

**(1960) 08 BOM CK 0023**

**In the Bombay High Court**

**Case No :** Civil Revision Application No. 1875 of 1958

Ramkrishna Vishnu Murti

APPELLANT

Vs

Laxminarayan Chunilal Lahoti

RESPONDENT

**Date of Decision :** 18-08-1960

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 13, 16, 17, 17A  
Civil Procedure Code, 1908 (CPC) — Section 144, 2, 36, 47  
Guardians and Wards Act, 1890 — Section 17C, 45

**Citation :** (1961) 63 BOMLR 106

**Hon'ble Judges :** Gokhale, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Gokhale, J.—An interesting point of law has been raised in this revision application by Mr. H. R. Gokhale, and that point is whether an order passed u/s 17 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (which shall hereafter be referred to as the Act) is an executable order, and it arises under these circumstances.

2. The petitioner claims to be in possession of a portion of the suit house in Gurwar Peth at Karad. Opponent No. 1, Laxminarayan Chunilal Lahoti, was the tenant in respect of these premises. Opponents Nos. 2, 3 and 4 are the landlords. These landlords filed Suit No. 482 of 1946 for recovering possession from the tenant Laxminarayan Lahoti on the ground that the premises were reasonably and bona fide required by them for their personal occupation. The suit resulted in a decree in favour of the landlords. It appears, however, that the landlords did not in fact occupy these premises, and opponent No. 1, Laxminarayan Lahoti, therefore, filed an application, which was Miscellaneous Application No. 5 of 1952 on February 5, 1952, u/s 17 of the Act for restoration of possession on the ground that the landlords did not occupy the premises within the time prescribed. That application was allowed by the trial Court on

October 19, 1955, and the landlords were directed to deliver possession of the suit premises to the applicant. There was an appeal against this decision, being Appeal No. 339 of 1955, which was dismissed on February 25, 1957, and a Civil Revision Application filed to this Court also came to be rejected. Then opponent No. 1, the tenant, filed Darkhast No. 77 of 1957 for enforcement of the order obtained by him, and that Darkhast was filed on April 5, 1957. Opponents Nos. 2 to 4, the landlords, were made parties to this darkhast as also one Vasudeo Gopal Bhurke, who was alleged to be put in possession of the southern portion of the premises. The present petitioner was not made a party to this darkhast. On August 8, 1957, a warrant for possession was issued regarding both the northern and the southern portions against the original plaintiffs-landlords and the said Bhurke, On September 11, 1957, the warrant was returned as it could not be executed in respect of the northern portion, because the petitioner Ramkrishna Udupi obstructed the execution of the warrant. So far as the present revision application is concerned, Bhurke is not impleaded and substantially we are concerned only with the northern portion of the suit premises. On September 26, 1957, opponent No. 1 applied for removing the obstruction caused by the petitioner, and that application was resisted by the petitioner by a written statement filed on December 24, 1957, in which he raised a two-fold contention. In the first instance, it was urged that he was in independent possession of the northern portion, and he was not in occupation of the premises through the landlords. Secondly, he contended that the order in Miscellaneous Application No. 5 of 1952 passed by the executing Court u/s 17 of the Rent Act was not an executable order and it could not be executed against him because he was not a party to the proceedings. His contention was that he was in possession of the northern portion by virtue of a Nokarnama executed by one Laxman Venkatesh Joshi. Now, the trial Court decided against the petitioner rejecting all his contentions. It was found that the petitioner had failed to prove an independent title from Laxman Venkatesh Joshi and that he appeared to have been put forward by the original opponents Nos. 2 to 4 the landlords. The trial Court also held that the order passed in darkhast No. 77 of 1957 u/s 17 of the Rent Act was an executable order, and, therefore, the Court could remove the obstruction raised by the petitioner in the execution proceedings. In accordance with these findings, an application filed by opponent No. 1 on September 26, 1957, for the removal of the obstruction of the petitioner was allowed and possession of the northern portion of the premises was also directed to be delivered to him after removing the obstruction of the petitioner, and opponents Nos. 2 to 4. It is against this order that the present revision application has been filed.

3. Now, Mr. H. R. Gokhale has frankly conceded that the finding of the learned trial Judge that the petitioner was not in independent occupation of the northern portion and that he appears to have been put forward by the landlords is a finding of fact, which he cannot challenge in this revision application. But he has strenuously urged that the order passed u/s 17 of the Act is not an executable order, and, therefore, the application made by opponent No. 1, under Order XXI,

Rule 97, was not a competent application.

4. In order to examine this argument, it will be necessary to refer to certain relevant provisions of the Act. Section 12 provides that ordinarily there shall be no ejectment of the tenant so long as he pays or is ready and willing to pay the standard rent and permitted increases. But the Act provides that the landlord can sue for recovery of possession on the ground of non-payment of the standard rent or permitted increases in certain cases. The landlord is also given a right to recover possession of any premises on the grounds mentioned in Section 13 of the Act, and as already pointed out the present suit was filed by opponents Nos. 2 to 4 u/s 13(1)(g) of the Act on the ground that the premises were reasonably and bona fide required by the landlords for personal occupation. It is necessary at this stage to refer to certain other clauses of Section 13, Under Clause (h) of Sub-section (1), a landlord may recover possession of any premises, if the Court is satisfied that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated. Under clause (hh) of Sub-section (1), the landlord will be similarly entitled to recover possession if the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting a new building on the premises sought to be demolished. Under Clause (i), the landlord may recover possession of the premises, if the premises consist of land and such land is reasonably and bona fide required by the landlord for the erection of a new building. It may be mentioned that under Sub-section (3A) of Section 13, no decree for eviction shall be passed on the ground specified in Clause (hh) of Sub-section (1), unless the landlord produces at the time of the institution of the suit a certificate granted by the Tribunal under Sub-section (3B), and also gives an undertaking in accordance with the provisions of Clauses (a), (b) and (c) of Sub-section (3A). Then there are three sections viz. Sections 16, 17 and 17A which are intended to enable the tenant to recover back possession of the premises in certain cases. u/s 16(1), the Court, when passing a decree on the ground specified in Clause (h) of Sub-section (1) of Section 13, that is to say, when the landlord requires the premises for carrying out the repairs which cannot be carried out without the premises being vacated, may ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted, and if the tenant so elects, that fact is to be recorded in the decree. Under Sub-section (2) of Section 16, if the tenant delivers possession on or before the date specified in the decree the landlord shall give notice to the tenant of the date on which the said work of repairs shall be completed, and within 15 days from the date of receipt of such notice, the tenant shall intimate to the landlord his acceptance of the accommodation offered and deposit with the landlord rent for one month. If the tenant gives such intimation and makes the deposit, the landlord shall, on completion of the work of repairs, place the tenant in occupation of the premises or part thereof on the original terms and conditions. But if the tenant fails to give

such intimation and to make the deposit, the tenant's right to occupy the premises shall terminate. Under Sub-section (3), if, after the tenant has delivered possession on or before the date specified in the decree, the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in accordance with Sub-section (2), the Court may, on the application of the tenant made within one year of the specified date, order the landlord to place him in occupation of the premises or part thereof on the original terms and conditions, and on such order being made the landlord and any person who may be in occupation shall give vacant possession to the tenant of the premises or part thereof. Under Sub-section (4) there is a penalty provided for the failure of the landlord to commence the work of repairs without reasonable excuse, or for the failure of the landlord or any other person to comply with the order made by the Court under Sub-section (5), and the landlord or any other person is liable to be punished with imprisonment for a term which may extend to three months or with fine or with both. Then comes Section 17, and it runs as follows:

17. (1) Where a decree for eviction has been passed by the Court on the ground specified in clause (g) or (i) of Sub-section (1) of Section 13 and the premises are not occupied or the work of erection is not commenced within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the Court may, on the application of the original tenant made within thirteen months of such date order the landlord to place him in occupation of the premises on the original terms and conditions, and, on such order being made the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant.

(2) Any landlord who recovers possession on the ground specified in clause (g) or (i) of Sub-section (1) of Section 13 and keeps the premises unoccupied or does not commence the work of erection without reasonable excuse within the period of one month from the date he recovered possession and any landlord or other person in occupation of the premises who fails to comply with the order of the Court under Sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

It will be seen from this section that where the landlord has recovered possession for personal occupation, under Clauses (g) and (i) of Section 13(1), and the landlord does not occupy the premises himself or does not begin the erection of a new building on the land, then the tenant can apply to the Court within the prescribed time for an order directing the landlord to place him in occupation of the premises on the original terms and conditions, and the landlord and any person who may be in occupation of the premises has to give vacant possession to the original tenant on such an order being made, and the failure of

the landlord or of the person in occupation to comply with the order, makes him liable to punishment to the extent of three months' imprisonment or fine or both. Then a reference may be made to Section 17A which enables a tenant to recover back possession of premises of which possession was obtained by the landlord by virtue of Clause (hh) of Section 13(1). Sub-section (1) of Section 17A enables a tenant to make an application to the Court within six weeks of the date on which he delivered back possession of the premises to the landlord if the work of demolition has not been commenced by the landlord within the period specified in Clause (b) of Sub-section (3A) of Section 13. Under Sub-section (2) of Section 17A, if the Court is satisfied that the landlord has not substantially commenced the work of demolishing the premises within the period of one month in accordance with his undertaking, the Court shall order the landlord to deliver to the tenant vacant possession of the premises on the terms and conditions on which he occupied them immediately before the eviction, and on such order being made the landlord shall forthwith deliver vacant possession of the premises to the tenant. Now to this extent, the wording of Section 17A is similar to the wording of Sections 16 and 17 except that in the case of an order passed under 17A, the landlord is required to deliver possession forthwith, which wording is not used in the other two sections. It may also be mentioned that under Sub-section (5) of Section 17A, the failure of the landlord to comply with the order of the Court exposes him to a penalty of imprisonment for a term which may extend to three months or fine or both. Now, this penalty is without prejudice to the liability of the landlord in execution of the order under Sub-section (2) of Section 17A, which in terms also provided that the order passed by the Court directing the landlord to deliver vacant possession of the premises to the tenant will be "deemed to be an order within the meaning of clause (14) of Section 2 of the Code of Civil Procedure, 1908". It must be mentioned that Section 17A as well as Sections 17B and 17C were inserted in the Act by Section 7 of Bombay Act LIII of 1950.

5. Now, the contention of Mr. H. R. Gokhale is that the orders passed u/s 16 as well as Section 17 are not executable orders, and this contention is sought to be supported on the ground that where the Legislature intended that such an order should be executable, it is so specifically provided as is to be seen from Sub-section (2) of Section 17A. It is further argued that the Act contemplates the filing of suits by landlord for recovery of possession and for recovery of rent and/or possession of the premises, and exclusive jurisdiction is conferred for the trial of such suits u/s 28. u/s 28, the Courts mentioned therein have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its provisions and no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question. In the explanation to Section 28, it is stated that the expression "proceeding" does not include an execution proceeding arising out of a decree

passed before the coming into operation of the Act. Section 29 mentions the Courts to which appeals will lie from the decree or order made by the Courts u/s 28, and also mentions the matters in which there would be no appeals.

6. Now, the argument of Mr. Gokhale on the basis of these sections is that the Act makes a distinction between a suit or proceeding on the one hand and an application on the other, and it is contended that under the rules framed under the Act, the provisions of the CPC are not applicable and orders which are passed in applications made under the Act would not be executable orders unless the Act itself provides that they would be executable as is done in the case of an order passed u/s 17A. It is further contended that since Section 17 provides for enforcement of the order passed under it by prescribing a penalty, it would not be open to imply any power of execution on the part of the Court since that is not specifically provided by that section itself, and it is argued that the same would be the position as regards the order passed u/s 16.

7. Before we examine these contentions, it is also necessary to refer to the relevant rules framed under the Act. These rules are framed u/s 49 of the Act, which empowers the State Government to make rules for the purpose of giving effect to the provisions of the Act. Under Clause (iii) of Sub-section (2) of Section 49, rules can be made in respect of the procedure to be followed in trying or hearing suits, proceedings (including proceedings for execution of decrees and distress warrants), applications, appeals and execution of orders. The rules under the Act were published in the Bombay Government Gazette on May 20, 1948. Under Rule 2(a), "Code" has been defined as the Code of Civil Procedure, 1908. In Rule 2(6), "Miscellaneous application" means an application for fixing the standard rent, except where the said relief is claimed in a pending suit or proceeding, an application for determining the permitted increases, an application by a tenant for reinstatement, an application for a direction for the restoration of any essential supply or service or an application by a member of the tenant's family under Sub-clause (c) of Clause (11) of Section 5. It is by virtue of this rule that the application filed by the tenant, opponent No. I, for recovering back possession u/s 17 of the Act was treated as Miscellaneous Application No. 5 of 1952. The scheme of these rules, so far as the procedure to be followed is concerned, seems to be that the rules in Chapter IV prescribe the procedure to be followed by the Court of Small Causes, Bombay, for suits, proceedings, appeals, etc. Chapter IV-A deals with the procedure to be followed by the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887, in suits, proceedings, etc., and by the District Court in appeals. Rules under Chapter V deal with the procedure to be followed by a Court of Civil Judge (Junior or Senior Division) in suits, proceedings, and by the District Court in Appeals. We are concerned, in the present case, with Rules 10 and 11 in this chapter. Rule 11 deals with the procedure in applications for fixing standard rents, etc, and it provides that in Miscellaneous Applications the Court of Civil Judge (Junior Division or Senior Division) shall follow, as far as may be and with the necessary modifications, the procedure applicable to suits referred to in Rule

10 as if such applications were suits of the description referred to therein. Rule 10 refers to procedure for suits the value of the subject-matter of which does not exceed Rs. 500 and for proceeding for execution of decrees and orders passed therein, and provides inter alia that in proceedings for execution of any decree or order passed in any such suit or proceeding, the Court of the Civil Judge (Junior Division or Senior Division) shall follow, as far as may be and with the necessary modifications, the procedure prescribed in the Code to be followed by the Courts invested with the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887. Chapter VII contains only one rule, namely, Rule 16, which states that in deciding any question relating to procedure not specifically provided for by the Rules the Court shall, as far as possible, be guided by the provisions contained in the Code.

8. Now, it is contended on behalf of the petitioner that so far as the procedure which governs suits, proceedings or applications under the Act is concerned, that is provided for under these rules, and the provisions for the CPC are not made applicable, but the Courts have to follow the procedure as laid down in the rules, and where the rules make no specific provision, then the Court has to be guided as far as possible by the provisions contained in the Code. The procedure in Rule 10 which is to be followed by the Court in dealing with a miscellaneous application no doubt refers to execution of decrees and orders. But that, contends Mr. Gokhale, would not make an order passed by the Court under the Act executable, if it is otherwise not shown to be executable. In this connection, reference is also made to Section 31 of the Act both by Mr. Paranjpe, learned advocate appearing on behalf of the opponent, and Mr. Gokhale. That section provides that the Courts specified in Sections 28 and 29 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them. Now, it is Mr. Paranjpe's contention that this section refers to the execution of orders made by the Courts and that implies, he argues, the existence of orders which are executable. Here again, the answer of Mr. Gokhale is that unless the order is executable, even assuming that Section 31 refers to execution of orders, that section cannot make any order executable. No doubt, there is some force in the contention of Mr. Gokhale. On the other hand, Mr. Paranjpe contended that the order passed whether u/s 17 or u/s 16 is an executable order falling within the definition of Section 2(14) of the Civil Procedure Code, and, therefore, would be an executable order. Alternatively, he contended that such an order would be, in effect, a decree as defined in Section 2(2) of the Civil Procedure Code, because it is analogous to an order made u/s 144 of that Code. It is contended that the decree that is passed by the Court u/s 13 is liable to be reversed on the grounds mentioned in Sections 16 and 17, so that when a Court passes an order under Sections 16 and 17, the tenant has, in fact, a statutory restitution in his favour by virtue of the provisions of the Act.

9. It is no doubt true that Sections 12, 13, 28 and 29 refer to institution of suits for recovering possession and also refer to decrees for possession. It is also true

that the Courts mentioned in Section 28, which have been invested with exclusive jurisdiction to try suits under the Act, have to follow the procedure prescribed by the rules, by virtue of the provisions of Section 31 of the Act and also the rules framed u/s 49. But it has to be remembered that the Courts referred to in Section 28 as well as Courts of appeal referred to in Section 29 are ordinary Civil Courts and the decrees which are passed by the Courts u/s 28 would be decrees falling within the definition of Section 2(2) of the Civil Procedure Code. Rule 10, as already stated, mentions that in the proceedings for execution of any decree or order passed in any suit or proceedings referred to in Sub-rule (1) of that rule, the Court has to follow with the necessary modifications the procedure prescribed in the Code of Civil Procedure, which is followed by the Courts invested with the jurisdiction of Small Causes established under the Provincial Small Causes Courts Act. Under Rule 11, in miscellaneous applications, the same procedure that is applicable to suits under Rule 10 has to be followed by the Court. Mr. Gokhale contends that the decrees passed u/s 28 of the Act become executable not by reason of the provisions of the Code of Civil Procedure, but by reason of the well known principle that when a power to give certain orders or directions is given to a Court without any consequential power for enforcement of that direction or order, then, the Courts would have an implied power to direct execution of those orders, and he argues that since there is nothing in the Act which provides for the execution of even decrees passed in suits for recovery of possession or for rent, the Court has inherent power to direct their execution. I am unable to accept this contention. It is true that a certain procedure is prescribed in respect of the suits, proceedings and applications under the Act. But Rule 16 shows that where there is no specific provision for deciding any question relating to procedure, the Court has to be guided as far as possible by the provisions contained in the Civil Procedure Code. In the case of proceedings for execution of a decree the procedure is prescribed in Rule 10, but the decree which is passed will nonetheless be a decree falling within the definition of Section 2(2) of the Civil Procedure Code.

10. Then, it is contended that, even assuming that a decree for possession or for recovery of rent passed under the Act is executable because it would be a decree within the definition of the Civil Procedure Code, the orders passed under Sections 16 and 17 would not fall within the definition of the term "order" in Sub-section (14) of Section 2 of the Civil Procedure Code. Under Sub-section (2) of Section 2 of the Civil Procedure Code, a "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. Now, a decree passed by a competent Court u/s 28 of the Act would be a formal expression of an adjudication which conclusively determines the rights of



the landlord and tenant with regard to the matters in controversy in the suit, and would, therefore, be a decree falling within the definition of the term "" decree"" as defined in Section 2(2) of the Civil Procedure Code. u/s 2(74) of the Code, an "order" means the formal expression of any decision of a Civil Court which is not a decree. u/s 36 of the Code the provisions of the Code shall be so far as they are applicable be deemed "to apply to the execution of orders". The orders passed under Sections 16 and 17 as also u/s 17A directing the landlord to place the tenant in occupation of the premises on original terms and conditions would amount to a formal expression of a decision by a Civil Court, though it would not be a decree, and these orders, therefore, would be orders within the meaning of Section 2(14) of the Civil Procedure Code. But it is contended that whereas the order u/s 17A is to be deemed to be an order within the meaning of Clause (14) of Section 2 of the Code of Civil Procedure, by virtue of Sub-section (2) of Section 17A, there is no such provision with regard to the orders contemplated in Sections 16 and 17. A reference may also be made to Section 24 of the Act, under which, if the landlord either himself or through any person acting on his behalf, without just or sufficient cause cuts off or withholds any essential supply or service enjoyed by the tenant in respect of the premises let to him, a tenant can make an application to the Court for a direction to restore such supply or service, and the Court may make an order directing the landlord to restore such supply or service before the date to be specified in the order, and the failure of the landlord to do so would expose him to the penalty of a fine which may extend to one hundred rupees. The landlord would also be liable to be convicted and be punished with imprisonment for a term which may extend to three months or with fine or with both, if he cuts off or withholds essential supply or service without just or sufficient cause. Mr. Gokhale contends that the order passed in an application by the tenant under Sub-section (3) of Section 24 will also not be an executable order. It is further contended that in Sections 16 and 17 as well as Section 24, the Legislature has provided a mode of enforcing an order by laying down a penalty to which the landlord would be exposed, and, therefore, the Court would not be justified in coming to the conclusion that these orders are executable in the absence of any such express provision as is incorporated in Section 17A(2), and which is further reiterated in Sub-section (5) of Section 17A which, as already pointed out, provides that the landlord's liability to being punished is without prejudice to his liability in execution of the order under Sub-section (1). It is difficult to accept this argument. In construing an Act, the Court must not lose sight of the principal object of the Legislature. The Act was enacted for the benefit of the tenants. It laid down conditions under which alone the landlord would be entitled to the recovery of possession of any premises in the occupation of the tenant. Sections 16, 17 and 17A are obviously intended for the benefit of the tenants. Section 24 prevents the landlord from cutting off or withholding an essential supply or service enjoyed by the tenant in respect of the premises. Sections 16, 17 and 17A enable a tenant to recover back possession of the premises which he had to vacate under a decree for eviction passed in favour of the landlord under certain circumstances. These

sections provide a summary remedy to the tenant to get relief, and it is impossible to hold that the Legislature intended that the object in providing speedy remedies should be defeated by making these orders unexecutable, It is well settled that if the Legislature enables something to be done, it gives power at the same time by necessary implication, to do everything which is indispensable for the purposes of carrying out the object in view. (See Craies on Statute Law, page 239, Fifth Edition). As we have already seen, Section 31 and rules framed u/s 49(2)(iii) of the Act refer to the procedure to be followed in execution of orders. Before the insertion of Section 17A in the Act in 1950 by Bombay Act LIII of 1950, the only orders contemplated in Part II of the Act dealing with residential and other premises were orders under Sections 16, 17 and 24. That position seems to be accepted by the learned advocates on both the sides. If, as I have already stated, the object of the Legislature was to provide a speedy remedy to the tenant, either to get back essential supply or service enjoyed by him, or to recover back possession of the premises, then, it is difficult to hold that these orders were intended to be incapable of execution by the Court which passed them.

11. But then it is contended that the Legislature having provided a remedy to enforce the order by imposing a penalty by way of imprisonment or fine or both, the Court cannot infer by implication any other remedy which is not expressly provided for. In this connection, reliance is placed on the following observations of Maxwell in his "Interpretation of Statutes", 10th Ed, at p. 395:

If the statute which creates the obligation, whether private or public, provides in the same section or passage a specific means or procedure for enforcing it, no other method than that thus provided can normally be resorted to for that purpose.

Reliance is also placed on the following well-known observation of Willes J. in *The Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C.B. 330 in Maxwell to the following effect:

... These are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

See also *The Secretary of State Vs. Mask and Co.*, where their Lordships of the Privy Council referred with approval to the principles laid down in the third class of easements stated by Willes J. after mentioning that the judgment of Willes J. was approved by the House of Lords in *Nevillo v. London "Express" News-paper, Limited* [1910] A.C. 868. Mr. Gokhale also relied upon *Muni Lal Agarwal Vs. Balbhadar Proshad and Another*, where an ex-guardian failed to comply with the Court's order to pay a certain sum of money due from him to the minor's account, and it was held by the Patna High Court that the Court can proceed u/s 45 of the Guardians and Wards Act, 1890, or direct the acting guardian to file a regular suit against the ex-guardian, but as there was no petition under the Guardians and Wards Act, the order making the ex-guardian liable to pay the amount to minor's account could not be executed, as if it was a decree or an executable order within the meaning of Section 36 of the Civil Procedure Code. That also is clearly distinguishable because there the Court had the power to proceed against the guardian u/s 45 and could also direct the filing of a regular suit against the ex-guardian. Reliance was also placed by Mr. Gokhale on a decision of the House of Lords in *Cutler v. Wandsworth Stadium Ltd.* [1949] 1 All E.R. 544, where the Court had to consider the provisions of the Betting and Lotteries Act, 1934. Now, in that case, a bookmaker brought an action against the occupier of a licensed dog-racing track for a breach of his obligation u/s 11(2) of that Act and it was held:

...on a true construction of the Act of 1934, the obligation imposed by Section 11(2) on the occupier of a track was intended for the benefit of the public who resorted to the track and not for the benefit of the bookmakers, and a breach of the statutory duty was a public and not a private wrong, and, therefore, since penalties for the breach were provided by Section 30(1) of the statute, it was to be inferred that the duty u/s 11(2) was not intended to have the additional sanction of civil liability, and the bookmaker had no right of civil action against the occupier.

This case again is distinguishable from the facts of the present case. In that case, it was observed by Lord Simonds at page 548:

...For instance, if a statutory duty is prescribed, but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damaged by the breach. For, if it were not so, the statute would be but a pious aspiration. But, as Lord Tenterden, C.J. said in *Doe d. Rochester (Bishop) v. Bridges* (1831) 1 B. & Ad. 847.

...where an Act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.

Mr. Gokhale contends that this observation of Lord Simonds would support his argument that as there is punishment provided for in the Act itself, the Court will not infer any other remedy by interpreting the statute and holding that the

orders passed are executable orders. But it has to be noticed that Lord Simonds himself contemplated exceptions to the general rule stated by him, and observed that though a specific remedy may be provided by the Act, yet the person injured may have a personal right of action in addition. In this connection, he quoted the observations of Lord Kinnear in *Butler (or Black) v. Pife Coal Company* [1912] A. C. 149 Limited as follows:

If the duty be established, I do not think there is any serious question as to the civil liability. There is no reasonable ground for maintaining that a proceeding by way of penalty is the only remedy allowed by the statute. The principle explained by Lord Cairns in *Atkinson v. Newcastle Waterworks Co.* (1877) 2 Ex. D. 441 and by Lord Herschell in *Cowley v. Newmarket Local Board* [1892] A. C. 345 solves the question. We are to consider the scope and purpose of the statute and in particular for whose benefit it is intended. Now, the object of the present statute is plain. It was intended to compel mine owners to make due provision for the safety of the men working in their mines, and the persons for whose benefit all these rules are to be enforced are the persons exposed to danger. But when a duty of this kind is imposed for the benefit of particular persons, there arises at common law a correlative right in those persons who may be injured by its contravention.

12. Lord Kinnear's conclusion at page 166 of the report which is not included in the above passage was:

...Therefore I think it is quite impossible to hold that the penalty clause detracts in any way from the prima facie right of the persons for whose benefit the statutory enactment has been passed to enforce the civil liability.

I may state that in this case the House of Lords was dealing with a breach of the rules under the Coal Mines Regulation Act, 1887, and the liability of the defendant Fire Coal Company Limited under the Employers' Liability Act, 1880, in respect of the negligence of their servants and their failure to comply with the rules.

13. Now, as already indicated, in *Cutler v. Wandsworth Stadium Ltd.*, the decision of the House of Lords proceeded on the construction of the Betting and Lotteries Act, 1934, and it was held that the obligation imposed by Section 11(2) on the occupier of a track was intended for the benefit of the public and not for the benefit of the bookmaker, and, therefore, a breach of the statutory duty was a public and not a private wrong. In the present case, undoubtedly the failure of the landlord u/s 17 exposed him to the penalty of being punished with imprisonment or fine or both. But it cannot be ignored that his failure to obey the order passed u/s 17 constitutes not merely a breach of public law, but also breach of the law intended for the protection and benefit of the tenants. It is further necessary to remember that the penal clauses of Sections 16, 17, 17A and 24 can hardly be regarded as remedies for the enforcement of the orders passed by the Courts under these sections. It appears, and that is what Mr.

Gokhale stated in the course of his arguments, that in the present case the landlords have already been punished for contravention of the provisions of Section 17 of the Act. It cannot be said, therefore, that the penalty provided u/s 17 is an effective remedy for the enforcement of the order passed by the Court directing the landlords to deliver possession of the suit premises to the tenants. Further, as already indicated, if the scope and purpose of the present Act and in particular the persons for whose benefit it is intended are considered, as indicated by Lord Kinnear in *Black v. Fife Coal Company Ltd.*, the Court would be justified in inferring that the orders contemplated in Sections 16, 17 and 24 were intended by the Legislature to be executable and the existence of the penalty clauses in these sections would not affect the question. The fact that the Legislature specifically provided in Section 17A that an order u/s 17A(2) shall be deemed to be an order within the meaning of Section 2(14) of the CPC would not also make any difference, because it has got to be remembered that this section was inserted by Bombay Act LIII of 1950, and it may be that the Legislature made this provision by way of *ex abundanti cautela*. That such a provision was made specifically in Section 17A would not, in my judgment, make the orders u/s 17 or other sections in any way less executable if, in fact the Legislature intended that they should be executable.

14. The wording of Sections 16 and 17 also supports the view that the orders that would be passed by the Court under those sections would be executable. The Court deciding the applications under these sections is empowered to order the landlord to place the tenant in occupation of the premises on the original terms and conditions; and these sections then provide that on such an order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant. This would be a mere pious aspiration if the Court is unable to execute its own order. To hold, therefore, that orders under these sections are not executable would defeat the objects of the Act.

15. I am, therefore, of the opinion that the view taken by the trial Court that the order u/s 17(1) of the Act is an executable order is correct. There is no dispute that, if the order passed by the Court on August 8, 1957, issuing the warrant for possession is correct, then, it would be open to the tenant to apply, as he did on September 26, 1957, for the removal of the obstruction caused by the petitioner, and as I have already indicated, the finding of fact that the petitioner has been put forward by the original judgment-debtors cannot be challenged in the present revision application. :

16. The alternative argument of Mr. Paranjpe that the order of the trial Court u/s 17 of the Act would fall within the definition of the term "decree" as given in Section 2(2) of the Civil Procedure Code, because it is analogous to an order passed u/s 144, cannot be accepted. The rules themselves indicate that the application for recovery of possession is to be treated as miscellaneous application, and when that application is considered by the Court, it cannot be

regarded as an application in the original suit which resulted in a decree for possession, nor can the order directing the landlord to place the tenant in occupation of the premises on the original terms and conditions be regarded as variation or reversal of the original decree. In my view, therefore, an order u/s 17 of the Act cannot fall within the definition of the term "decree" given in Section 2(2) of the Civil Procedure Code, but would fall within the definition of the term "order" u/s 2(14) of the Code and would be an executable order.

17. It may be mentioned that Mr. Paranjpe also urged that the contention of the petitioner would be affected by the principle of constructive res judicata, because when the warrant for possession was issued against the landlords on August 8, 1957, the landlords raised no such contention as they and the petitioner raised subsequently, and, therefore, the present petitioner, who, it is now held has been put forward by the landlords, would also be bound by the previous order, and cannot raise the contention that the order u/s 17 is not executable. This being a point which was never raised in the trial Court, I have not allowed Mr. Paranjpe to raise it for the first time at the stage of revision.

18. On the view taken by me, I hold that the application filed by opponent No. 1 was tenable and the obstruction raised by the petitioner was liable to be removed.

19. The result is that the revision application fails and the rule will have to be discharged with costs.