
(2009) 07 DEL CK 0004

In the Delhi High Court

Case No : CS (OS) No's. 1116 of 1998 and 1124 of 2000

Siemens Public Communication Network

APPELLANT

Vs

Sukhanlal Memorial Charitable Society
 Sukhan Lal
Memorial Charitable Society Vs Siemens Public
Communication Network

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Contract Act, 1872 — Section 23, 65, 70, 73, 74

Limitation Act, 1963 — Article 58, 59, 22

Specific Relief Act, 1963 — Section 26, 26(2), 27, 31, 34

Citation : (2009) ILR Delhi 69 Supp

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Pradeep K. Bakshi, Rajat, B.K. Sood, Rajesh Kumar and Yogesh Kumar Bhatt, for the Appellant; B.K. Sood, Rajesh Kumar, Yogesh Kumar Bhatt, Pradeep K. Bakshi and Rajat, for the Respondent

Judgement

S. Ravindra Bhat, J.—This judgment will dispose of six suits, i.e., CS (OS) No. 1115/1998, 1116/1998 and 1117/1998 which were filed by M/s Siemens Public Communication Network (hereafter called Siemens) against M/s Sukhanlal Memorial Charitable Society; M/s Kanha Credit & Holdings and M/s Aditya Developers; the latter filed Suits against Siemens (being CS (OS) No. 1124/2000, 1125/2000 and 1126/2000). The said three concerns are hereby collectively referred to as Sukhanlal and Group or Sukhanlal group and variously as Sukhanlal Society (in the case of Sukhanlal Memorial Charitable society); Kanha, in the case of Kanha Credit and Holdings; and Aditya in the case of Aditya Developers.

2. The common and undisputed facts, emerging from the pleadings and materials on record are that the Sukhanlal group, which own the premises, 215/70/2/1, Sarai Sahaji (P.F. Colony), Malviya Nagar (hereafter the suit premises) agreed to lease them to Siemens on rent, by Agreement to Lease dated 25th May 1995;

Siemens intended to use them for its telecommunication division. Together with the Lease Agreement, M/s Siemens Ltd., also entered into two other Agreements with other concerns of the Sukhanlal group, i.e Kanha and Aditya. These were the Agreement for Use and Facility and Hire Agreement AC Systems respectively; both dated 25.5.1995, with respect to the suit premises. Besides these three Agreements, the concerns of the Sukhanlal Society, Kanha and Aditya; entered into a Joint Agreement with Siemens, in respect of security deposit paid by the latter, to them, on 25.5.1995. A sum of Rs. 4,74,00,000/- (Rs. Four crores and seventy four lakhs only) (in proportions mentioned in the said Agreement) was given as security deposit to the Sukhanlal group in terms of the Security Deposit Agreement.

3. According to the Agreement to lease, the monthly rent reserved was Rs. 10,00,000/- (Rs. Ten lakhs only) per month. The total lease was for a period of nine years with an increment of 10% of the rent at the expiry of each year. M/s Siemens Ltd., agreed to pay 12 months advance rent to be adjustable in 36 equal monthly instalments from the month of rental of the lease. On termination or on the expiry of the lease, the Sukhanlal group were to refund the unadjusted amount of rent and security before taking over the possession of the premises and in the event of Sukhanlal groups failure to return the amounts, M/s Siemens Ltd. were entitled continue in possession in the premises without paying any rent or compensation, till such time the lessor (Sukhanlal group) paid the said amounts along with interest @ 1% per month for any delay of the refund of the security deposit and unadjusted advance. M/s Siemens Ltd., could terminate the Lease and receive back the entire amount i.e. Security Deposit and unadjusted advance rent, in the event of there being any defect or deficiencies or inadequacy in the Sukhanlal right to execute the Lease Agreement lease the premises.

4. The terms of the Agreement for Use of Facilities, between M/s Siemens Ltd. and M/s Kanha inter alia, postulated that:

(a) that the Agreement was for a period of nine years and was to be coterminous with the Lease Agreement of lease dated 25.5.1995 between M/s Siemens Ltd. and Sukhan Lal Memorial Trust and could be terminated along with the termination of the Lease Agreement;

(b) Siemens Ltd. were to pay M/s Kanha Credit & Holding Pvt. Ltd. a sum of Rs. 5,50,000/- (Five lakhs and fifty thousand only) per month, as charges for use of the facilities provided by the former (M/s Kanha Credit & Holding Pvt. Ltd.), with an increment of 10% of the hire charges at the expiry of each year; and

(c) M/s Siemens Ltd., agreed to pay twelve months rent in advance to be adjusted in 36 (thirty six) equal monthly installments, which amount was paid accordingly.

5. The Hire Agreement of AC Systems, between M/s Siemens Ltd. and M/s Aditya Developers, stipulated that:

(a) The tenure of the arrangement was nine years; it was to be coterminous with the Agreement of lease dated 25.5.1995 between Siemens and Sukhan Lal Memorial Trust; it same could be terminated along with the termination of the Lease Agreement.

(b) M/s Siemens Ltd., was to pay M/s Aditya Developers a sum of Rs. 8,00,000/- (Eight lakhs only) per month, as hire charges for A.C. System provided by the latter (M/s Aditya Developers,) with an increment of 10% of the hire charges at the expiry of each year; and

(c) M/s Siemens Ltd., agreed to pay twelve months rent in advance to be adjusted in 36 (thirty six) equal monthly instalments.

6. In addition to the above, the Sukhanlal group jointly executed an Undertaking cum Indemnity dated 25.5.95 in favour of M/s Siemens Ltd., agreeing to indemnify the latter for all costs of actions, claims, proceedings, demands, losses, charges, expenses, penalties, litigations, liabilities, prosecutions, if an any as regards to the use and occupation of the premises, from the various government/payable agencies.

7. Citing objections by the Delhi Development Authority (DDA), M/s Siemens Ltd., and parties to the three suits agreed to mutually terminate the Agreement for Lease, Agreement for Use and Facilities and the Agreement for AC Systems in respect of the premises. Three Supplementary Agreements were entered between M/s Siemens Ltd., on one side and Defendants being the Sukhanlal Society, Kanha and Aditya respectively on the other side on 17.4.1997, by which the parties agreed to the closure of the Agreement to Lease, Agreement for Use and Facility and Hire Agreement for AC Systems respectively. The Supplementary Agreements dated April 17, 1997 were entered between M/s Siemens Ltd., with the Sukhanlal Society; Kanha and Aditya, respectively. The terms of those Supplementary Agreements, required Siemens to hand over to the Sukhanlal group, possession of the premises, within six months (of signing of the Supplementary Agreements) i.e., by 16th October 1997. The Sukhanlal group agreed to pay back a sum of Rs. 2,79,10,000 (Rupees Two crore, seventy nine lakhs and ten thousand only), Rs. 72,99,660/- (Rupees Seventy two lakhs ninety nine thousand six hundred sixty only) and Rs. 1,56,13,336/- (Rupees One Crore fifty six lakhs thirteen thousand three hundred thirty six only) respectively to Siemens Ltd., being security deposit amount and balance of the rent, hire charges and other charges paid in advance, within six months from the date of Supplementary Agreements. A sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) each were paid to Siemens by each of the three Sukhanlal concerns at the time of signing of the Agreements. These agreements also stipulated that M/s Siemens was to hand over the possession of the Premises to the Sukhanlal after receipt of all the dues from the latter; It was also agreed that in case of delay on part of any party, the defaulting party was to indemnify the other party for the losses sustained on account of such breach/delay.

8. Apparently, the telecommunication division of M/s. Siemens Ltd., the original lessee, was taken over by the plaintiff Company w.e.f. 1.6.1997 along with all its assets, rights and liabilities including the rights in the Premises. The Sukhanlal group of concerns were informed of this development; they accepted the Siemens as successor interest of the original lessee.

9. Siemens alleged that in violation of the three Supplementary Agreements dated 17th April 1997 the Sukhanlal group paid back only a sum of Rs. 25,00,000/- (Rupees Twenty five lacs only) by cheque No. 631618 dated 29.9.1997 and an amount of Rs. 20,00,000/-. It was alleged that the entire amounts were not paid, despite repeated requests and extension of time for repayment, which expired on 31st December 1997. Siemens vacated the premises on 16th October 1997. However, the possession of the same was not delivered to the Sukhanlal group; Siemens position was that the premises could not be handed back due to default in regard to refund the amounts. Siemens served upon each of the Sukhanlal concerns, three separate legal notices dated 29.4.1998 through their Advocates calling upon them to pay the balance amount according to terms of the Supplementary Agreements. The Sukhanlal group of concerns did not pay the amounts demanded, and resisted the notice. Siemens therefore filed the three suits, i.e Suit Nos 1115/98, 1116/98 and 1117/98 claiming the amounts of Rs. 2,74,57,800/- (Rs. Two crores Seventy Four lacs Fifty Seven thousand and eight hundred only) from Sukhanlal; a sum of Rs. 57,28,592/- (Rs. Fifty seven lakhs twenty eight thousand five hundred and ninety two only) from Kanha, Defendant in Suit No. 1115/1998, inclusive of Rs. 52,96,660/- (Rs. Fifty two lakhs ninety six thousand six hundred and sixty only) being the principal amount and an amount of Rs. 4,16,932/- (Rs. Four lakhs sixteen thousand nine hundred and thirty two only) on account of interest thereupon w.e.f. January 1, 1998 till April 30, 1998 @ 24% p.a. Siemens claims the sum of Rs. 1,68,77,403/- (Rs. One crore sixty eight lakhs seventy seven thousand four hundred and three only) i.e Rs. 1,56,13,336/- (Rs. One crore fifty six lakhs thirteen thousand three hundred and thirty six only) as the principal amount, and Rs. 12,49,667/- from Aditya, Defendant in Suit No. 1117/1998, as due on April 30, 1998.

10. After Siemens filed the three suits, the Sukhanlal Memorial Charitable trust paid an amount of Rs. 1,84,70,000/- on 8.8.2000; Aditya paid a sum of Rs. 90,21,336/- whereas M/s Kanha Credit Pvt. Ltd. paid a sum of Rs. 38,76,661/-. Pursuant to receipt of the said amounts, Siemens handed over possession of the suit premises without prejudice to its rights and contentions in the three Suits, to the Sukhanlal group. The three suits filed by Siemens were initially summary suits; after the receipt of the amounts, they were ordered to be registered as ordinary Suits. According to Siemens, a sum of Rs. 89,87,800/- is now due from Sukhanlal towards the suit amount including interest till the date of filing of the Suit i.e. on 1st May, 1998. Siemens also claims interest on the entire amount of Rs. 2,74,57,800/- (Rs. Two crores Seventy Four lacs Fifty Seven thousand and eight hundred only) till 8.8.2000 and on the amount of Rs. 89,87,800 (Eighty

nine lakhs eighty seven thousand eight hundred only) till date of its payment, computed @ 24% p.a. being the agreed rate of interest between the parties. Siemens claims Rs. 78,56,167/- from Aditya in Suit No. 1117/98 including interest till the date of filing of the Suit i.e. on 1st May 1998. It states that Aditya are liable to pay interest on the entire amount of Rs. 1,68,77,403/- till 8.8.2000 and on the amount of Rs. 78,56,167/- (Seventy Eight lakhs fifty six thousand one hundred sixty seven only) till date of its payment, computed @ 24% p.a. being the agreed rate of interest between the parties. The sum of Rs. 57,28,592/- is claimed from Kanha in Suit No. 1115/98 including interest till the date of filing of the Suit i.e., on 1st May, 1998. According to Siemens, M/s Kanha Credit Pvt. Ltd. are liable to pay interest on the entire amount of Rs. 57,28,592/- till 8.8.2000 and on the amount of Rs. 38,76,661/- (Rupees Thirty Eight lakhs seventy six thousand six hundred sixty one only) till date of its payment, computed; @ 24% p.a. being the agreed rate of interest between the parties.

11. The Sukhanlal Society, in Suit No. 1116/1998, in its written statement, contends that the condition in the lease deed relied upon by the Siemens to retain possession of the premises without paying rent is hit by Section 74 of the Indian Contract Act and, therefore, is unenforceable. M/s Sukhanlal group in all the suits rely upon terms of the lease deed stating that the arrangement was not terminable prior to two years period from the date of commencement of the lease and that termination could be made only in specified eventualities. It is contended that having regard to this condition the lessor (Sukhan Lal Group) agreed to spent Rs. 1.5 Crores for repair, renovation and alternation of the premises. In Suit No. 1116/1998 it is submitted that as on the date of the supplementary agreement dated 17.4.1997, Rs. 2,7910,000/- was payable to Siemens, of which Rs. 10 Lakhs was paid. It is stated that Rs. 25 Lakhs were paid subsequently and that the Lessors/ owners (ie. the Sukhanlal group) were entitled to adjust four months rent out of the amounts payable by Siemens as well as towards payment of municipal taxes from March, 1997. An adjustment of Rs. 59,40,000/-, therefore, claimed on the basis of computation of Rs. 14,85,000/- per month. It is thus contended that a sum of Rs. 1,84,70,000/- was payable and not Rs. 2,79,10,000/-. Such amount, it is stated, was paid to Siemens on 8.8.2000.

12. The Sukhan Lal Group contend, in the written statement, that since the Siemens retained the possession of the premises and did not deliver it; it continued to be liable to pay lease amounts or rent each month till the handing over of the vacant and peaceful possession over and above amount payable towards damage caused to the premises. The Sukhan Lal Group contest that they are liable to pay any amounts to Siemens and submit that on the contrary Siemens cannot rely upon the supplementary agreements to say that it was absolved from paying rents for the period it continued to retain possession even after terminating the lease. The Sukhan Lal Group also denies the liability to pay interest, as claimed.

13. In Suit No. 1115 & 1117 of 1998, the pleas urged by the defendants i.e. M/s Aditya Developers and Kanha Credit & Holdings Pvt. Ltd. etc. are identical to those urged by the M/s Sukhanlal Memorial Charitable Society in Suit No. 1116/1998 except as to the amounts payable by them. Similar adjustments are claimed; it is also urged that the condition entitling Siemens to retain the possession of the premises is unenforceable by the reasons of Section 74 of Indian Contract Act.

14. During the pendency of three Suits filed by Siemens, each of the concerns forming part of the Sukhan Lal Group filed Suits being No. 1124, 1125 and 1126 of 2000. In these, the factual averments pertaining to leasing of the premises, conditions of lease, Security deposit agreement, Agreement for use of facilities and agreement for air conditioning hiring etc. have been made. The circumstances leading to the execution of the Supplementary agreement, termination of lease of the premises; retention of possession by Siemens etc. have also been pleaded. After outlining all these and mentioning about the Suits filed by Siemens against the Sukhan Lal Group of concerns, it is urged in the three Suits that the conditions contained in the lease agreement and agreement for security deposit, enabling Siemens to retain the possession of the property and of using of the facilities and fixtures without payment of rent or damages are invalid and not binding and are unenforceable. The Sukhan Lal Group and concerns, therefore, allege that the retention of possession by Siemens despite having entered into supplementary agreement on 17.4.1997 and consequently terminating the lease without payment of charges or rent are not legal. The Sukhan Lal Group urge that they are entitled to payment of amounts on account of rents, damages, hire charges etc., towards the premises, fittings, fixtures and for the A.C. system at least on the basis of the terms of the agreement for the period Siemens was in occupation. It is claimed that the premises incurred some damages during the occupation of Siemens which the latter is liable to be reimbursed. On the basis of these averments, a declaration that Clause 2 (b) of the Lease agreement and Clause 3 (b) of the agreement for security deposit besides clause-5 of the supplementary agreement dated 17.4.1997 are unenforceable as being penal is sought. Besides a sum of Rs. 3,39,05,000/- is sought by the Sukhanlal Society (in Suit No. 1124/2000), in Suit No. 1126/2000 identical reliefs of declaration and a decree for Rs. 3,10,78,000/- is sought (the plaintiff in this suit i.e. Shri Atul Bansal is the proprietor of Aditya Developers and has sought for a decree of the said amount; issue No. 8 however claims Rs. 3,10,78,000/- with interest the averments in the suit nevertheless continue to claim Rs. 2,20,56,664/-) and in Suit No. 1125/2000 by Kanha Credit & Holdings Pvt. Ltd. similar declaration and decree for Rs. 2,16,75,000/- is sought.

15. Siemens, which is a common defendant in all the three Suits, disclaims any liability and urges that Sukhan Lal Group is not possessed of any cause of action to lay claim to the reliefs that they have sought. It is urged that Sukhan Lal Group are estopped from challenging the provisions of the lease deed and supplementary agreement after having acted on it and having derived benefits

from it. The Siemens denies that huge amounts or the sum of Rs. 1.5 Crores was spent towards the renovation of the premises or its repairs. It also disputes that the lease agreement could not be terminated in two years and urges that parties voluntarily agreed to end the lease arrangement in terms of the Supplementary Agreements.

16. According to Siemens, the retention of premises without payment of rent upon termination of the agreement was in tune with the supplementary agreement dated 17.4.1997. It is contended that the Sukhan Lal Group entered into Supplementary agreement in terms of which the entire security deposit amounts were to be paid within the time specified. Since that condition was not complied with, Siemens urged that continuation of possession of the premises by it was in terms of the agreement itself. The Siemens disputes liability to pay any amount to each of the Sukhan Lal Group concerns in the three Suits filed by them.

17. On 8.8.2000, a sum of Rs. 1,84,70,000/- (in Suit No. 1116/1998) and Rs. 90,21,336/- (in Suit No. 1117/1998) was paid to Siemens. Consequently, possession of the premises were handed over. The Sukhan Lal group which paid the amounts contends that they were undisputed, and payable on account of refund of security deposit under the agreement with Siemens. By the same order (of 8.8.2000) the Court directed that Siemens suits to be converted from summary, to ordinary Suits. On 20.11.2003, the Court, with consent of parties directed that since issues of fact and law were common in all the six Suits, Suit No. 1116/1998 was to be treated as a lead case and evidence recorded only in that Suit. It was also ordered that such evidence was to be treated as the evidence in other proceedings as well; the Court framed issues in all the Suits.

18. The Court by subsequent order after hearing and with consent of the parties recast the issues on 1.2.2008. Some of the issues were subsequently modified again with consent of the parties. Since the documentary evidence in the form of exhibits were common, but had been marked separately in all the Suits, counsel agreed that a common series of exhibits ought to be adopted and accordingly filed a joint signed statement, which was taken on the record on 26.3.2008. The Court then recorded that the documentary evidence in the form of various agreements between the parties including the three supplementary agreements and correspondences exchanged between them as well as the two Local Commissioners report were to be read as Ex.A to Ex.T.

19. The following issues have to be decided by the Court by virtue of orders dated 1.2.2008, 15.2.2008 and 27.2.2008. The issues, which were also recast are in the following terms:

1. Whether the suit filed by Sukhan Lal is within time? OPP.
2. Whether Sukhan Lal and Group are estopped from challenging of the terms of the lease deed and the supplementary agreement dated 17.4.1997 and other agreements entered into with SIEMENS? OPD SIEMENS

3. Whether Sukhan Lal and Group are entitled to a declaration that Clause 2 (b) of the agreement of the lease and Clause 3 (b) of the agreement for the security as well as Clause 5 of the supplementary agreement dated 17.4.1997 are void and unenforceable, as claimed? OPP SUKHAN LAL.
4. Whether Siemens could retain possession of the property without payment of charges/rent/air-conditioning charges, as claimed by it? OPP SIEMENS
5. Whether Siemens are entitled to any amounts towards interest for delayed repayment of security and other amounts by the Sukhan Lal and Group, if so at what rate and for what period? OPP SIEMENS.
6. Whether Sukhan Lal and Group are entitled to Rs. 3,39,05,000 along with further amount in suit No. 1124/2000? OPP SUKHAN LAL.
7. Whether Sukhan Lal and Group are entitled to Rs. 2,55,51,661 along with further amount in suit No. 1125/2000? OPP SUKHAN LAL.
8. Whether Sukhan Lal and Group are entitled to Rs. 3,10,78,000 along with further amount in suit No. 1126/2000? OPP SUKHAN LAL.
9. Whether Sukhan Lal Group are entitled to payment of interest by SIMENS on any account, if so at what and for what period? OPP SUKHAN LAL.
10. Any other relief to any other party.

Issue No. 1 Whether the Suits filed by the Sukhanlal Group are within time:

20. Siemens contends that the relief of declaration which are primarily sought in the Sukhanlal groups Suits is time-barred in view of Article 59 of the Limitation Act. It is submitted that the relief amounts to seeking cancellation of part of a contract, for which limitation is three years from the date of knowledge of the offending condition; according to Siemens, the starting point of limitation is 25th May, 1995 and even if that date were not to be taken into account, the supplementary agreement dated 17th April, 1997 afforded the cause of action. Since the Suits were filed beyond the period of three years provided for, they are time-barred. It is also urged, as an adjunct submission that the relief of recovery of money in the three Suits filed by Sukhanlal cannot be granted since they are consequential in nature. Siemens urges that the Sukhanlal Groups plea that such relief can be separately granted regardless of the fate of the claim for declaration, is untenable.

21. In support of this contention, the Siemens relies upon the decisions of the Supreme Court, reported as Ramti Devi (Smt) Vs. Union of India (UOI), ; Secretary, Ministry of Works and Housing Govt. of India and Others Vs. Mohinder Singh Jagdev and Others, and Union of India v. West Coast Paper Mills AIR 2004 1596.

22. Siemens submits that having willingly consented to the terms whereby it was entitled to retain possession, and even having acted upon, the Suit for

declaration is not maintainable and is, therefore, time-barred.

23. The Sukhanlal Group contends that the Suits are not time-barred. They contend that the correct provision governing the Suits filed by them is Article 58 of the First Schedule to the Limitation Act, which provides that a Suit for declaration may be filed when the right to sue first accrues. The Sukhanlal Group contests that unlike Article 59, which bases knowledge of the facts as the foundational element for filing the Suit, Article 58 merely requires that the cause for approaching the Court should have first accrued to entitle a claimant to the declaration. Whilst the Sukhanlal Group do not dispute that the agreements were entered on 25.05.1997, 17.04.1997, they submit that the right to sue accrued only when Siemens threatened to retain possession without paying rent, thus signifying its intention to enforce the objectionable condition. It is submitted that the payment of all kinds was stopped from the period beginning 01.07.1997, clearly revealing the intention to rely upon the impugned stipulations. It is submitted that the Suits were filed on 25.05.2000, i.e. within the three-year period stipulated by Article 58.

24. In support of their contention, the Sukhanlal Group relies upon the judgments of the Supreme Court reported as *Irshad Ali Vs. Shahaba Begum, Jamila Begum and Others Vs. Jumma alias Billu Rehman and Others*, . Reliance is also placed upon the judgment reported as *M/s. Bengal Waterproof Limited Vs. M/s. Bombay Waterproof Manufacturing Company and Another*, ; it is contended that in such cases, the cause of action by virtue of Section 22 of the Limitation Act subsists each day or period as the case may be when the wrongful action is persisted with by the offending party.

25. For a better appreciation of the submissions, it would be necessary to extract two provisions, i.e. Articles 58 and 59 of the Limitation Act, they are as follows:

Article To declare any other declaration 3 years When the right to sue first accrues. 58 Article To cancel or set aside an 3 years When the facts entitling the 59 instrument or decree or for the plaintiff to have the instrument or rescission of a contract decree cancelled or set aside or the contract rescinded first becomes known to him.

26. In these cases, the relevant and undeniable facts are that the agreement or arrangements on which Siemens relied upon to continue in the premises till the full security amounts were repaid or refunded, were entered into on 25.05.1995; the parties agreed to end their arrangement despite existence of clearly spelt-out mutual obligations in those agreements, through three supplementary agreements dated 17.04.1997. It is also not denied that in terms of the supplementary agreement, the security deposits were to be repaid by Sukhanlal Group within a specified time; that such specified time was also extended by mutual consent. There were defaults and eventually, Siemens filed the Suits for recovery of money (Suit No. 1115-1117/1998), in the year 1998. It is not also disputed that Siemens stopped paying rent (in respect of the premises, which it

continued to retain; use of the facilities and towards hire charges for the air-conditioner) to the Sukhanlal Group with effect from 01.07.1997.

27. Article 59 of the Limitation Act, which is essentially relied upon by the Siemens to say that the Sukhanlal Groups Suits are time-barred, talks of cancellation or setting-aside of instrument or for the recession of the contract. As against this, Article 58 talks of declaration. The first relief sought for in each of the Suits filed by the Sukhanlal Group is for a declaration regarding unenforceability of the conditions in the lease deed (Ex.-A) and Security Agreement (Ex.-C) as embodied in the supplementary agreements dated 17.04.1997. The grounds for cancellation of instruments are spelt out in Sections 26 and 27 of the Specific Relief Act, i.e. a mistake or misrepresentation at the contract-formulation stage. There is no averment in the Sukhanlal Groups Suits which can substantiate the Siemens contention that what is really claimed is not a declaration, but cancellation or setting-aside of an instrument. On a facial reading of the pleadings, therefore, the contention that Article 59 is applicable, is unfeasible. Moreover, in the scheme of things too, such contention cannot succeed. The third column in the Schedule to the Limitation Act, which deals with the starting point of limitation talks of knowledge about the foundational facts which entitle the claimant to the relief of cancellation or setting-aside the concerned instrument. Now, the question of knowledge will arise only in restricted category of cases and logically squares with the ingredients spelt out in the Sections 26 and 27 of the Specific Relief Act. Sections 26 and 27 of the Specific Reliefs Act deal with rectification and recession of contracts. Section 26 enables the Court, upon finding that the instrument does not express the real intention of parties, by reason of fraud or mistake, to direct rectification so far as to express the real intention. Section 27, on the other hand, enables the Court to have the contract rescinded on the ground that it is avoidable or is unlawful. Section 31, which deals with cancellation of instrument entitles the person who has reasonable apprehension that the instrument, if outstanding may cause serious injury, to sue, and to have it adjudged void or avoidable and in such eventuality, the Court has discretion after rendering its finding, to direct it to be delivered up or cancelled.

28. In the case of declaration, the relevant provision is Section 34 of the Specific Reliefs Act, it entitles the Court to issue declaratory decrees regarding legal character of anyone, or to any right as to any property or title. The ambit of Section 34 of the power of the Court to issue declarations is far wider than in the case of Section 31. The power to cancel an instrument is upon a finding of the likely injury it would cause to the person apprehending it on the ground of it being void or voidable; while such consideration may also be taken into account in occasions for declaration, the power of the Court in a declaratory Suit is wider. It is not confined to granting the decree. There is no limitation upon such power to issue a decree only on the finding of nullity of the instrument the Court can, regardless of the legality of the contract or instrument, issue the declaration sought for on the basis of proven facts on the record. There is, however, no gain

saying that the power to issue declarations is discretionary and hinges on the applicability of equitable principles.

29. Siemens rely upon three decisions; in the Mohinder Singh Jagdevs case, the plaintiff was terminated from employment on allegations of cheating and forgery. Criminal proceedings were initiated in which he was acquitted. He filed a Suit for declaration from the date of termination, but within three years of his acquittal. The Court held that the limitation of three years commenced from the period when the right to sue first accrued, i.e. the date of termination and that such right was not postponed or suspended for the duration of criminal proceedings. In Ramti Devi (supra), the question was whether a deed registered on 29.05.1946, against which a declaration was sought through the Suit filed on 30.07.1966 was maintainable. The Court held that since the plaintiff had executed the document, and had knowledge of such fact, whether under Article 59 or any other Article, the question of deciding the right to sue would not arise. Incidentally, the Court did not anywhere allude to Article 58 of the Limitation Act. In West Coast Paper Mills (supra), the Supreme Court noticed the difference in Articles 58 and 113; in the former, the period of limitation commences from the date when the right to sue first accrues; whereas in the latter, the period of limitation would be counted from the date when the right to sue accrues.

30. In Irshad Ali (supra) (relied upon by Sukhanlal Group), this Court, relying upon the decision of the Supreme Court in Mst. Rukhmabai Vs. Lala Laxminarayan and Others, held that there is no right to sue unless there is an accrual of right asserted in the Suit and its infringement or there is a clear or unequivocal threat to infringe that right by the defendant against whom the Suit is instituted. It was also stated in that context that not every threat, howsoever, ineffective and unquestionable can be considered unequivocal to compel the plaintiff to file a Suit but only those which gives rise to a compulsive cause of action, which are to be considered while judging the question of limitation. In M/s. Bengal Water Proof (supra), the Court held that by virtue of Section 22 of the Limitation Act, there can be situations whereby a cause of action may be continuing in which event, the declaratory suit under Article 58 would be at different points of time.

31. A careful consideration of the submissions of the parties leads this Court to conclude that the most relevant provision is Article 58. Apart from the fact that there is no background in the pleadings of Sukhanlal Group, of the Suits to support the contention that it is really an action for cancellation of an instrument, between the two, Article 58 clearly talks of a declaration. The Sukhanlals have also sought for a declaration. The judgment of the Supreme Court in MST Rukhma Bai v. Lala Lakshminarain (supra) a decision by three judges held (by relying on Bolo v. Koklam 1929-1930 LR 57 I.A. 325 & Pothukutchi Appa Rao and Others Vs. Secretary of State for India in Council, that the law does not require that when the right of a person is denied, he is bound to bring at his peril, a Suit for declaration. The Court went on to hold that in a declaratory action, the right

to sue accrues when the defendant clearly and unequivocally threatens to infringe the right asserted by the plaintiff in the Suit. It is not the potentiality or the mere possibility of a threat but some overt action which would result in accrual of the right to sue, for the first time, under Article 58. This approach has been followed by this Court in *Irshad Ali*; it also appears to have been adopted in the *West Coast Paper Mills* decision.

32. Siemens is factually correct when it contends that the agreements were entered into in May 1995 and April 1997. Had Sukhanlal Groups suits been based only on those events, and sought for the relief of cancellation, the question of limitation might have been well arisen. However, the possibility of Siemens not paying rent or charges and continuing to retain possession could not have been visualized by the Sukhanlal Group at those points of time. It was only with effect from 1st July, 1997, when Siemens actually stopped paying rent and other amounts that the cause of action or right to sue accrued.

33. The right to sue or the cause of action as it were has to be seen on the basis of the pleadings and circumstances urged by the parties. The mere fact that the agreements were executed in 1995 and later in 1997 did not ipso facto entitle the Sukhanlal Group to seek a declaration; it was only when the threat of enforcement of the complained conditions becoming a real one did the right to sue accrue. In the words of Supreme Court (in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*), cause of action is the very fact which is necessary for plaintiff to prove if traversed in order to support his right to judgement of Court.

34. In view of the above discussion, it is held that the suits for declaration filed by the Sukhanlal Group are not time-barred; the issue is answered accordingly.

Issue No. 2

Whether the Sukhan Lal Group are estopped from challenging terms of the lease deed and of the supplementary agreement dated 17.4.1997 and other agreements entered into with

Siemens.

35. Siemens argument on this issue, is that the Sukhan Lal group having entered into various agreements consciously and willingly, which contained the impugned conditions and also having derived advantages from them cannot turn around and challenge them as unenforceable. It is submitted that besides voluntariness and consensualty, the agreements contained mutual obligations. One of them was that for terminating the lease arrangement in 1997 on the condition that the security deposit would be returned to Siemens within the time agreed. That condition was not complied with. As a result, Siemens was entitled to retain possession of the leased premises without paying rent till such time the security deposit amounts were refunded to it. This condition protected the rights of Siemens and was consented to by the Sukhan Lal group not only when the

original lease and security agreements were entered into in 1995 but also in 1997 when the Supplementary Agreements were entered into, for terminating the lease arrangements. It is urged that on the basis of these facts, the doctrine of estoppel would apply. Siemens relies on the decision of the Supreme Court reported as *Ganga Retreat and Towers Ltd. and Another Vs. State of Rajasthan and Others*, and contends that having elected to proceed with the agreement and the supplementary agreement which outlined the terms by which the lease arrangement ended, the Sukhan Lal group could not take a contrary position and urge that any condition in those agreements were void or unenforceable. Reliance is also placed on the decision reported as *Ningawwa Vs. Byrappa and Others*,

36. The Sukhan Lal group, on the other hand, denies that they are estopped from filing the Suit or contesting the legality of any condition in the agreement entered into with Siemens. It is submitted that in the *Ganga Retreat* decision *supra* the Supreme Court held that doctrine of estoppel is not available when the action proposed is premised on the contravention of law. It is submitted that the Suits filed by the Sukhan Lal group primarily are based on the claim that the stipulation (whereby Siemens could retain possession of the premises after termination of the lease without payment of rent) is plainly penal condition which Sukhan Lal group were entitled to avoid, by virtue of the Section 74 of the Indian Contract Act.

37. Estoppel, the plea invoked by Siemens has been described as a complex legal notion invoking a combination of several essential elements, a statement to be acted upon, action on the faith of it, resulting detriment to the actor (Refer *C.D. Sugar Co. v. C.N. Steamship* AIR 1947 P.C. 40). In *Gyarsi Bai and Others Vs. Dhansukh Lal and Others*, the Supreme Court held that in order to invoke the doctrine of estoppel, three conditions must be fulfilled:

1. Representation by one person to another;
2. Other should have acted upon the representation; and
3. The action should have been detrimental for the interests of person to whom the representation was made.

38. This formulation (in *Gayarasibais* case) was affirmed in *Dr. Karan Singh v. State of J&K* AIR 2004 SC 2480.

39. No doubt, there was consensuality and voluntariness by the parties when the agreements were entered into in 1995 & 1997; it is also beyond dispute that these documents contained stipulations enabling Siemens to retain possession of the premises despite termination of the lease arrangement without payment of rent or any charges. The Sukhan Lal group, concededly parties to these documents, are now saying that such stipulations are void and unenforceable by reasons of Section 74. It is a known proposition of law that there can be no estoppel against statute and that a party which may have entered into an

agreement or arrangement that is contrary to law can nevertheless successfully impugn such illegal conditions if they are contrary to legal provisions (refer B.V. Patankar and Others Vs. C.G. Sastry, ; Faqir Chand v. Shri Ram Ratan Bhanot AIR 1973 SC 92; Rai Chand Jain Vs. Miss Chandra Kanta Khosla, ; P.R. Deshpande Vs. Maruti Balaram Haibatti,

40. The Court is also of the opinion, on an application of the law declared by the Supreme Court that the essential ingredients of estoppel have not been established by Siemens. The mere entering into an agreement in 1995, as well as the Supplementary agreements in 1997 and the consequent action based on the agreements does not establish that Siemens acted upon the representation of its detriment. The termination of the lease arrangement was a mutually agreed act. But for the stipulation impugned, it could be reasonably expected that Siemens would have paid rent as long as it continued in possession of the premises. It is not only relying on that stipulation to say that there is no liability but is also contending that in addition it is entitled to interest and was also entitled to sublet the premises. These facts, in the opinion of the Court, cannot amount to acts on the part of the Siemens to its detriment based on any representation made by the Sukhanlal Group. Therefore, the essential ingredients of estoppel not having been satisfied, the plea that the Suit is liable to fail because Sukhanlal group is estopped from making the claims that they have preferred in the Suits filed by them, cannot succeed. The issue is, therefore, answered in the negative, against Siemens.

Issue Nos. 3 and 4: (3) Whether Sukhan Lal and Group are entitled to a declaration that Clause 2 (b) of the agreement of the lease and Clause 3 (b) of the agreement for the security as well as Clause 5 of the supplementary agreement dated 17.4.1997 are void and unenforceable, as claimed? OPP SUKHAN LAL.

(4) Whether Siemens could retain possession of the property without payment of charges/rent/air-conditioning charges, as claimed by it? OPP SIEMENS

41. The above two issues involve determination of intertwined questions of fact and law; they are taken up together, for consideration. The most vital materials for this purpose are the documents evidencing the transaction between parties, in the form of agreements. For the sake of a fuller discussion, it would be necessary to extract the relevant parts of the documents, i.e the Lease Agreement (Ex.A); Security Deposit Agreement (Ex. C) and the Supplementary Agreements, (the latter being in identical terms; therefore, the extract of one, being from Ex. G). They are reproduced below:

EXHIBIT A: EXTRACT FROM THE LEASE AGREEMENT DATED 25.05.1995

... .. 2.(a) That immediately upon the final expiry of the lease period herein or the extended lease period or on the earlier termination of the lease as provided hereinbefore, the LESSEE shall hand over vacant possession of the said Premises back to the LESSOR upon the LESSOR simultaneously refunding any

unadjusted advance rent and any other amounts such as deposit due to the LESSEE.

(b) Upon termination or expiry of the lease the LESSEE shall hand over vacant possession of the said premises to the LESSOR upon the LESSOR refunding to the LESSEE any unadjusted amount of rent and other payments due to the LESSEE. Notwithstanding the provision of this clause, if on expiry or termination of the lease, the LESSOR fails to refund to the LESSEE any amounts which are due to the LESSEE upon settlement of accounts, then that event, without prejudice to the LESSEES right to recover the same, LESSEE shall be entitled to remain in possession of the said Premises without paying any rent or compensation whatsoever to the LESSOR until such time that the LESSOR makes payment of the said amounts to the LESSEE and the LESSOR will pay interest of @ 1% per month for any delay in the refund of security deposit and unadjusted advance. If the payment is delayed beyond 3 months by the LESSOR, the LESSEE shall be entitled to sub let the premises on such terms as it may think fit and after the LESSOR makes the payment of all the dues, the LESSEE shall assign its rights in favour of the Sub-Lessee so that the Sub-Lessee shall be the LESSEE of the LESSOR subject to the overall terms and conditions of this Agreement to Lease and limiting to the sub lease to the maximum period of lease as envisaged/ agreed to in this Lease Deed.

4. The LESSEE shall not underlet, assign or transfer either part or whole of the premises without the consent of the LESSOR except that LESSEE may assign the lease to or permit the use of the said premises or any part thereof by subsidiary companies and affiliates of the LESSEE or companies whose management & control is with the LESSEE and LESSEE shall notify the LESSOR when the lease is assigned or when any of the aforesaid entities are permitted the use of any part or whole of the premises provided that the transferee/ assignee of the LESSEE shall continue to be bound by the terms and conditions hereof. The restrictions in this clause are subject to Clause 2 (b) above.

... .. 17. The LESSEE is entitled to terminate this lease for any reason whatsoever at any time during the term of this lease by giving six months notice in writing to the LESSOR after lease period of 24 months. Subject to clause 15 (a) & (b) of the agreement to lease dated 25th May, 1995.

18. In the event of default in payment and no performance of terms and conditions of the lease by the LESSEE, the LESSOR shall have the absolute rights to terminate the lease and take steps for recovery of the possession, the amounts due and damages the LESSOR may suffer due to non- performance by the LESSEE provided the LESSEE has been given a notice in writing and a period of thirty days for the rectification of any breach of this Lease Deed.

EXHIBIT C: EXTRACT FROM THE AGREEMENT FOR SECURITY DEPOSIT

1. (a) That the LESSEE agrees to pay to the LESSORS an interest free security deposit for an amount of Rs. 4.74 crores (Rupees four crores and seventy four

lacs only) which shall be refunded to the LESSEE only expiry of the lease or on earlier termination of the lease against possession of the said premises together with the furniture, fixtures, amenities/ facilities. It is agreed and understood that the said premises need substantial repairs/ renovation and alteration and estimated cost of which is 1.5 crore as agreed by both the LESSORS and the LESSEE, and since this obligation has been undertaken by the LESSORS, the LESSORS is obliged to fulfil this obligation by spending an amount of Rs. 1.5 crore out of this aforesaid deposit amount being paid by the LESSEE. It is however left for the parties to decide as to whether the LESSEE should pay the entire aforesaid amount of Rs. 1.5 crore to the LESSORS and then LESSORS spending Rs. 1.5 crore therefrom towards such repairs, renovation/ alterations required by the LESSEE or alternatively the lessee paying to the LESSOR only amount of Rs. 3.24 Crores and doing the work itself by spending 1.5 crore which will be a part of total deposit amount of Rs. 4.74 crores as agreed by the LESSEE.

(b) During the lease period and its extension the said security deposit shall be increased by 10% (ten percent) every year on the last total security deposited with the LESSOR.

... .. 2. (a) The said security deposit shall remain with the LESSOR without any interest and shall be refunded only after the expiry of the initial lease period or the extended lease period or on the earlier termination of the lease as per agreement to lease dated 25th May, 1995. The said security deposit above mentioned shall be refunded by the LESSOR to the LESSEE simultaneously with the handing over the peaceful vacant possession of the said premises back to the LESSOR as per the terms and conditions of the agreement to lease dated 25th May, 1995 entered into between the parties.

(b) The payment of the security deposit as mentioned in this Agreement shall be considered to be the essence of the said Agreement to lease and other agreements entered into between the parties in respect of the said premises and any default in payment of the said security amount shall be considered to be default of said lease and other agreements and in that eventually the LESSOR shall be entitled to terminate the said Agreement to lease and other Agreements and to take back the possession of the said Premises.

3. (a) That immediately upon the final expiry of the lease period or the extended lease period or on the earlier termination of the lease as provided in the said agreement to lease dated 25th May, 1995, the LESSEE shall hand over vacant possession of the said premises back to the LESSOR upon the LESSOR simultaneously refunding the security deposit due to the LESSEE. The LESSEE would be liable to restore the said premises to the same condition in which they were taken, repairing at its own cost any damages that may be caused by any act or default by the LESSEE its servants, agents or visitors. However normal wear and tear are excepted.

(b) If the LESSOR does not refund the Security deposit and unadjusted hire

charges if any due to the LESSEE, the LESSEE will have the right to retain the said premises without further payment or any rent whatsoever and shall be entitled to all the services as provided by the LESSOR till the unadjusted rent and hire charges and security deposit are recovered. This retention of the said premises is without prejudice to the right of the LESSEE to recover the security deposit and unadjusted rent and hire charges. If the payment is delayed beyond 3 months by the LESSOR, the LESSEE shall be entitled to sub let the premises on such terms as it may think fit and after the LESSOR makes the payment of all the dues the LESSEE shall assign its rights in favour of the sub lessee so that the sub lessee shall be the LESSEE of the LESSOR. However the sub lessee shall be subject to overall terms and conditions of this Lease Deed and limiting to the sub lessee to the maximum period of lease as envisaged/ agreed to in this Lease Deed.

... .. 6. The Lessee is entitled to terminate this lease for any reasons whatsoever at any time during the term of this lease by giving six months notice in writing to the Lessor after a Lease period of 24 months. Subject to clause 15 (a) (b) of the Agreement to Lease dated 25th May, 1995.

EXHIBIT G: EXTRACT FROM THE SUPPLEMENTARY AGREEMENT

This supplementary agreement is executed on 17.04.1997 at Delhi between Siemens Ltd. Having registered office at 130, Pandurang Budhkar Marg, Worli, Mumbai 400 018 (hereinafter called the FIRST PARTY which expression shall wherever the context permits shall include their successors, and assigns of the ONE PART and Kanha Credit & Holding Pvt. Ltd, having their office at 16, Community Centre, East of Kailash, New Delhi (hereinafter called the SECOND PARTY which expression shall wherever the context permits shall include their successors, and assigns of the other part.

AND WHEREAS this supplementary agreement is supplementary to the agreement between Kanha Credit & Holding Pvt. Ltd., and Siemens Ltd. dated 5th May, 1995.

AND WHEREAS the original agreement dated 5th May, 1995 was for use of facilities at the premises located at 215/70/2/1, Sarai Shahji (PF Colony), Malviya Nagar, New Delhi (hereinafter referred to as the said premises) for a period of 9 years from the date of the agreement.

AND WHEREAS both the parties are willing to come to a compromise to facilitate closure of the agreement on the terms and conditions mentioned in the supplementary agreement.

NOW THIS AGREEMENT WITNESSTH AS UNDER :

1. The first party shall handover full vacant and peaceful position of the said premises within six months of signing of this supplementary agreement.
2. The first party shall pay charges for the said premises for a period of four

months starting from the month of March 97 at the prevailing rates.

3. In terms of the above mentioned agreement an advance of Rs. . and a security has been given by the first party to the second party. The total sum lying with the second party is Rs. 72,96,661/- which the second party has agreed to pay back within a period of six months from the date of this agreement in a manner acceptable to both the parties. The second party shall submit a schedule of payment within a weeks time, after adjusting 4 month rent from March 1997 onward.

4. The second party has paid Rs. 10 Lacs vide cheque number 739275 drawn on the Bank of Rajasthan, GK-I, New Delhi dated 17.4.97 in favour of Siemens Ltd., as the first instalment.

5. Both the parties agree that the first party shall handover the possession of the said premises to the second party only after receipt of all the money due from the second party as stipulated above.

6. With the settlement of all the dues mentioned above and handing over the vacant possession by the first party to the second party this supplementary agreement as well as the original agreement dated 25th May 1995 shall come to an end and neither of the party shall have any obligation whatsoever towards the other.

7. This supplementary agreement shall be construed as full and final settlement between the parties with no legal obligation whatsoever towards each other.

8. In case of default on the part of either of the party and defaulting party shall indemnify the party for losses sustained on account such breach Consequential losses are precluded.

42. According to the Sukhanlal group, the conditions in the Lease Agreement, the Security Deposit agreements, entitling Siemens to retain possession of the premises, as well as use the facilities and air-conditioning, without payment of rent (and hire charges), is penal, and does not amount to a sustainable genuine predetermination of damages. The contention here is that Siemens concern to protect the Security deposit made to the Sukhanlal group was sufficiently addressed by the stipulation obliging the latter (Sukhanlal group) to pay 1% interest each month, for the duration of default in returning the Security deposit amounts, after termination of the arrangement; they also contend that in addition, Siemens could create a binding sub-lease, of the premises, and receive hire charges and rent, for the said duration. This is within the overall entitlement to retain possession. The Sukhanlal group therefore state that having secured these advantages, the so-called right not to pay any rent, or hire charges, for the duration of Siemens possession of the premises after the termination of the lease, is plainly penal.

43. The Sukhan Lal group submit by relying on the decisions of the Supreme Court reported as Fateh Chand Vs. Balkishan Das, Maula Bux Vs. Union of India

(UOI), ; Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., and Indian Oil Corporation v. Lyod Steel Industries Ltd. 144 (2007) DLT 659. It is contended that where parties agree for a measure of damages in the case of breach of a condition, by way of penalty, Section 74 mandates that only reasonable compensation not exceeding that amount can be paid. It is submitted by Sukhan Lal that Court while assessing damages has jurisdiction to award reasonable compensation having regard to all the circumstances. What is dispensed with is the need to prove actual loss or damage; however, the obligation is to assess only reasonable damage and no more. It is contended that the right to receive one per cent on the unpaid amounts (retained by the Sukhan Lal group) to sublet the premises and also to retain possession till such time the security deposit amounts are repaid was more than sufficient measure of liquidated damage. However, the stipulation that for such duration of possession that till the time the security deposits were not paid, Siemens was under no obligation to pay any rent, damage or lease amount towards the use of premises, was penal. In fact it conferred multiple advantages on Siemens despite the lease arrangements itself having ended. In the facts of these cases, the parties mutually agreed to terminate the arrangements through the Supplementary Agreements in April, 1997. The terms of the original lease deed mandated at least two years possession; this was in view of the Sukhanlal group spending huge amounts towards repairs and renovation. If such an assured time period were not in place, Siemens could well have terminated the lease agreement, causing considerable loss to the lessor/Sukhanlal group. In the over all circumstances, therefore, the impugned stipulation cannot be sustained and is, therefore, unenforceable.

44. Siemens argue that they had paid Rs. 5.72 Crores as advance rent and security. It was, therefore, imperative to secure the amount by adequate guarantees. It is submitted that the impugned stipulations are akin to an unpaid sellers right to hold on to the goods till such time the payment is made.

45. Siemens argue that the Sukhanlals are the parties in breach, having defaulted in repayment of the security deposit amounts on the stipulated dates or extended dates in terms of the supplementary agreement. They cannot consequently seek declaration that the conditions are illegal or hit by Section 74 of the Indian Contract Act. It is further submitted that Siemens has not benefitted from those conditions as they merely enabled it to mitigate losses. To the extent the conditions enable retention of possession they amount to mitigation of the losses which would otherwise have been far in excess of what is actually claimed by the Siemens.

46. Siemens rely upon the decisions reported in Dinanath Damodar Kale v. Malvi Modi Ranchhod Das & Co. AIR 1930 Bom.213; Michel Habib Raji Ayoub and Ors. v. Sheikh Suleiman El Taji El Farouqui AIR 1941 P.C. 101 and Managing Director, Hindustan Shipyard Private Ltd., Visakhapatnam Vs. Attili Appalaswami, . It is submitted that such conditions are in order to protect amounts paid towards security; such conditions cannot be characterised as penal and unenforceable u/s

74 of the Indian Contract Act.

47. Before discussing the merits of the rival contentions on these two issues, it would be necessary to extract Section 73 and 74 of the Indian Contract Act. They are as follows:

73. Compensation for loss or damage caused by breach of contract

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract - When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation - In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

74. Compensation for breach of contract where penalty stipulated for -

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.- When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the 1*[Central Government] or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation. - A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which

the public are interested.

48. The above provisions encapsulate the principles upon which damages are to be awarded by the Courts in India for breach of contracts. Facially there are obvious differences between the two provisions. Section 73 outlines the general principles for the award of damages i.e. the difference between the price or cost of the goods or services contracted for as on the date of breach which the injured party would be entitled to. In such an instance, the injured party would have to prove the breach (of contract); the value, cost or price of the goods or services contracted for on the date of breach and the measures taken by it towards mitigation of damages. Section 74, on the other hand, dispenses with the requirement of proving actual damage once breach of contract is established, the Court is enabled to award the reasonable compensation not exceeding the amount specified in the contract or the amounts which can be arrived at on application of the formulae or method prescribed in the contract.

49. The law on this subject was expounded in *Fateh Chands* case where the Supreme Court characterised Section 74 as the provisions cutting through the maze of rules evolved by English Courts over a period of time to distinguish between what is considered a genuine pre-determination of damages and what is penalty and, therefore, not enforceable. The Court held as follows:

10. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach and (ii) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of actual loss or damage; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.

xxxxx xxxxx xxxxx xxxxx 15. Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties pre-

determined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract predetermining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression to receive from the party who has broken the contract does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach.

16. There is no evidence that any loss was suffered by the plaintiff in consequence of the default by the defendant, save as to the loss suffered by him by being kept out of possession of the property. There is no evidence that the property had depreciated in value since the date of the contract provided; nor was there evidence that any other special damage had resulted. The contract provided for forfeiture of Rs 25,000 consisting of Rs, 1039 paid as earnest money and Rs 24,000 paid as part of the purchase price. The defendant has conceded that the plaintiff was entitled to forfeit the amount of Rs 1000 which was paid as earnest money. We cannot however agree with the High Court that 13 percent of the price may be regarded as reasonable compensation in relation to the value of the contract as a whole, as that in our opinion is assessed on an arbitrary assumption. The plaintiff failed to prove the loss suffered by him in consequence of the breach of the contract committed by the defendant and we are unable to find any principle on which compensation equal to ten percent of the agreed price could be awarded to the plaintiff. The plaintiff has been allowed Rs 1000 which was the earnest money as part of the damages. Besides he had use of the remaining sum of Rs 24,000, and we can rightly presume that he must have been deriving advantage from that amount throughout this period. In the absence therefore of any proof of damage arising from the breach of the contract, we are of opinion that the amount of Rs 1000 (earnest money) which has been forfeited, and the advantage that the plaintiff must have derived from the possession of the remaining sum of Rs 24,000 during all this period would be sufficient compensation to him. It may be added that the plaintiff has separately claimed mesne profits for being kept out possession for which he has got a decree and therefore the fact that the plaintiff was out of possession cannot be taken, into account in determining damages for this purpose. The decree passed by the High Court awarding Rs 11,250 as damages to the plaintiff must therefore be set aside.

50. In *Maula Bux (supra)*, the Court repelled the contention that quantified amounts spelt out in a contract for supply of potatoes to the Central Government, were, in the circumstances of the case, genuine pre-determination of what the damages were likely to be and held that such conditions were unenforceable penalties. The Court also noticed that the Central Government did not make any effort to establish the quantum of damage suffered by it. It approved the previous ruling in *Fateh Chand* and applied the ratio, holding that:

Counsel for the Union, however, urged that in the present case Rs 10,000 in respect of the potato contract and Rs 8500 in respect of the poultry contract were genuine pre-estimates of damages which the Union was likely to suffer as a result of breach of contract, and the plaintiff was not entitled to any relief against forfeiture. Reliance in support of this contention was placed upon the expression (used in Section 74 of the Contract Act), the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation. It is true that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree, and the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. But the expression whether or not actual damage or loss is proved to have been caused thereby is intended to cover different classes of contracts which come before the Courts. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him...

Similarly, in *M.L. Devender Singh and Others Vs. Syed Khaja*, (affirmed *P. D'Souza Vs. Shondrilo Naidu*, in the Court accepted the same approach and further emphasized that mere stipulation of some amount would only be a piece of evidence, but inconclusive by its very nature:

20. The fact that the parties themselves have provided a sum to be paid by the party breaking the contract does not, by itself, remove the strong presumption contemplated by the use of the words unless and until the contrary is proved. The sufficiency or insufficiency of any evidence to remove such a presumption is a matter of evidence. The fact that the parties themselves specified a sum of money to be paid in the event of its breach is, no doubt, a piece of evidence to be considered in deciding whether the presumption has been repelled or not. But, in our opinion, it is nothing more than a piece of evidence. It is not conclusive or decisive.

In Oil and Natural Gas Corporation Ltd. (supra), the Court summarized the legal position as follows:

68. From the aforesaid discussions, it can be held that:

(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.

51. The judgments relied upon by the Siemens i.e Dinanath Damodar Kale; Michel Habib Raji Ayoub and Managing Director M/s. Hindustan Shipyard Private Ltd. Visakhapatnam (supra) are cases where the Courts were called upon to decide whether money deposits in order to secure advances paid towards purchase of property with the stipulation that they could be forfeited in the event of breach were penalty stipulations. The Courts appear to have in such line of cases held that the conditions were not penalties within the meaning of expression u/s 74 and repelled contentions about their inapplicability. The ratio in those decisions according to this Court has to be considered in the light of the law declared in Fateh Chand and later applied in Maula Bux both of which are Supreme Courts decisions. In Maula Bux too, the Court had to deal with a stipulation that secured specified amounts. In both cases, the Court had no hesitation in concluding that stipulations amounted to penalties. Besides these obvious distinctions, the cases relied upon dealt with forfeiture of earnest money in the course of sale of immovable property. The observations contained in those decisions, in the opinion of this Court, are not applicable to cases like the present one.

52. In the present cases, as noticed earlier, Siemens had the advantage of use of the property (after termination of the lease arrangements); it also had the entitlement to one per cent interest on the outstanding amounts payable by the

Sukhanlal group. Additionally, it could also sublease the premises - as evidenced by the stipulations extracted earlier in the course of the judgment. In the circumstances, the further stipulation that possession of the leased premises could be retained and the facilities used without payment of rent or hire charges, amounts to multiple advantages. While one cannot be unmindful to the fact that Siemens had deposited a substantial amount initially to the extent of Rs. 4.72 Crores with the Sukhanlal Group, it also had the obligation not to terminate the arrangements for a minimum period of two years. No doubt, the parties negotiated and entered into supplementary agreements on 17.4.1997 before that period expired and agreed to terminate the lease arrangements. The lease rent and the use charges (agreed to be paid by the Siemens for the use of facilities and A.C. charges) worked out to about Rs. 29,70,000/- per month.

53. A penal clause in an agreement has been characterized as a stipulation in terrorem which the courts would refuse to recognize, or give effect to. This necessarily implies that the amount, or formulae (or formula) of damages far exceeds what can be reasonable compensation in the given facts of the case. Of course, the court would not, unless it is convinced that such condition far exceeds the genuine estimate of reasonable damages, interdict with the condition, which the parties have agreed to include in the contract.

54. The Court is of opinion that the impugned conditions contained in the lease agreement dated 25.5.95 [clause 2 (b) & Clause 3 (b)] of the security deposit agreement has the effect of conferring advantages to the extent it enables Siemens to remain in possession without paying any rent whatsoever, for the period any amounts towards security deposits are outstanding far exceeds what may be considered genuine pre- determinations of reasonable compensation or liquidated damages. The sheer dis- proportionality of this condition is obvious; even if for instance Sukhanlal group does not pay a minuscule amount of say 5% of the security deposit, till such time payments are made, Siemens is enabled to enjoy possession without any hindrance and without payment of any modicum of compensation, rent or charges. This surely is an in terrorem" condition which cannot be enforced. The effect of this condition may also be gauged from the fact that coupled with it Siemens was also entitled to sublet the premises and collect the rent. Mercifully it did not exercise that plight had it done so, the sheer inequity of the entire arrangement would have been highlighted in greater relief.

55. The controlling expression in Section 74 is that the Court may in its discretion issue a declaration having regard to the circumstances of the case. The Privy Council in Sheopar Singh v. Ram Audan Prasad Singh AIR 1916 PC 78 held that the approach of the Court to grant or deny declaration is discretionary and in every case it must be exercised on the basis of a sound judgment as to whether it is reasonable or not in all the circumstances of the case. It has been held that the plaintiffs conduct, including the question of delay in approaching the Court is of vital importance (see Ramesh Chandra Vs. State of West Bengal, and Shiam Bihari v. Madan Singh AIR 1945 ALL 493.

56. In these cases, the documentary evidence on the record show that by virtue of the supplementary agreement dated 17.4.1997, the parties recorded final settlement of their outstanding issues subject to the conditions spelt out in such documents. In terms of these, Siemens was given certain time to vacate the premises; reciprocally Sukhanlals were under an obligation to pay up all the outstanding amounts. It is undisputed that the outstanding security deposit amounts (without any adjustment, as claimed by the Sukhanlal group) were not paid back till August, 2000. Significantly, Siemens caused legal notices to be issued to each of the Sukhanlal group concerns on 27.4.98 (Ex.J, Ex.K & Ex.M). All these notices, calling for return of the full amount which had not been paid within the time agreed upon or the extended time which expired on 31.12.1997 were replied to by the Sukhanlal Group concerns through their counsel on 19.5.1998 (Ex.L & Ex.N). None of these replies set up the case that the impugned conditions were void and unenforceable and that consequently Siemens was liable to pay rents. A faint attempt through some accounts annexed to the reply notice by the Sukhanlal Memorial Charitable Society to claim rent up to the period May, 1998 through adjustments from September, 1997 was made. It was only in the notices on behalf of the Sukhanlal group much later on 12.11.1999 (Ex.T, Ex.Q & Ex.R) that the demand of payment of rent for the entire duration of Siemens position was made. These notices interestingly were issued after Siemens had filed its Suits for recovery; they for the first time allude to Section 74 and the impugned conditions being unenforceable and void. The record also discloses that the Sukhanlal group though having received a summons in the Suits chose to file written statements only in 2000. One last relevant factor is that though Siemens retained control and possession of the premises, it physically vacated them in October, 1997.

57. A relevant aspect which the Court has to consider apart from the principles upon which discretion is to be exercised is whether the conditions impugned here would fall within the description of void contracts of the kind contemplated under the provisions of the Contract Act. Section 23 enacts relevantly that the consideration or object of an agreement is deemed void if it is forbidden by law or is of such a character as would defeat provisions of any law; is fraudulent, or involves or implies injury to person or property of another. In such cases as well as cases where the Court regards the contract to be opposed to public policy, it is deemed void. Here, however, the Sukhanlal Group does not contend that the lease agreements, the Security Deposit agreement or the supplementary agreements are per se void. It is also their case that the mutual and reciprocal rights and obligations bound the parties and were to a large measure acted upon. In that sense, the contract cannot be termed as void ab initio; it is only the stipulations which enable the Siemens to retain possession without payment of rent that are to be regarded as unenforceable. No law or binding regulation was pointed out by the Sukhanlal Group, prohibiting the inclusion of such condition in the given set and other circumstances, inclusion of such a clause may be well justified and sustainable. Therefore, the declaration as sought for,

i.e. the impugned conditions are void cannot be granted. At best they could be regarded voidable. Sukhanlals chose or elected to treat these conditions as void and unenforceable, only in November, 1999. This intention is manifested clearly and explicitly in their legal notice issued to Siemens on 12.11.1999. In those notices, there is an explicit reference to the inequity in the conditions and also Section 74 of the Contract Act. Therefore, having regard to the discussion in the previous part of the judgment, the Court is of the opinion that the condition being demonstrably penal, could not have been given effect to, at least from the time the Sukhanlal Group elected to treat it as such.

58. This Court cannot be unmindful of the circumstances that all the while the Sukhanlal Group, despite their awareness of liability to pay back the amounts, defaulted from such obligation. Correspondingly, their withholding Siemens payments and their omission in putting Siemens to notice about the unenforceability of the impugned conditions put the latter at a distinct disadvantage since it continued to retain possession under the belief of legality and effectiveness of such conditions. Undeniably, after it was put to notice, the Siemens did not take any step towards returning the possession and did so only in August 2000.

59. In view of the above discussion, this Court is of the opinion that having regard to the overall circumstances in these cases, it would be in the interest of justice to treat the conditions as not binding upon the Sukhanlal Group, from the time they chose to repudiate it in November 1999. It is accordingly held that the impugned conditions mentioned in Issue No. 3 but are declared to be unenforceable from the time the Sukhanlal Group chose to repudiate it and Siemens correspondingly did not take steps to return possession, despite having been put to notice in that regard. It is consequentially held that Siemens was under an obligation to return back possession and hand over all the fixtures, fittings and air conditioning system back to the Sukhanlal Group concerns by the end of December, 1999.

Issue No. 5 Whether the Siemens are entitled to any amounts towards interests for delayed payment of security and other amounts by the Sukhanlal Group; if so, at what rate and for what period?

60. Siemens claims Rs. 57,28,592/- (being the principal amount of Rs. 72,96,661/- payable by (Kanha) in terms of the Supplementary Agreement between parties, less Rs. 20,00,000/- paid pursuant to such agreement with interest till filing of the suit), in Suit No. 1115/1998. Initially, Siemens had claimed a larger amount; the suit was later converted into an ordinary suit for recovery, and amended, seeking the amount finally sought. Siemens also claims interest from 1.1.1998.

61. The order dated 10-12-1998 records that Kanha paid an amount of Rs. 38,76,661/- to Siemens claiming that its liability under the Supplementary Agreement was confined to that sum of money. Siemens admitted that of the

original amount of Rs. 72,96,661/- , Rupees twenty lakhs (Rs. 20,00,000/-) was paid by Kanha. The latter, on the other hand, claims adjustment of charges towards use of facilities, @ Rs. 5,50,000/- plus ten per cent increase, till the date it paid the amounts to Siemens. In the earlier part of the judgement, this Court held that the Sukhanlal group elected to impeach the impugned conditions only in November, 1999, and filed the suit in May, 2000. The premises were vacated on 8-8-2000. The Sukhanlal group has not challenged the stipulation requiring payment of 12% interest on the outstanding amounts. The interest rate is contractual; Siemens were not entitled to claim any interest, for the duration when the lease subsisted, as the amounts were interest free; that part of the bargain has been effectuated.

62. A relevant aspect here is that the stipulation in the Supplementary Agreement between the parties enabled Kanha to adjust four months rent, from March 1997 onwards. This is evident from Clause 3 of Ex. G, dated 17-4-1997. The same document also records that Kanha had paid Rs. 10 lakhs by cheque towards first instalment to Siemens. The latter however states that Rs. 20 lakhs was paid by Kanha; it does not elaborate this aspect. Kanha, on the other hand, says that mentioning only Rs. 20 lakhs is wrong. From these materials, and pleadings, it is clear that according to the stipulations in the agreement, Rs. 10 lakhs was paid as first instalment; Siemens does not deny having received it. Kanha could adjust four months rent; @ Rs. 5,50,000/- it works out to Rs. 22,00,000/-. Though the original agreement stipulated a 10% increase, the Supplementary agreement had brought the obligations inter se parties, in respect of all other aspects, of the Lease or Hire agreements, to an end. Therefore, Kanha cannot legitimately claim the 10% increase. Thus, as on 01-01-1998, a sum of Rs. 40,96,661 was due and payable to Siemens. Therefore, Siemens are held entitled to interest at the agreed rate, on the amount of Rs. 40,96,661/-. This works out to Rs. 4,64,287.91/- till 10-12-1998. On that day, the sum of Rs. 38,76,661/- was paid by Kanha, to Siemens. The balance amount outstanding and payable, over and above the interest amount, was Rs. 2,20,000/-. The interest at 12% p.a. on that amount till 8-8-2000 works out to Rs. 43,822.66. The amount payable by Kanha, to Siemens in Suit. No. 1115/1998, is Rs. 2,63,826.66 (Rupees Two lakhs, sixty three thousand, eight hundred and twenty six and paise sixty six only), being Rs. 2,20,000/- and interest till 8-8-2000. As far as pendente lite and future interest are concerned, the court awards interest at the rate of 9% p.a on the said amount of Rs. 2,63,826.66 from 09-08-2000. Therefore, Siemens are entitled to Rs. 4,64,287.91 i.e. the 12% interest, till 10-12-1998 plus Rs. 2,63,826.66 (balance after 10-12-1998 and interest on it) with 9% pendent lite and future interest on that amount, with effect from 11-12-1998.

63. In Suit. No. 1116/1998, Siemens claims Rs. 2,74,57,800/- (being Rs. 254,10,000/- plus interest at 24% per annum till 30-4-1998), from Sukhanlal Memorial Charitable Society. Here, the Supplementary Agreement stipulated Sukhanlals liability as Rs. 2,79,10,000/-; the sum of Rs. 10,00,000/- is shown as

the first instalment, paid on the date of the agreement, i.e 17- 4-1997. here too, the parties stipulated adjustment of four months rent or lease amounts, from March, 1997 to June, 1997. Siemens avers that a sum of Rs. 25,00,000/- was paid to it by the Sukhanlal society in September, 1997. However, it does not, inexplicably adjust the sum of Rs. 10,00,000/- undisputedly mentioned in the Supplementary Agreement. Nor does it say that the cheque was not honoured, or not encashed by it; on the other hand, Sukhanlal states that the said amount was paid to Siemens. On a conspectus of these facts, it is held that the liability of the Sukhanlal Society as on 31-12-1997, stood at Rs. 1,84,70,000/- ((Rupees one crore eighty four lakh, seventy thousand only). The Sukhanlal group has not challenged the stipulation requiring payment of 12% interest on the outstanding amounts. The interest rate is contractual; Siemens were not entitled to claim any interest, for the duration when the lease subsisted, as the amounts were interest free; that part of the bargain has been effectuated. The amount paid by the Sukhanlal society on 8-8-2000 was Rs. 1,84,70,000/- (Rupees one crore eighty four lakh, seventy thousand only). The interest on the sum of Rs. 1,84,70,000/- from 1-1-1998 till 8-8-2000 at 12% p.a. is Rs. 57,74,953/33 (Rupees fifty seven lakhs, seventy four thousand, nine hundred and fifty three and paise thirty three only). So far as pendente lite and future interest are concerned, the court awards interest at the rate of 9% p.a on the said amount of Rs. Rs. 57,74,953/33, with effect from 8-8-2000.

64. Siemens claims Rs. 1,68,77,403/- (being the principal amount of Rs. 1,56,13,336/- payable by M/s Aditya Developers (Aditya) in terms of the Supplementary Agreement between parties, in Suit No. 1117/1998, along with interest. Initially, Siemens had claimed a different amount; the suit was later converted into an ordinary suit for recovery, and amended, seeking the amount finally sought. Siemens also claims interest from 1.1.1998. Here, Aditya claims adjustment of charges towards use of air conditioning facilities, @ Rs. 8,80,000/- per month, till the date it paid the amounts to Siemens, when the premises were vacated. In the earlier part of the judgement, this Court held that the Sukhanlal group elected to impeach the impugned conditions only in November, 1999, and filed the suit in May, 2000. The premises were vacated on 8-8-2000. The Sukhanlal group has not challenged the stipulation requiring payment of 12% interest on the outstanding amounts. The interest rate is contractual; Siemens were not entitled to claim any interest, for the duration when the lease subsisted, as the amounts were interest free; that part of the bargain has been effectuated.

65. Like in Suit No. 1115/98, there is a stipulation in the Supplementary Agreement between the parties which enabled Aditya to adjust four months rent, from March 1997 onwards. This is evident from Clause 3 of Ex. I , dated 17-4-1997. The same document also records that Aditya had paid Rs. 10 lakhs by cheque towards first instalment to Siemens. The latter however does not state that Rs. 10 lakhs was paid by Kanha; it does not elaborate this aspect. Aditya, on the other hand, says that mentioning additionally, alleges that it paid Rs. 20

lakhs, in the written statement; this is also reiterated in the oral evidence led on behalf of the Sukhanlal group. Curiously, no date is mentioned about the payment of such amount of Rs. 20 lakhs; no particulars, such as cheque or demand draft number, name of the bank, date of the instrument, etc, are absent. From these materials, and pleadings, it emerges that according to the stipulations in the agreement, Rs. 10 lakhs was paid as first instalment; Siemens does not deny having received it. Aditya could adjust four months rent; @ Rs. 8,00,000/- it works out to Rs. 32,00,000/-. Though the original agreement stipulated a 10% increase, after the first year period or renewal period, the Supplementary agreement had brought the obligations inter se parties, in respect of all other aspects, of the Lease or Hire agreements, to an end. Therefore, Aditya cannot claim the 10% increase. Thus, as on 31-1-1997, a sum of Rs. 1,14,13,336/- was due and payable to Siemens. Therefore, Siemens are held entitled to interest at the agreed rate, on the amount of Rs. 1,14,13,336/- . This works out to Rs. 35,68,569.72 till 8-8-2000. On that day, the sum of Rs. 90,93,336/- was paid by Aditya, to Siemens. The balance amount outstanding and payable, over and above the interest amount, was Rs. 23,20,000/-. The amount payable by Aditya, to Siemens in Suit. No. 1117/1998, is Rs. 58,88,569.72 (Rupees fifty eight lakhs, eighty eight thousand, five hundred and sixty nine and paise seventy two only), being Rs. 23,20,000/- and 12 % interest on Rs. 1,14,13,336/- till 8-8-2000. As far as pendente lite and future interest are concerned, the court awards interest at the rate of 9% p.a on the said amount of Rs. 58,88,569.72 (Rupees fifty eight lakhs, eighty eight thousand, five hundred and sixty nine and paise seventy two only).

66. Issue No. 5 is decided in accordance with the above findings, to such extent, in favour of Siemens.

Issue No. 6: Whether Sukhan Lal and Group are entitled to Rs. 3,39,05,000 along with further amount in Suit No. 1124/2000?

Issue No. 7: Whether Sukhan Lal and Group are entitled to Rs. 2,55,51,661 along with further amount in suit No. 1125/2000? OPP SUKHAN LAL.

Issue No. 8: Whether Sukhan Lal and Group are entitled to Rs. 3,10,78,000 along with further amount in suit No. 1126/2000? OPP SUKHAN LAL.

Issue No. 9: Whether Sukhan Lal Group are entitled to payment of interest by SIMENS on any account, if so at what and for what period? OPP SUKHAN LAL.

67. These issues have to be decided on common principles and considerations, and are, therefore, taken up together for discussion. The claims are premised upon the Sukhanlal group of concerns right to receive full lease or rental for the premises, as well as hire and use charges after determination of the arrangement through the Supplementary Agreement dated 17-04-1997. It is

contended that once the court holds the impugned clauses in the Lease Agreement, Hire Agreement, and Use of Facilities Agreement, as well as the Security Deposit agreements to be void and unenforceable, the natural corollary would be that Siemens has the obligation to fully recompense the Sukhanlal group concerns for the rent, hire and use charges payable till the latter handed over the premises.

68. In the discussion on issue numbers 3 and 4, this Court had, even while agreeing with the Sukhanlal groups contention that the impugned stipulations amounted to unenforceable penal conditions, nevertheless found that they (the Sukhanlal group) elected to treat such conditions as not binding only in November 1999. The question is whether Siemens is liable to pay the lease amounts as agreed between the parties, from December 1999 or it is liable to pay some other amount.

69. Now, the stipulations in the supplementary agreements entered into between Siemens and the Sukhanlal group concerns on 17-04-1997, all commonly stipulated that the latter (i.e. the Sukhanlal society; Kanha and Aditya) were all entitled to adjust the agreed rental, use or hire amounts for the four-month period between March 1997 and June 1997. Significantly, the supplementary agreements expressly granted six months time to the Sukhanlal group of concerns, to pay back or refund the entire security deposit amounts, spelt out in the agreements. Yet the parties consciously chose that only four months rent could be adjusted. These documents also recorded final settlement of all outstanding issues provided their terms were complied with. This Court has held that the conditions in the lease agreement and the security deposit agreements, to the extent they enable Siemens to continue with the possession of the premises without having to pay any rental amounts are unenforceable; this is with the rider that such effect would be only from the time the Sukhanlal group elected to treat these conditions as not binding. In the opinion of the court, the overall effect of these -the other conditions in the supplementary agreement and the effect of the declaration of the court, is that the contract between the parties, or the lease or hire arrangement between the parties had ended in terms of the Supplementary Agreements dated 17-04-1997. Necessarily therefore, there was no agreement between the parties about the rate of damages or charges, payable for the duration Siemens retained possession of the premises -even though it had vacated it, sometime in October 1997. As a result, relying on the original lease agreement terms to bind the parties, after the completion of the arrangement, when they provided for only a part of the period, would not be apposite. An equally important aspect which the court has to keep in sight, is that here, the question of damages for breach of contract does not arise; the principle underlying Section 73 of the Contract Act would not be applicable.

70. The above being the position, the question is, what would be the principle governing determination of amounts to the Sukhanlal group, for the period after they elected to treat the impugned conditions as illegal. Sections 65 and 70 of

the Contract Act embody restitutionary guidelines that would assist the courts in such cases. They read as follows:

65 Obligation of person who has received advantage under void agreement, or contract that becomes void.

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore, it, or to make compensation for it, to the person from whom he received it.

XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX 70. Obligation of person enjoying benefit of non-gratuitous act.

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

The principle was explained by the Supreme Court, in *Puran Lal Sah Vs. The State of U.P.*, in the following terms:

The principle of quantum meruit is rooted in English law under which there were certain procedural advantages in framing an action for compensation for work done. In order to avail of the remedy under quantum meruit, the original contract must have been discharged by the defendant in such a way as to entitle the plaintiff to regard himself as discharged from any further performance and he must have elected to do so. The remedy it may be noticed is, however, not available to the party who breaks the contract even though he may have partially performed part of his obligation. This remedy by way of quantum meruit is restitutory that is it is a recompense for the value of the work done by the plaintiff in order to restore him to the position which he would have been in if the contract had never been entered into. In this regard it is different to a claim for damages which is a compensatory remedy aimed at placing the injured party, as near as may be in the position which he would have been in, had the other party performed the contract. This Court had in *Alopi Parshad and Sons Ltd. Vs. Union of India (UOI)*, observed at p. 809:

Compensation quantum meruit is awarded for work done or services rendered when the price thereof is not fixed by a contract. For work done or services rendered pursuant to the terms of a contract compensation quantum meruit cannot be awarded where the contract provides for consideration payable in that behalf.

Though in that case the basis of the principle was not explained, it nonetheless, lays down that where work is done under a contract pursuant to the terms thereof no amount can be claimed by way of quantum meruit.

It was again declared, in *V.R. Subramanyam Vs. B. Thayappa and Others*, , that:

If a party to a contract has rendered service to the other not intending to do so gratuitously and the other person has obtained some benefit, the former is entitled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was, therefore, entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him: even if he failed to prove an express agreement in that behalf, the court may still award him compensation u/s 70 of the Contract Act.

Most recently, the same principle was reiterated, by the Supreme Court, in *Food Corporation of India and Others Vs. Vikas Majdoor Kamdar Sahkari Mandli Ltd.*,

The principle of quantum meruit is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed, by which the person for whom the work is to be done contracts to pay reasonably for the work done, to the person who does the work. The provisions of this section are based on the doctrine of quantum meruit, but the provisions of the Contract Act admit of a more liberal interpretation; the principle of the section being wider than the principle of quantum meruit. The principle has no application where there is a specific agreement in operation. A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled to be paid a reasonable price for such work as was done by him.

71. In these cases, the parties agreed about the quantum of lease, hire charges and use amount, under the original agreements, entered into in 1995. Barely two years later, they agreed to terminate the agreement. Significantly, the Supplementary Agreements factored only 4 months hire, lease and use charges. Reciprocally, the Sukhanlal group were to pay back the Security deposit amounts within a time frame, which was concededly extended to end December, 1997. This stipulation was breached. The court has already held that the stipulation concerning continued possession of the premises, by Siemens, without payment of rent, is unenforceable, from the date the Sukhanlal group elected to treat it as such. In these circumstances, the measure of compensation, if one could so term the use, rent and hire charges, would not be the same as was agreed upon in the contracts, entered into in 1995.

72. The Sukhanlal group has, besides urging entitlement to the originally agreed amounts, made no attempt to establish its case that such amounts reflected the market rates for the premises as also the prevailing rates. Apart from the original agreements, in the case of Kanha and Aditya, no description about the equipment, their quality, value, or age, exists on the record. In these circumstances, the court is left guessing about the measure of compensation that should be reasonably awarded to the Sukhanlal society, Kanha and Aditya. All the

three concerns also claim amounts towards damage to the premises, and rely on reports of the commissioners, in support of such claims for compensation towards damage to the premises, or equipment. Here again, however, no attempt has been made, apart from the general averments, to specify the extent of such damage, by reliance on experts, surveyors or independent professionals testimony. The original value of the equipment, the extent or degree of harm to those, the monetary value of the equipment, the charges for repair, etc have not been established. In the circumstances, the court has to again hazard its guess, on these aspects towards their latter claim (of damage) no amounts can be decreed.

73. In the overall facts of the case, the court is of opinion that with the limited nature of the evidence, only nominal damages should be granted, as a safe course. In this regard, as far as the premises are concerned, the basic lease amount agreed was Rs. 11,00,000/-; the sum of Rs. 3,85,000/- was agreed to be paid, each month, towards municipal taxes. The Sukhanlal society has not pleaded or established that such, or any other amounts were paid to the municipal authorities at any time; it does not plead that remission for the period after October, 1997, when Siemens vacated the premises (but continued to retain possession) was not claimed. No documentary or other evidence is forthcoming. Therefore, this amount plainly cannot be awarded. As regards compensation or damages for the premises is concerned, the court is of opinion that in the absence of any valuation or empirical indication, the amount of Rs. 5,50,000/- per month, Constituting half the original lease amount agreed, would be in order. No evidence about the value of damage, or the amount spent in repairing it, has been led; therefore, no amount is awarded. Accordingly, it is held that the Sukhanlal Society is entitled, in Suit No. 1124/2000, to a decree of Rs. 39,96,666.67 being the amount of Rs. 5,50,000/- per month, till 8-8-2000. It is also entitled to pendente lite and future interest @ 9% per annum on the said amount.

74. In the case of Kanha, the amount agreed originally was Rs. 5,50,000/-. Here, unlike in the case of immovable property, the charges were for the use of facilities and fixtures. There is no specific description of the facilities or their value, either in the documents, or the oral testimony. The court has not been told about the value at which these equipment were purchased; Sukhanlals contention of having spent substantial amounts towards renovation has not been supported by evidence. In these circumstances, the court awards Rs. 2,00,000 as hire charges, per month, for the facilities, in favour of Kanha, for the period 1-1-2000 to 8-8-2000. The same works out to Rs. 14,73,331.86 It is also entitled to pendente lite and future interest @ 9% per annum on the said amount.

75. In the case of Aditya, the considerations which weighted in the case of Kanha, would equally apply. The amount agreed for hire charges, originally was Rs. 8,00,000/- per month. The charges were for the use of airconditioning

facilities. There is no specific description of the airconditioning facilities, their value, manufacture, etc, either in the documents, or the oral testimony. The court has not been told about the value at which such equipment were purchased; it is also not known if an airconditioning plant was installed, or a system with different kinds of air conditioners .In these circumstances, the court awards Rs. 2,75,000/- as hire charges, per month, for the facilities, in favour of Aditya, for the period 1-1-2000 to 8-8- 2000. The same works out to Rs. 20,25,816. It is also entitled to pendente lite and future interest @ 9% per annum on the said amount.

Issue No. 10: Relief

In view of the above discussion and findings, the parties are entitled to the following reliefs:

(1) Suit No. 1115/98 is decreed in favour of Siemens and against Kanha Credit & Holdings Private Limited for the sum of Rs. 7,28,114.57 with pendente lite and future interest @ 9 per cent, per annum, from 09.08.2000;

(2) Suit No. 1116/1998 is decreed, in favour of Siemens and against M/s Sukhanlal Memorial Charitable Society, in the sum of Rs. 57,74,953/33 (Rupees fifty seven lakhs, seventy four thousand, nine hundred and fifty three and paise thirty three only), with pendente lite interest for the period after 9-8-2000, and future interest at the rate of 9% p.a on the said amount;

(3) Suit No. 1117/1998 is decreed, in favour of Siemens and against Aditya Developers, for the sum of Rs. Rs. 58,88,569.72 (Rupees fifty eight lakhs, eighty eight thousand, five hundred and sixty nine and paise seventy two only) with pendente lite interest for the period after 9-8-2000, and future interest at the rate of 9% p.a on the said amount;

(4) Suit No. 1124/2000 is decreed, in favour of Sukhanlal Memorial Charitable Society, and against Siemens, for the sum of Rs. 39,96,666.67 (Rupees thirty nine lakhs, ninety six thousand, six hundred and sixty six, paise sixty seven only) with pendente lite interest from 9-8-2000 and future interest @ 9% per annum;

(5) Suit No. 1125/2000 is decreed, in favour of Kanha Credit & Holdings Private Limited, and against Siemens, for the sum of Rs. 14,73,331.86 (Rupees fourteen lakhs seventy three thousand three hundred thirty one and eighty six paise only) with pendente lite interest from 9-8-2000 and future interest @ 9% per annum;

(6) Suit No. 1126/2000 is decreed, in favour of M/s. Aditya Developers, and against Siemens, for the sum of Rs. 20,25,816.15 (Rupees twenty lakhs twenty five thousand eight hundred sixteen and fifteen paise only) with pendente lite interest from 9-8-2000 and future interest @ 9% per annum.