

(1975) 11 BOM CK 0027
In the Bombay High Court
Case No : Spl. C. A. No.264 of 1971

Shivchandray Poddar (Since deceased by his heir Bhagwati Prasad) APPELLANT

Vs

Shera Dara Haveliwalla and others Opponents RESPONDENT

Date of Decision : 27-11-1975

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(2), 12(3)(a), 12(3)(b), 13
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 106, 108(e), 111(g), 116

Citation : (1977) MhLj 379

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : R.W. Adik, A.G., Chimanlal Shah and Co. and Jamshedji Rustamji and Devidas and Jam Merchant, Attorneys, for the Appellant; K. J. Abhyankar with D.K. Ghaises, For opponent No. 1, for the Respondent

Final Decision : Allowed

Judgement

G.N. Vaidya, J.—The petitioner in the above Special Civil Application under Article 227 of the Constitution of India, is the heir of the original plaintiff, who filed a suit against the respondent No. I and her husband as defendants Nos. 1 and 2, for eviction of the defendants and for recovering a sum of Rs. 23, 234.43 np. due from the defendants, as per the details, which-

"Particulars of the plaintiffs Rent at Rs. 2758 from July 1951 to June 1960 (108 months).....

claim. Rs. 2,97,864.00

Additional tax at 3% from July 1951 to June 1960 i.e. Rs. 82.74

Rs. 8,935.92

Rs. 3,06,799.92

Additional Halakhore and Education Tax at 1.7% on rent from 1-4-58 to June 1960 (27 months) Rs. 46.88

Rs. 1,265,76

Rs. 3,08,065.68

Additional Tax from 1-4-59 to June 1960 (15 months) at 2% on rateable value of 1.7% on rent 49.09 on Rs. 2887.62 made up of Rs. 2758,82.74 and Rs. 46.88

Rs. 736.35

Total amount due.....

Rs. 3,08,802.03

Less amount received.....

Rs. 2,85,567.60

Balance due.....

Rs. 23,234.43

The suit was filed by the plaintiff on July 14, 1960.

2. The allegations made by the plaintiff in the plaint can be conveniently stated as under:

3. By an Indenture of lease dated October 4, 1944, one Eruch Gustadji Reporter and Mrs. Alia Shavak Runwalla demised unto the 1st defendant a leasehold land hereditaments and premises situate at Colaba, together with all rights of assessments and appurtenances thereto with the fixtures and fittings and other articles permanently attached to the said premises, including electric installations etc., for a period of three years from October 4, 1944, at a monthly rent of Rs. 3,500 payable in advance on the 15th of each calendar month on the terms and conditions contained therein. A copy of the lease is annexed to the plaint as Ex. "A", which had several terras and conditions.

4. By a Deed of Assignment, dated May 6, 1946, Eruch Gustadji Reporter and another assigned over the leasehold interest in the aforesaid premises to the plaintiff and the plaintiff became the owner of the demised premises subject to the lease granted by the said Eruch Gustadji Reporter and Another in favour of the 1st defendant. By the terms of the said lease the 2nd defendant stood surety for payment of the rent and for performance and observance of the terms and conditions of the lease. The said lease expired by efflux of time and thereafter the 1st defendant continued to be a monthly tenant in respect of the said premises after determination of the lease on the terms and conditions contained in the said lease, Ex. A. The plaintiff alleged that the 1st defendant had committed the following breaches of the terms and conditions of the lease, a monthly tenancy:

(1) The 1st defendant was very irregular in payment of rent and compensation in respect of the premises and had always failed and neglected to pay the rent and compensation which was payable in advance on the 15th of each and every month. (2) The 1st defendant had also committed the breach of the terms of clause (2) under which she was bound to keep the premises clean and sanitary; and she further committed the breach of the terms (4) and (5); which required the 1st defendant to keep sanitary fittings, fixtures and electric and gas installations, fans, bath-tubs, wash basins, geysers and others sanitary fittings in a good and tenantable conditions; (3) The 1st defendant has also not cared to keep the demised premises in a tenantable condition or repairs, as the plaster of the walls at several places had deteriorated and bricks have been exposed at several places. The balconies and galleries in Miramar Building required repairs. The 1st defendant had put up temporary props to the gallery on the south and had not carried out repairs to the same and thus the 1st defendant committed breach of clause 2 (5) of the lease; (4) The 1st defendant had constructed a sea saw in the open compound and had removed partitions from the aforesaid premises and put up chajjas in Halvetia Building without the written consent of the plaintiff and thus committed a breach of clause 2 (6) of the lease by making additions and alterations to the demised property; (5) She had also failed to whitewash once in every year such parts of the premises as are usually white-washed after the end of the monsoon and has failed to paint with two good coats at least with good oil paint both inside and outside the demised premises. (6) She was not using the premises for the purpose for which the same was let out; inasmuch as the 1st defendant, in breach of the terms and conditions had let out a portion of the demised premises to several sub-tenants for the purpose other than the hotel business carried on by the defendants, such as letting out the premises to Children-nook and educational institutions for the purpose of carrying a school. The 1st defendant had further let out several other portions of the demised premises to sub-tenants without the previous consent in writing of the plaintiff and had thus committed a breach of clause 2 (14) of the lease. (6) She had filed an application for fixation of standard rent being R. A. N. Application No. 750 of 1951; and though the interim rent at Rs. 2,000 per month was fixed, the 1st defendant failed to pay the interim rent regularly. Ultimately, by an order dated December 2, 1953, the standard rent was fixed at Rs. 3200 per month. On an appeal filed by the 1st defendant, it was reduced to Rs. 2,600 per month; and it was ultimately decided on April 30, 1957, after remand by the High Court that the standard rent of the premises was fixed at Rs. 2,932.

5. Once again there was an appeal and by the said appeal the standard rent was fixed at Rs. 2758 per month subject to all permitted increases under the Rent Act. In spite of all this and in spite of filing of the suit by the plaintiff in the Small Causes Court being Suit No. 927/4224 of 1954, for recovery of arrears of rent and compensation in respect of the said premises from July 1, 1951 to February 28, 1954, the amount of Rs. 23,091-25P. remained due and payable by the 1st defendant to the plaintiff. The defendant No. 1 failed to pay the same amount

with permitted increases.

6. The plaintiff, therefore, by his Advocate's letter dated April 30, 1957, which is at Ex. C on the record, terminated the tenancy of the 1st defendant and called upon the 1st defendant to vacate the premises and also to pay all the arrears of rent with permitted increases. The material words in the said notice were:

Your tenancy is also otherwise determined by a notice to quit previously served on you and you are now only a statutory tenant.

Without prejudice to what is stated above, and in the event of the earlier notice to quit being held not operative, my client is advised to serve on you this fresh notice to quit and I have therefore to call upon and require you to quit, vacate and deliver up quiet and peaceful vacant possession of the said premises on the expiration of one calendar month next after the receipt of this letter by you find please note that if you fail to vacate, immediate legal steps will be taken against you for the costs and consequences of which you will be held responsible.

By the notice, it was stated that the balance of the amount payable by her comes to Rs. 44,176 plus additional Municipal taxes at 41/2 per cent at the not rateable value. The letter said:

I have now to call upon you to forthwith pay the said amount of rent and also Municipal taxes and please note that if you fail to do so legal steps will be taken against you for the costs and consequences of which you will be held responsible.

7. The plaintiff by his Advocate's letter dated April 28, 1959, which is on record at Exh. J, called upon the 1st defendant once again and the 2nd defendant to pay up the arrears of rent and permitted increases then due. Without prejudice to the plaintiff's contention, the tenancy of the 1st defendant was duly terminated stating as follows:

I am, therefore, instructed to call upon you Mrs. Dara to quit, vacate and deliver up quiet and peaceful possession of the aforesaid premises in your occupation at the end of the month next to the current month.

The notice further stated:

I am further instructed to state that the tenancy of you Mrs. SheraDara Haveliwalla in respect of the said premises has been duly determined and this letter is written without prejudice to my client's rights and contentions that you occupy the said premises as my client's statutory tenant. This letter is written to you with a view to obviate any objection in future.

The plaintiff further by his Advocate's another letter dated October 3, 1959, sent a statement of account showing the amount of rent and compensation and additional taxes due by the defendants to the plaintiff. The defendants by their Advocate's letter dated October 6, 1959, disputed the said statement and stated that they were going through the statement and would write at length thereafter. As no reply was received by the plaintiff, the plaintiff's Advocate sent another

letter dated October 9, 1959, calling upon the defendants to pay the arrears of rent.

8. The defendants by their Advocate's letter dated October 30, 1959, disputed the amount claimed by the plaintiff and wrongly alleged that only a sum of Rs. 20,520.45np. was due and disputed the correctness of the permitted increases claimed by the plaintiff and sent a cheque for the sum of Rs. 20,520-45ap. In the correspondence that ensued thereafter between the parties, the said amount was accepted by the plaintiff without prejudice to the rights and contentions of the parties. The plaintiff in the said correspondence denied that only a sum of Rs. 20,520-45 was due by the defendants till September 30, 1959, and called upon the defendants to pay the amount as claimed by the plaintiff. The 1st defendant thereafter sent the sum of Rs. 2,851.60np. for the month of October 1959, by cheque, which amount was also accepted by the plaintiff without prejudice to the rights and contentions of the parties.

9. According to the plaintiff, the 1st defendant had falsely raised the dispute as regards the permitted increases due from July 1, 1951, because she was found under the lease clause 2 (2) read with clause 4 (b) to pay the increase in taxes from the date of the lease on account of the increase in Halakhore tax and levy of education fee by the Municipality in 1958 and 1959. The plaintiff further contended that the 2nd defendant had wrongly denied the liability to pay the amount due from the 1st defendant. Thus, Rs. 23,234.43 was due from the 1st defendant and the 2nd defendant was liable to pay the rent as a guarantor. Relying on the above facts, the plaintiff prayed for eviction of the defendants and for recovery of Rs. 23,234.43; and for recovery of future compensation and mesne profits at Rs. 2,934.50 and other incidental reliefs.

10. The defendant No. 1 in her written statement, pleaded that the plaintiff was not entitled to rely on the breaches alleged by him, and denied having committed any breach of the terms of her tenancy, or having changed the user of the suit premises. She also pleaded that the breach, if any, had been waived or acquiesced in by the plaintiff. She denied that her tenancy had been validly terminated, or that the plaintiff had served her with a valid notice of demand u/s 12 (2) of the Rent Act, or that she had been in arrears of rents and permitted increases as alleged. She denied her liability to pay the difference in taxes as claimed by the plaintiff; and also pleaded law of limitation in regard to a portion of the plaintiff's claim and protection under the Rent Act. She submitted that the suit was liable to be dismissed with costs. Defendant No. 2 contended that after the expiry of the period of lease dated October 4, 1944, came to an end and further his contract of suretyship as with the original lessors also came to an end.

11. The learned trial Judge framed as may as 12 issues treating the suit as a composite suit to recover possession of the suit property from defendant No. 1 and also a sum of Rs. 23,234.43 np. as arrears of rent and compensation. It is rather difficult to understand why he called the suit as a composite suit, when the suit was a suit which could be instituted on the basis that the defendant

could not claim any protection under the Rent Act; and the plaintiff was entitled to recover possession u/s 12 and also u/s 13, with standard rent and permitted increases under that Act. However, he used that expression and went on to deal with the various issues. He overruled the contentions of the defendants and found that the tenancy of the defendant No. 1 was validly and duly terminated by the notice dated April 30, 1967 (Ex. K) and Ex. J, which were admittedly served on defendant No. 1 on that very day. The learned Judge observed:

The plaint does not specifically state on which of these two notices this suit is based. The learned Advocate for the defendants has, however, contended that both these notices are too short and therefore not valid. It is urged by him that the lease dated 4-10-1944 (Ex. "D"), under which the defendant No. 1 was put in possession of the suit property, being for a period of 3 years, the same expired on 4-10-1947, and that as the defendant No. 1 thereafter continued to remain in possession of the suit property and the plaintiff assented thereto by accepting rents from her, the defendant No. 1 must u/s 116 of the Transfer of Property Act, be deemed to have become the plaintiff's monthly tenant on the expiry of the lease, i. e. from the 5th of October 1947, and that therefore the notices to quit should have called upon her to vacate the suit property at the end of the 4th of any month, and not at the end of the month.

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But even if the lease is taken to have expired on 4-10-1947 it must be noted that the suit property was then governed by the Rent Act of 1944. It has been held that in cases where premises are governed by the Rent Acts and mere acceptance of rent by the landlord is no evidence of his assent to his tenant's continuing in possession of the premises (See 50 Bom. L R 233). Nor would the plaintiff's statement in the notices Exhs. J and K, or even in the plaint, that after the efflux of the period of the lease the defendant No. 1 Continued to be a monthly tenant in respect of the suit properly establish any assent on his part to the defendant No. 1 continuing in possession, (vide Ganga Dutt Murarka Vs. Kartik Chandra Das and Others,). In the present case, there is no evidence whatever to show that after the determination of the lease the plaintiff has assented to the defendant No. 1's continuing to occupy the suit property as a monthly tenant, and consequently the provisions of section 116 of the Transfer of Property Act, would not apply to this case.

However, even assuming that after the determination of the lease a new contract of tenancy came into existence between the parties, then it may be noted that in the notice to quit dated 28-4-1959 (Ex. J), which was the final notice before the filing of this suit, no particular date for the defendant No. 1's vacating the property was mentioned, and she was required to vacate the same "at the end of the month" could only mean "current" month of tenancy. Hence the notice was to expire with the end of the month of the defendant No. 1's tenancy. The defendant No. 1 know well was what date to what date her month of tenancy from running. It is settled law that the test of the sufficiency of a notice to quit is

not what it would mean to a stranger ignorant of all the facts and circumstances touching the holding to which it refers, but what it would mean to tenants presumably conversant with all these facts and circumstances (See Harihar v. Ram Shashi 46 Cal. 458). Hence, I hold that the tenancy of the defendant No. 1 in respect of the suit property has been validly terminated and, therefore, my finding on this issue is in the affirmative."

But the learned Judge decreed the plaintiff's suit for possession on the following ground: (1) that the defendant had committed breaches alleged in paras 17 and 19 of the plaint i. e. not keeping the suit premises in tenantable repairs and para 19, failure to whitewash as agreed under clause 2 (7) of the lease-deed. The learned Judge had, however, found that the rest of the grounds alleged by the plaintiff were not proved.

12. The defendants carried an appeal against the judgment and decree before the appeal Court. The appeal Court reversed the findings of the trial Court. The learned trial Judge decreed the plaintiff's suit for possession only and passed a decree for Rs. 14,275 and observed that the decree should be marked as satisfied having regard to the amount which was received after the filing of the suit by the defendant without prejudice to the rights and contentions. The plaintiff and the defendants, both carried appeals to the appeal Court of the Small Causes.

13. The appeal Court reversed the findings of the trial Court with regard; to (1) the liability of the defendant to be evicted under section 12 (3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for nonpayment of arrears of rent and permitted increases; (2) for breach of the condition No. 12, failure to use the premises only for boarding house, hotel and/or for allied businesses and or as residential quarters; and allowing the part of the premises to be used as in violation of clause 2 (12) and section 13 (1) (a) of the Rent Act; and (3) breach of the term 2(5) of the lease-deed, by not carrying out necessary and tenantable repairs and by not whitewashing as per the terms of clause No. 2 (7).

14. However, the appeal Court dismissed the suit for possession on the ground that the tenancy of respondent No. 1 defendant No. 1 was not validly terminated on 1-4-1949. The appeal Court held that the month of tenancy expired on the fourth day of the following month according to the British Calendar; and, therefore, the notice sent under the provisions of section 106 of the Transfer of Property Act, to quit must expire on the fourth day of the following month; and as the second notice at Exh. J did not mention the first notice and the first notice was the only notice referred to in the plaint, both the notices were invalid, observing:

The appellant's contention is that the first notice was served upon her on 30-4-1957 i. e. on the same day and it expired on 31-5-1957. The second notice is served upon the appellant on 29-4-1-959 and it expired on 31-5-1959. Neither

of them expired on the fourth day of the following month. The relevant portion of the first notice is "I have, therefore, to call upon and require you to quit, vacate and deliver up quiet and peaceful vacant possession of the said premises at the expiration of one calendar month next after the receipt of this letter by you. (*Italics is mine*) The words "next after" plainly mean immediately following the receipt of the letter So also the words "calendar month" mean a month according to the British Calender. A month of the tenancy may either commence from the first date of any of the calender month and may expire on its last date, or it may commence from any other date and may expire on the corresponding date of the following month. One of the cardinal principles relating to the interpretation of a document is that the words or phrases used therein must be given their plain grammatical meaning in the absence of an intention to the contrary On giving this plain meaning to the above underlined words, the notice must be interpreted to mean that the tenant was called upon to quit and vacate after the expiry of the month of May, 1957. The words under interpretation do not suggest any other meaning. According to Mr. Mehta a "calendar month" always means and must be always interpreted to mean a month synonymous with the month of the tenancy. In order to accept this interpretation, the words "of your tenancy" after the words "calender month" are required to be interposed. Such an interposition is neither warranted by any evidence nor extraneous circumstances and, therefore, it is not, in our opinion, permissible We are. therefore, unable to interpret this notice to mean that it had expired with the end of the month of the tenancy in question. In the result, it was a short notice and it did not validly terminate the tenancy."

The second notice was also held by the appeal Court to be invalid with the following observations:

The relevant portion in this notice is "I am, therefore, instructed to call upon Mrs. Dara to quit, vacate and deliver up quiet and peaceful possession of the aforesaid premises in your occupation at the end of the month next to the calendar month (*Italics is mine*). It was served on the appellant on 29-4-1959. According to Mr Boman Behram, this notice, on the plain meaning given to the above words, must be held to have expired at the end of May, 1959. There is considerable force in this argument. Mr. Mehta wants us to interpret the words "calendar month" as current month of the tenancy. For the reasons already discussed in the preceding para, such an interposition is not warranted and we are unable to accept it. That apart, there is one more circumstance to indicate that the words "calendar month" were not intended to mean as the current month of the tenancy. The words of "your tenancy" appearing after the words "current month" are struck off. Therefore, the words used but struck off late or before the despatch of the notice, cannot be interposed to validate the notice if it is otherwise invalid. Consequently,, this notice is short of the requisite period and there is no valid termination of the tenancy. Thus, both the notices are short and, therefore, invalid.

The appeal Court, however, passed a decree for Rs. 22,320.43 by varying the decree of the trial Court for the recovery of the balance due.

15. The said judgment of the appeal Court is challenged by the plaintiff in the above Special Civil Application, under Article 227 of the Constitution of India. The learned Advocate General, who appears for the plaintiff, submitted that the learned Judges of the appeal Court made a mountain of the technical point in respect of the notices, when the only notice required u/s 12 was given, as required by section 12 (2) to the defendant No. 1. No notice was required u/s 13 (1) (a) under which the decree was passed by the trial Court. He had further relied on a notice which was given on April 1, 1949, which runs as follows:

1-4-1949.

Mrs. Shera Dara Haveltwaila, Hotel Miraman, Opposite Colaba Bus Station, Colaba, Bombay. Madam,

We write this to you under instructions of our client Mr. Shivchandray Poddar. Under the terms of the lease dated 4th October 1941 on the terms whereof you are the tenant holding over as a tenant after the expiry of the terms, we are instructed to point out to you that in contravention of the terms of the Lease, clause II sub clause 6, you have made an addition to the demised premises without the previous consent in writing of our client by building a fruit and flower stall. You have thus made a breach of the terms of the Lease.

We are further instructed to point out to you that you have not carried out the white washing work required to be done under sub-clause 7 of clause II and thus you have made another breach of the terms of the lease. Our clients are, therefore, entitled to treat the lease as having come to an end hereby intimate to you that they will proceed on that basis

Our clients have received two notices from the Bombay Municipality Bearing No 1823 and 3450, which we beg to send you herewith as they pertain to you and as you are liable to pay the same as per the terms of the same lease.

The letter was based on clause in the lease-deed viz. Clause V (1), which runs as follows:

Provided always and It is hereby agreed as follows:

(1) If any part of the rent hereby reserved shall be unpaid for 10 days after becoming payable (whether formally demanded or not) or if any covenant on the Lessee's part herein contained shall not be performed or observed or if the Lessee or other the person in whom for the time being the term hereby granted shall be vested or the surety shall become insolvent or bankrupt or in case any furniture or other articles appertaining to the demised premises as stated in clause I hereof or any part thereof shall be taken in execution under process of law against the goods of the Lessee or such other person then and in any way of the said cases it shall be lawful for the Lessors at any time thereafter to re-enter

upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Lessors in respect of any breach of the Lessees covenants herein contained.

(2) Either of them the Lessors and the Lessee shall have the option of giving three calendar months previous notice in writing to the either of them to extend the period of this lease by a further period of three years on the same terms and conditions as are contained in these presents exclusive of the present option clause and for this purpose a fresh lease in duplicate shall be executed by both the parties provided however that the Lessee shall not be entitled to exercise the said option if the Lessee has not paid the rent regularly or has committed default in the performance or, observance of any of the covenants and conditions in these presents on bet part to be so observed and performed.

16. It is rather unfortunate that both the Courts below ignored the notice Ex. 4, which ought to operate so far as the contractual tenancy is concerned, notwithstanding that the requirements contained in section 106, which applied in the absence of contract. The lower appeal Court has referred to this letter and laid that there cannot be said to be valid termination u/s 111 (g) of the Transfer of Property Act, ignoring that the mode is by forfeiture in case the lessee breaks an express condition which provides that on breach thereof the landlord may re-enter; and the tenancy was forfeited once notice is given as provided u/s 111 (g) of the Transfer of Property Act; and the appeal Court itself has come to a conclusion that there were breaches of conditions.

17. The learned Advocate General submitted that the lower appeal Court ignored this notice and dismissed the plaintiff's suit for possession on erroneous assumption that the contractual tenancy arising out of holding over u/s 116 of the Transfer of Property Act, was not validly terminated by the plaintiff before filing of the present suit. The contention must be upheld, because the appeal Court failed to exercise the jurisdiction on the basis of the finding recorded by it u/s 13 (1) (a) and section 12 (3) (a) on an illegal view of the three notices given by the plaintiff. It is clear from the first notice that the contractual tenancy was terminated as per the lease u/s 111 (g) It is also clear from the second notice at Ex. K that notice terminated the tenancy without prejudice to the earlier termination of the contractual notice. It is also clear from the 3rd notice that as a matter of further abundant caution with regard to the provisions of the Bombay Rent Act the statutory tenancy of the petitioner, however, was terminated u/s 12 (2). In these circumstances it is patent that the lower appeal Court erred in law in dismissing the plaintiff's suit notwithstanding the finding recorded by it that there were breaches of the terms of the lease and non-payment of rent within a month after the service of the notice, Ex. J.

18. Mr. Abhyankar, the learned counsel for the tenant, submitted that the lower appeal Court's view about the effect of the notice was correct, in view of the decision, of the Supreme Court in *Bhaiya Punjalal Bhagwanddin Vs. Dave*

Bhagwatprasad Prabhuprasad, With respects that case is not relevant to the present case, because here notice u/s 12 was validly given and the contractual tenancy, as stated above, was validly terminated in accordance with Ex. No. 4.

19. Moreover, as pointed out by Lord Halsbury L. C. in *Quinn v. Leathern* (1901) A C 495 even the decision of the highest Court must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified, the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.

19. So far as section 13 of the Bombay Rent Act is concerned a landlord) shall be entitled to recover possession of any premises if the Court is satisfied with any. "of" "the conditions mentioned in that section and it does not require as further condition that the tenancy must be terminated by a notice. Section 12 Up doubt requires a notice is to be given, but a notice has been given in this case arid i. e. at Ex, J. In my view, therefore, the lower appeal Court refused to exercise the jurisdiction vested in it by raw on an erroneous view of the legal effect or three notices at Exhs. 4, K. and J.

20. Mr. Abhyankar, the learned counsel for the tenant, contended that the lower appeal Court was wrong in reversing the finding of the trial Court with regard to "the nonpayment of arrears of rent and change of user and breach of terms of the lease. u/s 29 (2) of the Bombay Rent Act, no second appeal shall lie against any decision under sub-section (1); and the decision of the appeal Court is" a final decision on facts; and in view of the decision of the, Supreme Court in AIR 1975 1297 (SC) , the power of superintendence of this Court under Article 227, which is extraordinary cannot be exercised so as to interfere with the findings recorded by the appeal Court.

21. Moreover, the standard rent was already determined in this case; and yet the defendants did not agree. to pay the standard rent within one month from the service of the notice u/s 12 (2), Ex. J dated April 28, 1959. There-is also nothing in the written statement offering to pay the standard rent and; permitted increases. There was already a previous litigation about the standard rent and for recovery of. arrears of rent; and in the facts and circumstances of the case, the plaintiff was entitled to a decree for possession u/s 12 (3) (a). Mr. Abhyankar submitted that as all the arrears of rent and permitted increases are paid now, the attendants are entitled to the benefit of section 12 (3) (b).

22. In the present, case, there Was no dispute between the landlord and tenant with regard to the standard rent although there was a dispute about the permitted increases. There can be no doubt that within one month from the service of the notice, Ex. J, the defendants did not-pay all the arrear of rent, though they may have withheld the permitted increases, they had no business to withhold the standard rent demanded by, the landlord. The facts of the case

attract the operation of section 12 (3) (a), as rightly held by the appeal Court; and in any event, with regard to the principles laid down in Babhutmal v. Laxmibai, by the Supreme Court, it is not possible for this Court to interfere with the finding recorded by the appeal Court- takings into consideration the material before it.

23. Similarly, Mr. Abhyankar's contention that the breaches of the terms did not amount to actionable breaches of terms and that the change of user of the premises was merely not the change of user of the dominant use was put to run a hotel; and for this purpose he relied on the observations made by the Supreme Court in Babhutmal's case at page 1299, and contended that it was for the plaintiff to lead proper and sufficient evidence towards establishing their case in clause (a) read with section 13 (1) by showing that the dominants' use was different from the use for which it was leased. These are all questions for the final Court of fact and appeal.

24. In fact, in the present case, we have the concurrent finding of the two Courts below that the defendants have allowed a substantial portion of the suit premises for the use of a school. The finding again is a finding which will not be interfered with by this Court under Article 227 of the Constitution. The word used in section 29 (2) is not a decree, but a decision and the appeal Court has recorded a decision that there is an actionable change of use within the meaning of section 13(1) (a) read with section 108 (e) of the Transfer of Property Act, which is violated by the tenant not only by change of user but also by the breach of terms and conditions. This Court will not interfere with such findings, because those findings are based on oral and documentary evidence supported by cogent and convincing reasons.

25. In the result, the petition is allowed. The judgment and decree passed by the appeal Court, in so far as dismissing the plaintiffs suit for recovery of possession after setting aside the decree of the trial Court, are set aside and the decree for possession passed by the trial Court is restored. Rule is made absolute with costs throughout.