
(1978) 04 BOM CK 0010

In the Bombay High Court

Case No : Civil Revision Application No. 565 of 1977

Shafique Ahmed

APPELLANT

Vs

Jayant Metals Corporation Bombay

RESPONDENT

Date of Decision : 14-04-1978

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 4, 41, 50, 53, 53(1)

Citation : AIR 1979 Bom 81 : (1978) 80 BOMLR 702

Hon'ble Judges : Pratap, J

Bench : Single Bench

Advocate : V.C. Meghani, for the Appellant; D.R. Dhanuka, for the Respondent

Final Decision : Allowed

Judgement

1. Questions of some significance and importance arise for determination and judgment in this petition filed by the original defendant Shafique Ahmed challenging the order dated Sept. 23, 1977, passed by the Court of Small Causes at Bombay, on his application for setting aside a distress warrant issued to distrain his moveable property at the instance of the opponents herein---the original plaintiffs--Messrs. Jayant Metals Corporation, a partnership firm.

2. As per the case of the plaintiffs, a portion of an open plot of land of which the plaintiffs claim to be lessees from the Trustees of the Port of Bombay, was, under an oral arrangement, given by the plaintiffs to the defendant for storage facilities on payment of storage charges/compensation at the rate of Rs. 122/- per month. The said licence, also called an arrangement, was revoked by the plaintiffs by notice dated Feb. 12, 1977. By subsequent notice dated June 23, 1977, the plaintiffs called upon the defendant to pay the arrears of storage charges. This notice not being complied with, the plaintiffs moved the Court of Small Causes at Bombay on July 12, 1977, for distress warrant against the move-able properties of the defendant for recovery of Rs. 1,344/-, being the arrears of compensation for the period 1-11-1975 to 31-10-1976 and obtained a warrant addressed to the Bailiff and Appraiser of the Court directing him to distrain the moveable property

of the defendant lying on the premises in question for the sum of Rs. 1,344/- and costs of the distress, according to the provisions of Chap. VIII of the Presidency Small Cause Courts Act, 1882 (hereinafter referred to as the Act). Distress was accordingly levied on July 18, 1977, against the goods of the defendant lying on the premises in question. On July 15, 1977, the defendant paid, but under protest, the amount of the distress warrant so that the goods may be released. Payment was accepted accordingly by the Court and the attachment was raised. Subsequently, by his application (also described as notice) dated July 29, 1977, and on grounds more particularly mentioned therein in that behalf, the defendant prayed to the Court to set aside the distress, discharge the warrant and order refund of the monies paid. The plaintiffs opposed the said application. The trial Court hearing the matter was pleased, by its order dated Sept. 23, 1977, to dismiss the said application. This petition challenges the legality and validity of the said order.

3. It was contended by Mr. Meghani, the learned Advocate for the defendant, that distress proceedings in Chap. VII of the Act can be levied only at the instance of a landlord against his tenant and only for recovery of "rent" strictly so called and not at the instance of a licensor against his licensee, much less at the instance of the plaintiffs herein claiming to recover storage charges or fees from the defendant for storage faculties made available to the latter under an oral arrangement between the parties. According to him the provisions of Chap. VIII were clear and unambiguous leaving no room for any doubt about its application only to a restricted and specified class of cases. Mr. Dhanuka, the learned Advocate for the plaintiffs, has, on the other hand, contended that Chap. VIII contemplates wide and comprehensive relationships and not necessarily one restricted to that between landlord and tenant strictly so understood. Consequently, the amount recoverable by way of distress can, he contends, be not only rent in its narrower sense but payment in its wider meaning so as to include also storage charges and licence fee, both of which would be compensation within the meaning of the word "rent" in Chap. VIII of the Act. There seems to be no direct authority on this question involved nor is there any set guideline or strait-jacket formula enabling an instant solution. However, on a consideration of the scheme of Chap. VIII and its origin, object and purpose, conclusion clearly emerging therefrom accords more with the contention of Mr. Meghani than with that of Mr. Dhanuka.

4. While considering and adjudicating upon these rival contentions and while endeavouring to discover the object and ambit of Chap. VIII of the Act, the Court cannot ignore the Origin of the remedy of distress nor can it remain oblivious of its legislative history. The Indian law relating to distress for arrears of rent is based upon the English law in that behalf. It has its origin in the ancient English feudal system enforceable without any legal process. It was originally part of the common law and when exercised, the goods remained only as a pledge without any power of sale. Though power of sale was later conferred by statute in modification of the common law right, distress continued nevertheless to remain

a summary remedy with a virtual push-button feature resulting in instant redress. In *Nasiruddin Karim Mohamed v. Umerji Adam and Co.*, 43 Bom LR 546 : (AIR 1941 Bom 286), Wadia J. has characterized its origin as "a purely private form of self-help" and Woodfall's *Landlord and Tenant* describes it as: "one of the most ancient remedies for the recovery of rent."

5. Though the ancient self-help method underwent various statutory transformations, even this statutorily modified system has been commented upon by Lord Denning, M. R., in *Abingdon R. D. C. v. O. Gorman* (1968) 3 All ER 79 :

"It is very rarely that we have a case about distress for rent. It is an archaic remedy which has largely fallen into disuse. Very few landlords have resort to it."

6. It was, indeed, such an ancient and archaic system that was imported into India, or to be more accurate, the then British India, some time towards the close of the first half of the last century. Prior to 1847, there was, as far as one could see, no right to distress for arrears of rent. The said right was, for the first time, conferred in 1847, by Act No. 7 of 1847. This law, however, was originally made applicable only to the town of Calcutta. In 1850 it was (by Art No. 9 of 1850) extended to the presidency towns of Madras and Bombay. Later, in the year 1875, the Governor General of India in Council passed Act No. 1 of 1875 entitled. "The Distress Act" repealing the earlier law on the subject and comprehensively governing and regulating distresses for rent in the then presidency towns of Calcutta, Madras and Bombay. Some seven years later, in the year 1882, the Governor General of India in Council enacted the Presidency Small Causes Courts Act which came into force on July 1, 1882. The said 1882 Act was basically an enactment.

"to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency Towns".

7. However, Chap. VIII of the said Act embodied therein almost verbatim et literatim the provisions of the aforesaid Distress Act, 1875, which was consequently repealed. It is thus clear that in India the right to distress for arrears of rent was at all times a statutory right exercisable in accordance with the terms of the statute in question. A successful distress, therefore, depended and depends upon a proper compliance with the terms and conditions of the statute permitting and regulating the same. Chap. VIII of the Act of 1882 embodies the prevalent law on the subject. It constitutes a self-contained statutory code and treatise relating to the right to distress for arrears of rent. Though much water has flown beneath the bridge so far as the concepts of landlord, tenant, lease and licence are concerned, the system of a distress remedy continues to operate with almost the same original features and incidents for the last more than a century. Turning to chap. VIII of the Act, we find, even as of today that, except for minor modifications, the same old and ancient distress structure is preserved and maintained and continues to remain

in tact.

8. It is further significant to note that distress is not defined in any of the statutes on the subject, nor is it defined in Chap VIII of the Act of 1882. A good indication of its meaning is, however, available in 13, Hals-bury's Laws of England, Fourth Edition, where, at page 107, Para 201, it is stated as follows:

"The term "distress" primarily connotes a summary remedy by which a person is entitled without legal process to take into his possession the personal chattels of another person, to be held as a pledge to compel the performance of a duty, or the satisfaction of a debt or demand. By almost universal sanction the term "distress" is now used to designate both the process of taking, and the chattels taken, though originally it applied only to the taking."

Similar description of distress appears in Wood-fall's Landlord and Tenant, 27th Edition, Volume I, page 336:

"It is the taking, without legal process, cattle or goods as a pledge, to compel the satisfaction of a demand, the performance of a duty, or the redress of an injury the act of taking, the thing taken, and the remedy generally, having been called a distress;" Similar is the concept of distress in Bradby's Law of Distresses as also in Stroud's Judicial Dictionary, Fourth Edition, Vol. 2, page 811.

9. Considering this origin and description of distress as also its legislative history and background, it is, in my opinion, not open to give to the relevant words and terms embodied in the various sections of Chap. VIII of the Act, meaning which these words and terms could not have had or possessed in the year 1875 when the Distress Act, 1875, was passed or in the year 1882 when the present Act (embodying in its Chap. VIII the provisions of the 1875 Act) was enacted and came into force. As stated in Maxwell's Interpretation of Statutes, Twelfth Edition, at page 85:

"The words of an Act will generally be understood in the sense which they bore when it was passed. They are to be construed, it has been said, "as if we had to read it the day after it was passed"....."

And as noted by Craies on Statute Law, 7th Edition, page 126:

"In *Keates v. Lewis Merthyr Consolidated Collieries Co. Ltd*, 1911 AC 641 , Lord Atkioson said: In the construction of a statute it is of course at all times and under all- circumstances permissible to have regard to the state of things existing at the time the statute was passed and to the evil which, as appears from its provisions, it was designed to remedy and I think nothing could be more unsafe or more misleading than to allow oneself to be deterred from putting upon a statute the particular construction, which the consideration of these things would lead one to adopt, by the apprehension of the prejudicial effect it might have on rights and privileges conferred by subsequent legislation unthought of at the time the particular statute was passed." And reverting to Maxwell at page 47:

"The Court is to..... read the section with a view to finding out what it means, and not with a view to extending it to something that was not intended." There are indeed various different aids and keys to the construction of a statute. But the object ultimately is to get at the crux of the matter viz., the intention of the legislature.

10. What then was this intention and the position in the year 1875 and in the year 1882? In 1875 when the Distress Act was enacted, there was, as far as one could see, no rent restriction enactment in force in British India, nor was there any Transfer of Property Act in force, though some regulations relating to transfer of property but not relevant in this case appear to be Operating at that time. In 1882, the present Act (Act XV of 1882: 17-3-1882) as also the Transfer of Property Act (Act IV of 1882; 17-2-1882) were enacted almost simultaneously and brought into force on the same day, July 1, 1882. But even at that time, there was no rent restriction enactment in existence at all nor perhaps any even under contemplation. Consequently, the normal general law of landlord and tenant prevailed untrammelled by any rent restriction legislation and unhindered by the subsequent altogether wide, liberal and at times even artificial definitions of the words "landlord" and "rent".

11. "Bent", no doubt, is a word used in a variety of circumstances in a variety of statutes. Different statutory rules reflect different interpretations thereof. These interpretations fluctuate with the respective intentions of the written statutes. Intention not being one and uniform, the meaning also cannot be so- The word "rent", more perhaps than any other word or expression, has in recent times been in a state of flux. It has become a word of complex legal alchemy. It is not a mathematical term nor is it a scientific expression easily lending itself to a fixed, precise and certain meaning. However, in the context of the entire scheme of Chap. VIII of the Act and having due regard to its origin and object and in the absence of any positive indication therein to per se warrant a liberal and wider meaning of the word "rent", the said word should receive only its plain, ordinary, normal, primary and natural meaning. When such meaning is clear, necessity cannot arise to see how the same word is used and considered elsewhere under different circumstances in recent enactments. Indeed, in such a situation, the Court would have to guard against a large variety of interpretations of the said word as used in a variety of laws under a variety of situations. So far as Chap. VIII is concerned, equitable extension of the plain and ordinary meaning of the said word is not possible. Indeed, it is best left undisturbed in its original setting and form. To give wider meaning thereto would amount virtually to legislation by the Court. It would, in this behalf, be also relevant to note that when two alternative constructions are set forth:

"..... that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system". (Maxwell's Interpretation of Statutes, Twelfth

12. Bearing, therefore, this entire position in mind and having regard to the state of things and the language of the times when the law was passed in 1875/1882 and putting oneself in the world of legal concepts and terminology of those times, it is clear that the word "rent" in the different provisions of Chapter VIII including Sections 50, 53, 57, 58 and 60 as also in Forms A and C in the Third Schedule to the Act can only mean rent strictly so called, i. e, rent in its limited or narrower sense, rent which is payable by a tenant to his landlord for property demised by the landlord to the tenant. The word "rent in Chapter VIII of the Act means rent in its primary sense, rent due under a lease either in contract a demise or in law a lease. This is the emerging construction and interpretation on application of the principle of contemporanea expositio to find out how the law was understood when passed and what was its meaning when enacted. This interpretation is further strengthened by the words "chargeable with the rent" in Section 58 because, generally speaking, of the different categories of payments to be made, rent alone (as distinguished from compensation or licence fee) can more appropriately be said to be "chargeable" on a property. Similarly, the words "any person claiming to be entitled to arrears of rent" in Section 53(1) of the Act would in the context mean the landlord. It is only the landlord who becomes entitled to rent and its arrears. This is further corroborated by the provisions of Section 67 of the Act, under which the Registrar is enjoined to keep account inter alia of "..... all sums realised by sale of the property detained and paid over to landlords". Again, the word "debtor" in Section 59 onwards of the Act would also in the context, mean the tenant in question because it is only from a tenant that rent can be due and can be claimed and rent in arrears becomes a debt and one liable to pay the same would be a debtor.

13. The narrow construction of the word "rent" is also in consonance with the very nature of the proceedings under Chap. VIII. It is a summary remedy and, indeed, a drastic measure. At the very inception, even the initial order to levy distress is ex parte passed behind the back of the very person vitally affected thereby. Distress, therefore, is, indeed, a serious matter and even where it is later established to be illegal inviting conviction and penalty, vide Section 68 of the Act, the damage, in the meanwhile, resulting to the goods and reputation of the party in question, in commercial cities can be extensive and, in a given case, even irreparable. Relevant to note is also the circumstance that there is no appeal provided in the matter. Provisions relating to distress could not, in the circumstances, have been intended to operate over a wide spectrum of relationship over and beyond the strict confines of the relationship of landlord and tenant. Distress proceedings cannot, therefore, be permitted in cases where the, relationship between the parties is not that of landlord and tenant and where the arrears becoming due are not arrears of rent strictly so understood. Distress can be levied only upon a strict compliance with its pre-requisites. It cannot be based upon an ambiguity putting the other side in great jeopardy on the basis of such ambiguity. Such a distress would be illegal at its very threshold

resulting in a trespass ab initio on the premises in question as also in relation to the goods in question sought to be detained.

14. Such, therefore, being the nature and character of the distress proceedings, the contention that the word "rent" in Chap. VIII should, even in the context of a distress proceeding be interpreted widely and liberally cannot be accepted. So also the contention that the word "rent" has been judicially construed also in a wider sense, though otherwise correct, cannot apply to a matter relating to distress proceedings as of the instant nature. In fact, the plaintiff-firm itself does not accept any relationship of landlord and tenant between the parties viz, the plaintiffs and the defendant either by way of any contract accordingly or even by virtue of operation of any law. The positive contention of Mr. Dhanuka, on the contrary, is that the Rent Act has no application to the premises in question, nor does it apply to govern or regulate the relationship between the parties. Nor does Mr. Dhanuka admit the application to this case of the provisions of Chapter V (regarding leases) of the Transfer of Property Act. The stand of the plaintiffs all along has been and is a denial of any relationship of landlord and tenant as also a denial of any lease either in contract or in law between the parties and an emphatic denial of any consideration payable being rent strictly so called.

15. Indeed, even in the very application dated July 12, 1977, for distress warrant, the plaintiffs have struck off the word "rent" and in lieu thereof mentioned "compensation" and in the very affidavit solemnly affirmed by plaintiffs' partner P. Jayant Shetty in support of the said application, the printed word "rent" is struck off and substituted by the word "compensation". When contention is that the word "rent" includes compensation, where was then the need to , deliberately strike off rent in both these important documents aforesaid which had set into motion the distress proceedings in question and positively substitute the same by the word "compensation". Such being the position and having itself more than once distinguished rent From compensation, with what strength can the plaintiffs contend that what was sought to be recovered was nevertheless rent and not compensation? A litigant cannot be permitted to approbate and reprobate and take advantage by adopting shifting positions to somehow or the other overtake his rival. The plaintiffs cannot, therefore, be permitted by way of distress to recover storage charges orally contending the same to be rent in a faint attempt to conform to the requisites of a distress proceeding while at the same time refusing to acknowledge any relationship whatever of landlord and tenant between the parties and also refusing to acknowledge payment of consideration being rent strictly so called. If the relationship set up and set forth by the plaintiff-firm itself vis-a-vis the defendant is not that of landlord and tenant, then the storage charges, fee or compensation payable by the defendant to the plaintiffs under an "arrangement so called can, by no stretch of imagination, be termed "rent" strictly so contemplated by law.

16. Mr. Dhanuka referred to Chap. VII (as in force in the State of Maharashtra) of the Act, particularly Section 41 therein, and contended that since it provides

(where certain enactments including the Rent Act have no application) for recovery of possession of any immovable property by way of suit or proceedings not only between a landlord and his tenant but also between a licensor and his licensee as also for recovery of rent or licence fee or charges, the provisions of Chap. VIII of the Act would also apply to proceedings for distress not only by a landlord against his tenant for recovery of rent but also by a licensor against his licensee for recovery of licence fee or charges. I am unable to accept this contention. Having already noted earlier the origin and the legislative history of Chap. VIII, conclusion must follow that Chap. VIII has nothing to do with Chap. VII. The law contained in Chap. VIII was in substance enacted and was in operation since 1847 thus long prior to the enactment of Chap. VII in 1882. The provisions of Chap. VIII do not flow from those of Chap. VII. There is no inter-connection between the two. Nor is one dependant upon the other. Each of these two chapters is independent of the other. It is a mere coincidence that, notwithstanding absence of any link between these two chapters, the one is placed after the other and the two form part of the same main enactment viz., the Presidency Small Clause Courts Act.

17. Furthermore and even if one were to take the aid of Chap. VII (as in force in the State of Maharashtra) to interpret the provision in Chap. VIII, it would be seen that the very scheme of the said Chap. VII supports more the contention of Mr. Meghani for the defendant rather than that of Mr. Dhanuka for the plaintiff. The very Section 41 (on which Mr. Dhanuka laid much emphasis) by reference to them separately preserves and maintains the well-recognised distinction between landlord and tenant on the one hand and licensor and licensee on the other as also between rent on the one hand and licence fee or charges on the other. This distinction through use of different words is not a mere exercise in tautology. Nor is this distinction mere formal or verbal, but it is, in the eye of law, real and substantial. If the aforesaid different expressions had only one and single meaning, where was then the need to use them all together? Such user would indeed then be superfluous. Such superfluity, however, cannot be attributed to the legislature. Legislature being an ideal body, makes no mistakes nor does it engage itself in superfluities. Reasonable inference, therefore, would be that when the legislature itself has used different words and expressions and specifically linked them respectively with different concepts and relationships, the object and intention is to maintain in tact the real, legal and vital distinction involved therein and reflected thereby. And what is equally pertinent is the fact that though Chapter VII has undergone a number of significant changes since originally enacted and has, so far as this State is concerned, been substituted by new Chap. VII by Maharashtra Act No. 19 of 1976. Chap. VIII has (even in Maharashtra), except for certain minor changes, remained much the same since its inception in 1882. This also shows that the scheme and object of the two chapters is altogether different and distinguishable. One does not have any effect on the other. Each stands on its own and each constitutes in its own sphere and field a self-contained code. The aforesaid contention of the learned Advocate Mr.

Dhanuka, based on Chap. VII of the Act, therefore, fails and is rejected.

18. On behalf of the plaintiffs, reliance is placed by Mr. Dhanuka on the ruling of the Supreme Court in *Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik*, wherein, at p. 922 (para 11), a passage from an earlier ruling of the Supreme Court in *State of Punjab and Another Vs. British India Corporation Ltd.*, is quoted as follows:

"In its wider sense rent means any payment made for the use of land or buildings and thus includes the payment by a licensee in respect of the use and occupation of any land or building. In its narrower sense it means payment made by tenant to landlord for property demised to him." It is difficult to appreciate how this helps the plaintiffs. On the contrary, when once it is found that the word "rent" in Chap. VIII is used in its narrower sense as distinguished from its wider meaning, the aforesaid ruling supports the defendant's contention that the word "rent" in Chap. VIII means not any licence fee or charges as contended by the plaintiff but "payment made by tenant to landlord for property demised to him" as held by the Supreme Court-19. It is, in this context, also further relevant to note that in *Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik*, the question related to the true construction not of any statute but of a consent decree which contained the word "rent". And the Supreme Court held that notwithstanding the use of the said word "rent" in the consent decree, what was intended was payment by a licensee and the consent decree did not create any fresh tenancy. The said case, therefore, was on this ground also clearly distinguishable and can have no application to the present case.

20. In *State of Punjab and Another Vs. British India Corporation Ltd.*, the question arose in the context of the said word "rent" being used in a taxing provision viz., Rule 18 of the Punjab Urban Immovable Property Tax Rules (1941) and the Court, on a review of the position involved therein, held thus in Para. (17) of its judgment:

"Our conclusion therefore is that the word "rent" in Clause (ii) of Rule 18 (4) means payment to a landlord by a tenant for the demised property and does not include payments made by licensees."

and in the next para. (18) the Court observed as follows:

"In coming to this conclusion we have not overlooked the fact that there is scope for an argument that in Clauses (d) and (e) of Section 4 of the Act as they stand after the amendments in 1954 and 1957, respectively, the word "rent" has been used in the wider sense. Assuming that this is so, such use of the word in 1954 and 1957 cannot be taken into account for the purpose of interpretation, as the Rule under consideration was framed long before these dates." If while construing the word "rent" in a 1941 rule, the Supreme Court excluded from consideration its subsequent wider meaning by the same law by its amendments of 1954 and 1957, it is not possible, indeed all the more difficult, for this Court to construe the word "rent" in art 1882 enactment by reference to the subsequent

expanded meaning of the said word as used in altogether different other laws.

21. Mr. Meghani, the learned Advocate for the defendant, next contended that distress can be levied only so long as contractual relationship of landlord and tenant or licensor and licensee (assuming it can be levied by a licensor against his licensee) subsists. The right to distress comes to an end with the cesser of contractual relationship. Mr. Dhanuka, while conceding that distress cannot be levied for recovery of rent due for the period after termination of contractual relationship contends, however, that it can be levied even after termination of contractual relationship but for recovery of rent due for the period before the said termination. He seeks support for his contention from the use of the words "any person." in Section 53 of the Act which expression, according to him, indicates that any person can levy distress irrespective of whether he is landlord or licensor and irrespective of whether the tenancy or licence is subsisting or not subsisting, terminated or not terminated.

33. Here again, I am unable to accept the contention of Mr. Dhanuka. The aforesaid relationship between the parties must subsist not only at the time when rent falls in arrears and becomes due but also at the time when distress is sought to be levied even though it be for the period prior to the termination of the said relationship, just as the right to levy distress can arise only when contractual relationship springs into existence, it subsists only so long as that relationship subsists and becomes extinct when the relationship stands terminated. It is basically a personal right. The very act of termination, extinguishes the right to distrain. Distress can" not be levied thereafter by one refusing to accept and acknowledge a subsisting contractual relationship and when, in the eyes of the landlord, the person against whose goods distress is sought to be levied, is either a trespasser simpliciter or a protected trespasser or a statutory tenant as sometimes called.

23. Implicit in the right to distress for arrears of rent is a subsisting contract between the parties, under which contract the party concerned is bound to pay but has failed to pay the rent in question thus attracting the weapon of a distress warrant for its summary recovery. Once it is found that "rent" in Section 53 of the Act has to be construed in its narrower sense, it is also clear that arrears of such rent is a sine qua non for a valid distress. That being so, what is due to a landlord from his tenant after termination of the contract of tenancy is not rent so construed but only either damages or compensation or mesne profits depending upon the facts and circumstances of each case. As laid down in 13, Halsbury's Laws, Fourth Edition, page 141, paragraph 267:

"Except in the cases already cited (not applicable to the present petition), a landlord is not entitled to distrain after the expiration of the term of tenancy, even though the tenant continues in occupation after notice to quit has expired."

I, therefore, hold that the plaintiffs herein having terminated the contract by notice dated Feb. 12, 1977, it was no longer open to the plaintiffs to thereafter

seek to levy distress against the goods of the defendant by application made five months later on July 12, 1977. The impugned order is, on this ground also, therefore, liable to be set aside.

24. A tenant holding over would, however, stand on a different footing altogether. In such a case, though the tenancy is terminated, the tenant nevertheless continues in possession with the approval and consent of his landlord resulting in a renewal on the same terms and conditions of the very tenancy in question. Needless to add that a tenant holding over is a concept different and distinguishable from the concept of a mere statutory tenant continuing in possession not with the approval and consent as such of his landlord but because of the protection granted by the statute. It is common knowledge that in areas where Rent Restriction Acts are in force, the continuation of a tenant in possession after termination of contractual tenancy is, generally speaking, referable more to the protection of the rent statute in question than to any approval or consent of the landlord. In such cases, the presumption or inference would be more in favour of one being a statutory tenant rather than a tenant holding over. But yet one cannot exclude the possibility of there being tenant or tenants holding over. And in so far as a tenant holding over is concerned, his landlord would, in my view, be entitled to levy distress for arrears of rent due from such a tenant.

25. Mr. Meghani also further contended that the impugned distress warrant was bad also for the reason that it seeks to recover more than the amount recoverable under the law. Mr. Dhanuka objected to this contention being raised for the first time at the stage of arguments. This objection is countered by Mr, Meghani by relying upon the revision petition ground No. 2 viz.,

"The learned Judge..... has exercised jurisdiction which was not vested to him." and ground No. 3 viz.:

"The learned Judge.... has failed to take into account the absence of pre-requisite as required by law before distress can be issued." Mr. Meghani, therefore, submitted that his aforesaid contention was more than amply covered by the said two grounds. Now, without going into the question whether the said grounds can or cannot be said to cover the said contention, I am inclined to permit the same to be raised because I find that it emerges in a clear-cut manner from the undisputed facts on record and also because it goes to the root of the matter affecting the jurisdiction of the Court issuing the distress warrant.

26. u/s 50 of the Act, distress cannot be levied in respect of "any rent which has been due for more than twelve months before the application" in that behalf. The application in this case is made on July 12, 1977. Distress therefore, could not be levied for more than 12 months prior to the said date. In other words, it could not be levied for the period prior to July 12, 1976. But when we turn to the application for distress, we find that distress is asked for to recover amount for the period from Nov. 1, 1975, i.e., as much as nearly 8 1/2 months outside the

period expressly limited by law. And what is enigmatic is that the Court has even then issued the distress warrant accordingly. Indeed, Mr. Dhanuka had to concede that the plaintiff's application for distress as also the distress warrant was for a period of about 8 1/2 months outside the period expressly limited by law.

27. Question then is what is the effect of such a warrant? Can it nevertheless be sustained as a whole? Or can it be partly sustained and partly quashed? Or must it be invalidated as a whole? To my mind, the only answer can be that such a defective warrant must be set aside as a whole. u/s 54 of the Act, the contents of the warrant have to be in Form B contained in Section III to the Act. The said form of the warrant does not mention any period as such (presumably because the said period is already laid down in Section 50), but it is expressly stated to be for a fixed and specified amount. The warrant in the present case directs the Bailiff and the Appraiser to distrain the moveable property of the defendant on the premises in question for the sum of Rs. 1,344/- and the costs of the distress. Out of this amount of Rs. 1,344/-, as much as about Rs. 940/- is for a period of nearly 8 1/2 months which falls outside the period expressly limited by law. Thus, more than two-third of the amount of the distress warrant was not legally recoverable and was expressly barred by Section 50 of the Act. And yet, if the defendant has to avoid and save the distress on his moveable property even by virtue of such a patently illegal warrant, he has no option but to pay the said warrant amount of Rs. 1,344/- in its entirety and without any demur because the Bailiff cannot go behind the warrant and the amount stated therein and there is no provision in the Act to split up such a defective warrant. Nothing but actual payment can save the situation.

28. Circumstances, therefore, show that the warrant stands or falls as a whole. Its integrity cannot be broken up and if sought to be so broken, it must disintegrate as a whole. One cannot, in this context, ignore the summary nature of distress proceedings and the drastic power of a distress warrant and the rigorous consequences of a seizure and sale involved. A distress warrant in such a proceeding must, therefore, be construed strictly according to the letter of the law. Any vital defect therein must necessarily vitiate the same and render it totally unenforceable. There was, therefore, at the very inception, no jurisdiction to issue such a warrant nor any authority of law to enforce it as it stood, It was void ab initio.

29. Mr. Meghani also raised two further contentions for setting aside the distress proceedings viz:

(1) The affidavit filed by the plaintiffs in support of the application for distress warrant was not as per Form A in Sch. III to the Act as required by Section 53(2) of the Act, inasmuch as the word "rent" was struck off and in its place was mentioned "compensation".

(2) The defendant was not supplied with the inventory and notice as per Form C

in the Third Schedule to the Act.

30. So far as the latter contention is concerned, I cannot permit Mr. Meghani to raise such a factual contention for the first time in revision. There is also nothing on the record as it stands to show that the defendant was not supplied with the inventory and notice as per the said Form C. The said contention is, therefore, rejected.

31. So far as the first contention is concerned, it is factually correct that in their affidavit (purported to be in Form A in Schedule III to the Act) in support of the application for distress warrant, the plaintiffs have struck off the word "rent" and in its place mentioned "compensation". In the earlier part of the judgment, I have, thought in a different context, already referred to this aspect. Now, Form A is undoubtedly a part of Schedule III to the Act and, in law, a schedule is as much a part of the enactment in question as are its other provisions and sections. Prima facie, therefore, the prescribed form cannot be deviated from nor can the vital words therein be altered or substituted. However, since I am upholding the other and more substantial contentions of the learned Advocate and allowing this petition, it is, in my view, not necessary in this case to further go into this question and decide whether substitution of "rent" by "compensation" per se invalidates the warrant in question. Though this question also is an arguable one, its decision is not necessary for the disposal of this petition. The said question is, therefore, left open.

32. In the result, this petition succeeds. The order dated Sept. 23, 1977, passed by the trial Court in Distress Warrant No. 236 of 1977 is set aside, the defendant's application challenging the said distress proceedings is allowed and the distress proceedings including the distress warrant in question are hereby quashed. The amount with costs deposited under protest by the defendant in compliance with the distress warrant and lying in the trial Court be forthwith refunded to him unconditionally.

33. Rule absolute. In the circumstances of the case, the parties will bear their own respective costs of this petition.

34. Petition allowed.