to be relieved against forfeiture. The tenant can in a case where the tenancy is sought to be determined by forfeiture obtain relief against forfeiture and on the forfeiture being relieved against, the contractual tenancy of the tenant would continue uninterrupted as if no forfeiture had taken place. This right to relief against forfeiture which the tenant possesses is for the reasons which I have mentioned above not affected by the provisions of the Rent Act. But when there is no forfeiture of the tenancy I do not see how the tenant can resist the landlords claim for possession of premises if his case does not fall within the four corners of the Rent Act. The tenant has apart from the provisions of the Rent Act no right to remain in possession of premises when the tenancy is determined by any mode other than forfeiture and if the tenant cannot find protection within the four corners of the Rent Act the ordinary law of landlord and tenant must prevail and the landlord must get possession of premises from the tenant. In a case where the tenancy is determined otherwise than by forfeiture and the tenant cannot bring his case within the four corners of the Rent Act the Court has no discretion to refuse to award possession to the landlord. There is no provision of law which confers any such discretion on the Court in such a case. It is significant to note that in English Section 5 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 and Section 3 (1) of the Rent and Mortgage Interest Restrictions (Amendment) Act 1933 confer a discretion on the Court not to make an order for possession against the tenant when the Court does not consider it reasonable to do so even though the conditions removing the bar against recovery of possession specified in the relevant Acts are fulfilled. So far as the Rent Act is concerned there is however no provision which confers any such discretion on the Court. If the Rent Act does not confer any such discretion on the Court I fail to see how the Court can refuse to pass a decree for eviction in favour of the landlord by relying on any such discretion. When the tenant does not comply with the provisions of the Rent Act so as to bar the landlords right to recover possession of premises from the tenant the Court must ask itself: the provisions of the Rent Act do not apply so as to exclude the right to recover possession but then is there any principle of law on which the Court can refuse possession to the landlord The principle obviously cannot be found in the Rent Act for the case of the tenant in the instance given above would not fall within the four corners of the Rent Act. Then is there any such principle in the ordinary law of landlord and tenant or in any other statute? Obviously there is none. The principle of relief against forfeiture would apply only to relieve a tenant against forfeiture. Here there is no forfeiture. The tenancy has come to an end by notice to quit and the landlord is under the ordinary law of landlord and

tenant entitled to possession. There is no discretion in the Court under the ordinary law of landlord and tenant or under any statute apart from the Rent Act to refuse to award possession to the landlord. Possession must therefore follow as soon as it is established that the tenancy is determined by notice to quit and the tenant cannot bring his case within the four corners of the Rent Act. The effect of accepting the construction contended for by Mr. B.R. Shah would be to confer upon the tenant a right or benefit which is not conferred upon him by the Rent Act. Under the ordinary law of landlord and tenant the tenant has no right to resist possession once the tenancy is determined. The Rent Act has conferred upon the tenant the protection of irremovability if he complies with certain conditions. If he does not comply the protection must go. How can the Court give him a further protection which the Act does not confer? The Rent Act says to the tenant that he shall have protection under certain conditions. Can the Court then say I shall give you protection even though you have not fulfilled the conditions and you are therefore not entitled to protection either under the Rent Act or under the ordinary law of landlord and tenant? That would amount to legislation and it is clear that it is not permissible to the Court to do any such thing. I am therefore of the opinion that in a case where the tenancy of the tenant is determined by a mode other than forfeiture the tenant must in order to save himself from dispossession bring his case within the four corners of the Rent Act and if he does not do so there is no discretion in the Court to relieve the tenant against dispossession or to refuse to award possession of premises to the landlord.

24. So much on principle. Turning to the authorities I must confess and I find myself faced with what Lord Goddard C.J. described in *Young husband v. Luftig* (1948) 2 K.B.71 as a complete fog of authorities or what Upjohn J. called in *Smeaton v. Ilford Corp.* (1954) Ch. 450 478 a rough sea of contradictory authority. I am constrained to say as Humphreys J. said in *Lyus v. Stepney Borough Council* (1940) 2 K.B. 653: I find myself confronted with authorities all of which I should like to follow and all of which are binding on me but with regard to which I have the greatest possible difficulty in understanding how they can all be right. The authorities are on both sides and since they are all decisions of a single Judge I am free to choose and follow that line of authorities which commends itself to my reason. The strongest reliance was placed by Mr. B.R. Shah in support of the view advocated by him on a decision of Chagla C.J. as he then was in *Kalidas Bhavan v. Bhagvandas* 60 BomLR 1359. Mr. B.R. Shah contended that this decision clearly lays down that even if the conditions specified in Sub-section (3)(b) of Section 12 are not fulfilled by the tenant there is a discretion in the Court not to pass a decree for possession in favour of the landlord and that in the exercise of such discretion the Court can refuse to pass a decree in favour of the landlord for possession of premises against the tenant. I am afraid this proposition of law does not emerge if this decision is carefully examined. The ratio of this decision can be easily appreciated if it is borne in mind that in this case the tenant had paid all arrears of rent before the decree

was passed by the trial Court. The question which Chagla C.J. considered was whether the tenant who had paid all arrears of rent before the passing of the decree was entitled to be protected from dispossession u/s (3)(b) of Section 12. The argument which was advanced before the learned Chief Justice was that the arrears of rent were not paid by the tenant on or before the first day of hearing of the suit or on a subsequent day fixed by the Court. It appears that no application had been made by the tenant to the Court for fixing any day or days for payment of the arrears of rent. The tenant without making any application to the Court for fixing any day or days for making payment of the arrears of rent deposited the arrears of rent in Court on two different dates prior to the passing of the decree. This according to the contention urged on behalf of the landlord did not constitute compliance with the requirements of Sub-section (3)(b) of Section 12 and it was argued that the tenant was therefore not entitled to resist eviction. The learned Chief Justice dealing with this contention observed that when the arrears of rent were deposited on two different dates the Court must be deemed to have fixed these dates as the dates on which the tenant should pay the arrears and that there was therefore compliance with the provisions of Sub-section (3)(b) of Section 12. In this view of the matter the tenant was entitled to the protection of Sub-section (3)(b) of Section 12 and the landlord was not entitled to a decree for possession against the tenant. It was not therefore necessary for the learned Chief Justice to consider whether apart from the provisions of Sub-section (3)(b) of Section 12 there was any discretion in the Court to refuse to pass a decree for possession against the tenant. If therefore any observation was made by the learned Chief Justice to the effect that even where the tenant does not comply with the requirements of Sub-section (3)(b) of Section 12 the Court has a discretion whether or not to pass a decree for eviction against the tenant such observation would be obiter and would not be binding on me. I however find that no such observation has been made by the learned Chief Justice. The learned Chief Justice merely considered the question whether the provision enacted in Sub-section (3)(b) of Section 12 had the effect of taking away a discretion which the Court might otherwise have of refusing to pass a decree for eviction. The learned Chief Justice observed that all that Sub-section (3)(b) of Section 12 enacts is that no decree for eviction shall be passed against the tenant if he complies with certain conditions but it does not say that if the tenant does not comply with those conditions the Court must pass a decree for eviction against the tenant. To use the words of the learned Chief Justice himself:

25. If the Court has a discretion not to pass a decree under certain circumstances that discretion has not been taken away by Section 12.

The learned Chief Justice never intended to lay down that even if the tenant does not comply with the conditions set out in Sub-section (3)(b) of Section 12 the Court has always a discretion whether or not to pass a decree for eviction. All that the learned Chief Justice meant to say and said was that if the Court has a discretion not to pass a decree for eviction such discretion is not taken away by the provisions enacted in Sub-section (3)(b) of Section 12 and that in such a

case even if the tenant does not comply with the requirements of Sub-section (3) (b) of Section 12 the Court can yet exercise the discretion and refuse to pass a decree for eviction. It is therefore not correct to read the judgment of the learned Chief Justice as laying down any such proposition of law as contended for by Mr. B.R. Shah. As a matter of fact the learned Chief Justice expressed his entire agreement with the decision of Shah J. in *Laxminarayan Nandkishore v. Keshardev Narsaria* 58 BomLR 1041 and distinguished that decision by observing that:

It will be noticed that in the case before Mr. Justice Shah arrears of rent had not been deposited before the date of judgment and therefore the question that I am now considering was never considered by the learned Judge. There the arrears were directed to be paid by the decree and they were paid subsequent to the decree. It is on those facts that Mr. Justice Shah held that a conditional decree could not be passed by him. The tenant was not protected by Section 12(3)(b) in the case before Mr. Justice Shah because he had neither paid the arrears on the first day of the hearing nor on any, subsequent date before the final decision.

26. It will be clear from this observation that according to the learned Chief Justice the decision given by Shah J. was correct because in the case before Shah J. the tenant had not paid the arrears of rent on the first day of hearing or on any subsequent date before the final decision and that the tenant was therefore not protected by Sub-section (3)(b) of Section 12 whereas in the case before the learned Chief Justice the tenant had paid the arrears of rent before the final decision and was therefore entitled to the protection of Sub-section (3) (b) of Section 12. The learned Chief Justice rested his decision on the view that the tenant in the case before him was protected by Sub-section (3)(b) of Section 12 because the tenant had paid the arrears of rent before the date of the final decision and indicated in clear and unambiguous terms that if the tenant had not paid the arrears of rent before the date of the final decision as in the case before Shah J. the decree for eviction would certainly have been passed against the tenant. In the case before Shah J. the arrears of rent had not been paid by the tenant before the date of the final decision and a conditional decree for possession was therefore passed by the trial Court which was not to be executed if the arrears of rent and costs of the suit were deposited in Court before the expiry of two months. The landlord filed an appeal against the conditional decree in the District Court and the learned Assistant Judge who heard the appeal came to the conclusion that the tenant having failed to pay the standard rent and permitted increases before the final decision of the suit the tenant was not entitled to claim relief against an order in ejectment and he therefore set aside the conditional decree and passed a decree for possession in favour of the landlord. The tenant came in revision before the High Court against the decree for possession passed against him. Shah J. held that under Sub-section (3)(b) of Section 12 the arrears of standard rent and permitted increases could be paid or deposited by the tenant only upto the date of final disposal of the suit and that it was not open to the tenant to pay or deposit the same in the Court of Appeal.

The learned Judge held that the arrears of standard rent and permitted increases had not been paid or deposited by the tenant upto the date of the final decision of the suit and that the tenant was therefore not entitled to claim the benefit of Sub-section (3)(b) of Section 12 and that the decree for eviction was therefore rightly passed against the tenant. It is therefore clear that according to the learned Judge if the conditions specified in Sub-section (3)(b) of Section 12 are not satisfied in a case where the tenancy of the tenant is determined by any mode other than forfeiture for that was the case before the learned Judge the decree for eviction must go against the tenant and there is no discretion in the Court to refuse to pass a decree for eviction for if there were any such discretion the learned Judge would have certainly interfered with the decree for possession passed by the learned Assistant Judge particularly in view of the fact that the arrears of rent and permitted increases had been paid off by the tenant subsequent to the conditional decree by the trial Court. The learned Judge in fact held that the arrears of rent and permitted increases cannot be paid or deposited by the tenant subsequent to the date of the final decision of the suit. This decision was as I have pointed out above accepted as good law by Chagla C.J. in *Kalidas Bhavan v. Bhagwandas Sakalchand* (supra). The decision of Chagla C.J. therefore does not help the argument of Mr. B.R. Shah but on the contrary supports the contention urged by Mr. S.B. Vakil that if the tenant does not comply with the conditions specified in Sub-section (3)(b) of Section 12 by paying or depositing the arrears of rent and permitted increases before the date of the final decision of the suit the court has no discretion to relieve the tenant against dispossession and that the decree for possession must go against the tenant. In this connection I may also refer to another decision of Chagla C.J. in *Gulam Hussein v. Mahomed Umar*. 60 BomLR 972 where the learned Chief Justice emphasized that the principles on which the tenant can be relieved against dispossession must be found in the sections of the Rent Act and that there are no equitable principles on which the tenant can be granted relief apart from those found in the provisions of the Rent Act. The learned Chief Justice observed:

It is a well established principle of law that provisions with regard to relief against forfeiture must be liberally construed. Under English Law relief is granted on principles of equity and the Equity Courts have always assumed wide powers in relieving a tenant against the consequences of his default in paying the rent. It is true that under the Rent Act we are not concerned with any equitable principles. The principles are embodied in the sections of the Act and what the Court has got to do is to construe those sections.

27. Of course the learned Chief Justice used the expression relief against forfeiture but that is in my opinion with the greatest respect to the learned Chief Justice not the correct expression in the context in which it is used. It is clear that what the learned Chief Justice intended to refer to was relief against dispossession and not relief against forfeiture. These observations clearly show that according to the learned Chief Justice the principles on which the tenant can be relieved against dispossession are embodied in the sections of the Rent Act

and that the tenant must find his protection within the four corners of the Rent Act. In this decision also the learned Chief Justice referred to the decision of Shah J. mentioned above and observed that Shah J. was perfectly right in taking the view that there being failure to pay the standard rent and the permitted increases and no application having been made as contemplated by Section 12 (3)(b) it was obligatory on the Judge to pass a decree for eviction. This decision also therefore reinforces the view which I am inclined to take namely that if the tenant does not comply with the provisions of Sub-section (3)(b) of Section 12 there is no discretion in the Court in a case where the tenancy of the tenant is determined by any mode other than forfeiture to relieve the tenant against dispossession and to refuse to pass a decree for eviction against the tenant.

28. This view also receives considerable support from a decision of the Kings Bench Division of the High Court of England in *Brewer v. Jacobs*. (1923) 1 K.B. 528. In that case the landlord had let a dwelling house to the tenant for a period of five years. At the expiration of the term the tenant remained in possession as statutory tenant. He subsequently became in arrear with rent and also committed a breach of covenant to repair. The landlord thereupon issued a summons for possession on these grounds. Subsequent to the summons but before trial the tenant paid the rent and costs into Court. No notice of breach of covenant was served by the landlord on the tenant u/s 14 of the Conveyance Act 1881. The tenant contended that the landlord could not claim relief of possession since u/s 212 of the Common Law Procedure Act 1852 the proceedings in ejectment were liable to cease on payment of rent and costs into Court and that so far as the breach of the covenant to repair was concerned the tenant was not liable to be evicted since u/s 14 of the Conveyance Act 1881 it was a condition precedent to re-entry that the notice specifying the breach should be served on the tenant which had not been done in that case. The County Court Judge made an order for possession but in appeal the Kings Bench Division of the High Court held that the tenant was not entitled to the benefit of Section 212 of the Common Law Procedure Act 1852 or Section 14 of the Conveyance Act 1881 since he was not a tenant at all but was entitled to continue in possession so long as he complied with the provisions of the Rents Control Act and that since he had not complied with the provisions of the Rents Control Act by falling in arrears of rent and by committing a breach of the covenant to repair he was not entitled to protection under the Rents Control Act. Bailhache J. stated:

But for the Increase of Rent etc. (Restrictions) Act he would not be a tenant at all and he is only in possession as long as he complies with the provisions of that Act. One of those provisions is that he shall pay his rent and another is that he shall observe the covenants in his lease. He must find his protection, if any within the Act and other Acts do not apply at all.

29. This decision of the Kings Bench Division of the High Court in England clearly brings out the position occupied by a statutory tenant and lays down in clear and unmistakable terms that a statutory tenant must find his protection within the

four corners of the statute and that if he cannot bring his case within the four corners of the statute he must give up possession of the premises in favour of the landlord.

As against these decisions to which I have referred and which amply support the view which I am inclined to take I find that there are two decisions which take a contrary view. I will first refer to the decision of Tarkunde J. in Civil Revision Application No. 1822 of 1957. The case before Tarkunde J. was a case which came within the provisions of Sub-section (3)(b) of Section 12 but the learned Assistant Judge from whose judgment the matter came in revision before the High Court took the view that Sub-section (3)(a) of Section 12 applied to the facts of the case and accordingly passed a decree for eviction against the tenant.

Tarkunde J held that it was not Sub-section (3)(a) but Sub-section (3)(b) of Section 12 that applied to the facts of the case and after referring to the decision of Chagla C.J. in *Kalidas Bhavan v. Bhagvandas Sakalchand* (supra) observed as follows:

That the Court has discretion of granting or refusing a decree for possession in cases where the tenant fails to act according to the explanation to Section 12 Is clear from the observations of Chagla C.J. as he then was in *Kalidas Bhavan v. Bhagvandas Sakalchand*.

and even though the tenant had not paid the arrears of standard rent and permitted increases before the date of the decree passed by the trial Court refused to pass a decree in favour of the landlord on the ground that he had a discretion whether or not to grant a decree for eviction. It is clear from the judgment of the learned Judge that he did not consider the question on its merits but merely followed what he thought was the ratio of the decision of Chagla C.J. in *Kalidas Bhavan v. Bhagvandas Sakalchand* (supra) namely that even where the tenant does not comply with the provisions of Sub-section (3)(b) of Section 12 the court has a discretion whether or not to grant a decree for possession to the landlord (in a case where the tenancy of the tenant is determined by a mode other than forfeiture). What Chagla C.J. laid down in that case was quite the contrary for he held in that case that if the tenant does not pay or deposit the arrears of rent and permitted increases before the date of the final decision of the suit the decree must go against the tenant. I do not therefore see how Tarkunde J. with the greatest respect to him could derive any support from the decision of Chagla C.J. in *Kalidas Bhavan v. Bhagvandas Sakalchand* (supra) for the proposition that apart from the provisions of Sub-section (3)(b) of Section 12 the Court has a discretion whether or not to pass a decree for eviction against the tenant. I cannot therefore follow this decision of Tarkunde J.

30. The next decision to which I must refer is the decision of Naik J in Civil Revision Application No. 2217 of 1957. Naik J. also took the same view as Tarkunde J and decided in favour of the tenant who had defaulted in payment of arrears of rent and permitted increases upto the date of final decision of the suit.

The decision of Naik J. suffers in my humble opinion from the same mis-appreciation of the decision of Chagla C.J. as the decision of Tarkunde J. Of course it must be mentioned that in the case before Naik J. the tenant had paid up all arrears of rent and permitted increases before the date of the decree of the trial Court and that the learned Judge was therefore right in refusing to pass a decree for eviction against the tenant following the decision of Chagla C.J. in *Kalidas Bhavan v. Bhagvandas Sakalchand* (supra).

31. It will thus be seen that there are two decisions one of Tarkunde J. and the other of Naik J. which support the view contended for by Mr. B.R. Shah. As against these decisions there are four decision one of Shah J. in *Laxminarayan Nandkishore v. Bhagvandas Narsaria* (supra); two of Chagla C.J. in *Kalidas Bhavan v. Bhagvandas Sakalchand* (supra) and *Gulam Hussein v. Mahomed Umar* (supra) and the fourth of the Division Bench of the High Court of England in *Brewer v. Jacobs* (supra) which have taken the contrary view advocated before me by Mr. S.B. Vakil. I have already discussed the question on principle and for reasons which I have already mentioned I am of the opinion that the four decisions to which I have just referred lay down the correct law and that I should follow those decisions. I therefore take the view that in a case where the tenancy of the tenant is determined by any mode other than forfeiture the tenant in order to be entitled to protection from dispossession must bring his case within the four corners of the Rent Act and that if he cannot do so there is no discretion in the Court to grant or refuse a decree for possession to the landlord against the tenant and that the decree for eviction must in such case go against the tenant. In this view of the matter the contention of Mr. B.R. Shah that the defendant should be granted relief against dispossession even if he did not comply with the conditions specified in Sub-section (3)(b) of Section 12 must be negatived.

The result therefore is that the Revision Application fails and will be dismissed with costs.