

(2013) 03 BOM CK 0096

In the Bombay High Court

Case No : Civil Revision Application No. 12 of 2013

The Consulate General of Iran

APPELLANT

Vs

M/s. Baldota Brothers

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, 115, 79, 80, 81
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 14, 51
Evidence Act, 1872 — Section 58
Maharashtra Rent Control Act, 1999 — Section 3(1)(a), 3(1)(b)
Presidency Small Cause Courts Act, 1882 — Section 3(1)(b), 41

Citation : (2013) 4 ABR 1294 : (2013) 4 ALLMR 254 : (2013) 5 BomCR 346 :
(2013) 3 MhLj 569

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : P.S. Dani, for the Appellant; D.D. Madon, Sr. Advocate, for the Respondent

Judgement

S.C. Dharmadhikari, J.—Rule. Mr. Madon, Sr. Counsel, waives service on behalf of the Respondents/Original Plaintiffs.

2. By consent, Rule is made returnable forthwith.

3. By this Civil Revision Application u/s 115 of the Code of Civil Procedure, 1908, the Applicants/Original Defendants - the Consulate General of Iran, now known as the Consulate General of Islamic Republic of Iran, impugns and challenges the Judgment of the Appellate Bench of the Court of Small Causes at Mumbai dated 8th November, 2012 in Appeal No. 28 of 2007 in T.E.& R. Suit No. 100/112 of 2004.

4. By the impugned order, the lower Appellate Court has reversed the Judgment and Order dated 16th October, 2006 of the Trial Judge and has passed a decree for possession in favour of the Respondents/Original Plaintiffs in respect of the

suit premises, namely, Block No. 4 situate on the First Floor of the building known as "Baldota Bhavan", 117, Maharshi Karve Road, Churchgate, Mumbai - 400 020 along with a Garage. The Appellate Court has also directed that an inquiry under Order XX Rule 12 of the Code of Civil Procedure, 1908, into mesne profits from the date of the Suit till the Applicants/Original Defendants hand over vacant and peaceful possession of the suit premises to the Respondents/Original Plaintiffs, be conducted and held in accordance with law.

5. The few facts that are necessary for deciding the legal questions are as follows:

The Suit in question was filed in the Court of Small Causes at Bombay by the Respondents/Original Plaintiffs invoking Section 41 of the Presidency Small Causes Courts Act, 1882 alleging that the Respondents/Original Plaintiffs are a Partnership Firm registered under the Indian Partnership Act, 1932. The Partnership Firm is the owner and landlord of the building known as "Baldota Bhavan". A portion of the said building, namely, suit premises, admeasuring 3250 sq. ft., as described in para 2 of the plaint, was let out by the Respondents/Original Plaintiffs to the Applicants/Original Defendants on a monthly tenancy basis. The Applicants/Original Defendants are a "Foreign Mission" representing the State of Iran in India. The Applicants/Original Defendants were allowed to use the suit premises as a Office. They have ceased to occupy the premises and have shifted their office to a new address at 47, Swapna Lok, L. Jagmohandas Road, Mumbai - 400 026. The suit premises have been locked and are unused. Recently the Applicants/Original Defendants started using the suit premises as a Nursery School and have, thus, changed the user of the premises.

6. For initiating legal proceedings against the Applicants/Original Defendants, the Respondents/Original Plaintiffs were required to obtain permission from the Ministry of External Affairs, Government of India, New Delhi. This was because the Applicants/Original Defendants are a Foreign State. The permission in that regard was received from the said Ministry by a communication dated 31st December, 2003. However, as the permission was to initiate legal proceedings to obtain vacant possession of the suit premises, the Respondents/Original Plaintiffs wrote letters dated 24th January, 2004 and 3rd February, 2004 to the said Ministry of External Affairs requesting for a composite permission. They requested that not only permission be granted to initiate legal proceedings to seek eviction of the Applicants/Original Defendants, but also recover arrears of rent due and payable from October, 2001 upto December, 2003 amounting to Rs. 22,911/- and for recovery of water charges, as set out in para 5 of the plaint.

7. The Ministry of External Affairs clarified vide its letter dated 16th February, 2004 that the permission dated 31st December, 2003 u/s 86 of the Code of Civil Procedure, 1908 was for initiation of proceedings for recovery of possession and also for recovery of rent and, therefore, a separate permission was not necessary.

8. It is stated that the Respondents/Original Plaintiffs have by their letter dated 3rd February, 2004 terminated the tenancy of the Applicants/Original

Defendants. That letter/notice was despatched by Registered Post and the acknowledgement of receipt thereof is dated 9th February, 2004. Despite issuance of the said notice and receipt of the same, the Applicants/Original Defendants have failed to vacate and hand over vacant and peaceful possession of the suit premises, as called upon by the Respondents/Original Plaintiffs.

9. By contending that the Applicants/Original Defendants are excluded from the Maharashtra Rent Control Act, 1999, by virtue of Section 3(1)(b) of the said Act, it was prayed that the Suit be decreed.

10. This Suit was filed in the Trial Court on 30th July, 2004.

11. On the suit summons being served, the Applicants/Original Defendants filed their written statement and urged that the Suit is not maintainable. It is stated that the Suit cannot be filed in the form in which it was filed. It is the Consul General of Iran who can be sued in law. The Consulate General is not a Corporation Sole and hence the Suit cannot be filed against it.

12. The other contention was that the Applicants/Original Defendants have been occupying the suit premises for more than 50 years under a Deed of Lease/Agreement of 99 Years. Their occupation is protected by the Maharashtra Rent Control Act, 1999. They are a tenant in terms of the said Act. They are also not a "Foreign Mission" as contemplated by Section 3(1)(b) of the Maharashtra Rent Control Act, 1999. The Suit is, therefore, not maintainable. The Applicants/Original Defendants are full-fledged diplomatic representative based in India and functioning on reciprocal basis by virtue of the Vienna Convention. It is only these two contentions which are material for the purposes of this Civil Revision Application.

13. On these pleadings, the Trial Court framed the necessary issues. The Respondents/Original Plaintiffs examined one Amrutlal Maganlal, the Rent Collector and Manager, who stated that the Consulate represents a Foreign country and that is the Islamic Republic of Iran and is, thus, a Foreign Mission. He has also justified that the Suit is filed by impleading the Consulate and, therefore, the same is maintainable.

14. In the cross-examination, several questions were posed and, particularly, as to why the Suit has been filed and what is the reason for termination of tenancy. The answer is that the Applicants/Original Defendants have another Office at Nepean Sea Road, Mumbai. While it is conceded that the Applicants/Original Defendants are tenants/lessees in respect of the suit premises, but what has been stated is that as far as the legal issue of applicability of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, the witness of the Respondents/Original Plaintiffs cannot give any answer.

15. There was another witness who was examined by the Respondents/Original Plaintiffs.

16. However, on behalf of the Applicants/Original Defendants, the Secretary

employed with the Consulate entered the witness box. He reiterated the stand taken in the written statement and, noted as above, in his examination-in-chief.

17. In the cross-examination, it was admitted that the letter at Exhibit-20 was signed by the ex-Consul General. He admitted that in all the correspondence, the Applicants/Original Defendants have been referred as "Diplomatic Mission". There is no dispute and rather an admission that the Applicants/Original Defendants have another premises at Nepean Sea Road. They also admitted that they have received the suit notice. They deny the suggestion that Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 applies to them.

18. The learned Trial Judge, on this material and on the basis of oral arguments, held that though the Suit is maintainable, Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 cannot be held to be applicable. The learned Judge held that the wording of Section 86 of the Code of Civil Procedure, 1908 would guide him in construing and interpreting Section 3(1)(b) of the Maharashtra Rent Control Act, 1999. If the admission in the cross-examination is that the Applicants/Original Defendants are a "Diplomatic Mission" and the word "Mission" means "aim, assignment, business calling etc., then, the wording in Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 will have to be interpreted accordingly. So interpreted, that provision is not applicable. The Suit is, therefore, not maintainable u/s 41 of the Presidency Small Causes Courts Act, 1882. The Trial Judge on the relevant issue Nos. 3 and 5 held in favour of the Applicants/Original Defendants and dismissed the Suit on 16th October, 2006.

19. The Respondents/Original Plaintiffs carried the matter in Appeal and the Appellate Bench has reversed this Judgment and Decree of dismissal of the Suit. The finding of the lower appellate Court on the point of exemption from the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, is as under:-

15. In the present case, the question is who is the tenant. D.W.1 Shri. Gulam, who is the Secretary of Consulate General of Islamic Republic of Iran is examined. He deposed that he is employed by the defendants. In cross-examination, he admitted that the rent receipts are issued in the name of the defendants as specified by the plaintiffs in the plaint. He further admitted that in all correspondence, defendants have been referred as a diplomatic mission. Plaintiffs issued notice, in which defendants are described as "foreign mission". By reply, the defendants have not denied this fact. So, this is implied admission. In view of this fact, it is clear that defendants are the tenant of the suit premises.

16. Now, secondly, it is the case of the defendants that defendants are not the foreign mission as contemplated u/s 3(1)(b) of the Maharashtra Rent Control Act. Whereas, according to plaintiffs, defendants have no protection of Maharashtra Rent Control Act. In view of the admission given by the D.W.-1 as discussed above, it is clear that defendants are the foreign mission. Now, the question is what is the foreign mission. it is settled position of law that where, the Act does

not defined word legislature should be presumed to have used that word in its ordinary meaning. So, we will have to see dictionary meaning of word "foreign mission". The word "Foreign Mission" is defined in P. Ramnath Aiyar's Advanced Law Lexicon as "A term use in contradistinction to home missions, and applicable to all missions located or conducted in a country which is foreign to that where the home organization is established". The word "Mission" in Webster's New World Dictionary is defined as "a group of persons sent to a foreign government to conduct negotiation; diplomatic delegation, embassy etc..." D.W.1 admitted that defendants have been referred as diplomatic mission. He also admitted Exh. 20. It is settled position of law that the admission made in a suit have special value in view of Section 58 of the Evidence Act. So, we come to the conclusion that defendant is a foreign mission.

17. Thirdly, it is contended by the defendants that there is no evidence on the record to show that paid up share capital of the defendants is more than one crore or so. There is no iota of evidence to show that defendants are having share capital of Rs. 1 crore or more. The plaintiffs though claiming right of eviction are completely silent on this aspect. It is to be noted that the defendants are not having any commercial establishment or anything of commercial nature which are making profits. The defendants are diplomatic organization protected by virtue of Vienna Convention and more a consular organization having their base in Mumbai on reciprocal basis between two sovereign countries. It is the contention of the learned Advocate that defendants are protected under the Maharashtra Rent Control Act. In our view the provision of paid up share capital will be applicable to Private Limited Companies and Public Limited Companies. This is because, word "and" is used before the foreign mission, international agency and multinational companies. So, by using the word "and" separate category is carved out. The learned Advocate for the respondents draw our attention towards clause (3) of report of Joint Select Committee on The Maharashtra Rent Control Bill, 1993, wherein, it is held that:

This clause provides for exemption. Sub clause (1)(b) of this clause provides that this Act shall not apply to any premises let to foreign missions, international agencies, multi national companies and public limited companies having a paid up share capital of more than rupees one crore. The Committee felt that this Act should not apply to premises let or sublet to foreign missions, international agencies, etc.

According to him, the foreign mission is not exempted. However, this submission cannot be accepted. Because, if we read further in the same clause (3), it is mentioned that the Committee further felt that this Act should not apply to private limited companies having a paid up share capital of more than rupees one crore. So, it is clear that the Private Limited Company having share capital is a separate category.

It is one of the settled rules of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word,

phrase or sentence is to be considered in the light of the general purpose and object of the Act itself.

Under the ordinary rules of interpretation the adjectival phrase "regarding the conditions etc." should be taken to apply to the word or phrase immediately preceding it and not to the remoter antecedent term or expression.

18. It is settled position of law that while interpreting Section court should not take narrow restricted view which will defeat the purpose of that it has been held in Arjun (supra). So, we are of the opinion that defendants have no protection of Maharashtra Rent control Act and the finding given by the learned trial Judge is not proper and legal and deserves to be set aside and we set it aside accordingly.

20. It is this finding and the conclusion based thereon leading to the decree for possession which is challenged in this Civil Revision Application.

21. Mr. Dani, learned Counsel appearing on behalf of the Applicants/Original Defendants, submitted that the Suit filed in the Trial Court was bad for non-joinder of necessary parties. He invited my attention to the title and submitted that the Partners are not joined as Plaintiffs. Similarly, as far as the Applicants are concerned, the Consulate General of Iran has been named as Defendants. The Applicants, namely, Consulate General of Iran, is not a Legal Entity. He has also invited my attention to pages 21, 22 and 25 of the paper-book, which contains the plaint and pages 34 and 35 of the paper-book, which contains the written statement. He has also invited my attention to the deposition of the witnesses and submitted that the protection of the Maharashtra Rent Control Act, 1999 cannot be said to be taken away. Mr. Dani submitted that Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 will have to be interpreted restrictively and narrowly. There is no definition of the term "Foreign Mission". It does not have a comprehensive meaning. The Legislature was aware of the distinction and particularly with regard to the activities undertaken by a Consulate General and at the Diplomatic Mission. Mr. Dani submits that had the Legislature been desirous of including in this provision, namely, Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, any activity of a Foreign State in a reciprocal country, then, it would have specified clearly. The term "Foreign Mission", therefore, cannot be interpreted to mean and include a reciprocal arrangement with a foreign country allowing it to function as a representative of that country, allowing it to acquire and hold property. In any event, acquisition on lease is not outside the purview of Rent Control and Rent Restriction Act. It is the Foreign State/Ruler which could be said to be the tenant. Any activity of a Foreign State and particularly of the present nature, therefore, cannot be covered by the subject provision.

22. Mr. Dani submits that upon a reading of Section 86 of the Code of Civil Procedure, 1908, the present Suit was not maintainable. The Consulate General is not a Body Corporate. The Consul General is not sued by making him a party. Inviting my attention to Sections 87 and 87A of the Code of Civil Procedure,

1908, Mr. Dani submits that the Suit is, therefore, not filed as required by the Statute and hence it is not maintainable. The Suit is not filed against the Foreign State. He has led special emphasis on the cause title and has submitted that the Trial Court and, equally, the lower Appellate Court have failed to take into account this point.

23. In any event, the lower Appellate Court has seriously erred in holding that there is no pleading in the written statement that the tenancy was obtained in the name of State of Iran. In these circumstances, the impugned Judgment is ex-facie contrary to law. The jurisdiction has been exercised illegally and with material irregularity. Mr. Dani has submitted that the term "Foreign Mission" appearing in Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 does not include a "Foreign State". Therefore, an Entity such as Government, being covered by Section 3(1)(a) of the Maharashtra Rent Control Act, 1999, would show that the intention of the Legislature was to make a distinction between a Government and any other Entity. Therefore, the term "Foreign Mission" appearing in Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 cannot be interpreted as "Foreign State" or include a Foreign State within it. Mr. Dani submits that the permission granted u/s 86 of the Code of Civil Procedure, 1908 will not control the interpretation of Section 3(1)(b) of the Maharashtra Rent Control, Act, 1999 and, therefore, that provision is of no assistance to the Respondents/Original Plaintiffs. For these reasons, this Civil Revision Application be allowed.

24. Mr. Dani has placed reliance upon the Diplomatic Relations (Vienna Convention Act, 1972) and the Judgment of a learned Single Judge of this Court in the case of M/s. Earth Builders, Bombay Vs. State of Maharashtra and Others, .

25. On the other hand, Mr. Madon, learned Senior Counsel appearing for the Respondents/Original Plaintiffs, submits that the Suit in this case was clearly maintainable. The Suit was filed by the Original Plaintiffs, which is a Partnership Firm. In law, a Firm cannot be seen de-hors its Partners. Therefore, the Suit can be filed in the name of a Firm or by Partners styling them as such of a Firm. The Suit is, therefore, clearly maintainable. In any event, the Suit was held to be maintainable by the Trial Court. It was dismissed on merits. That dismissal was challenged in Appeal by the Respondents. The Applicants throughout accepted the finding on the issue of maintainability of the Suit in the present form.

26. Mr. Madon, then, submits that the point that the Suit was not filed against the Foreign State or the Consul General was never raised. He has invited my attention to the issues framed by the Trial Court at page 78 of the paper-book and it is submitted that the point raised was of res-judicata, namely, that Suit earlier filed by these very Respondents against the Applicants was dismissed and, therefore, second Suit is not maintainable. The objection now raised has not been raised at all. He has also invited my attention to the order passed by the lower Appellate Court and he submits that although some debate was raised with regard to the maintainability, the lower Appellate Court has relied upon the

contents of the written statement and, equally, that the argument of Mr. Dani is contradictory in terms. If the argument is that "Foreign Mission" does not include "Foreign State" as the activities of the Foreign State are akin to State or Government activities, is conceding that Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 is attracted and applicable irrespective of the nature of the functions of the Mission. Then, there cannot be a plea that the word "Foreign Mission" must be interpreted by considering the functions undertaken by it. Mr. Madon has, therefore, submitted that the Suit has been rightly filed against the Consulate General of State of Iran. In any event, rent receipts are issued in the name of the present Applicants/Original Defendants. He submits that if the rent receipts are issued in that name and there cannot be any confusion about the word "Consul General" and "Consulate General", then, the Suit was maintainable. He has invited my attention to the admission in the cross-examination and particularly with regard to Exhibit-20. That was a letter signed by ex-Consul General. Therefore, the Suit was clearly maintainable. There is a permission granted to sue the present Applicants as a "Consulate General" and based thereon, the Suit is filed. It is, therefore, maintainable.

27. Mr. Madon submits that the Applicants/Original Defendants have admitted that they are "Diplomatic Mission". Once they are a "Diplomatic Mission", then, they are covered by the term/word "Foreign Mission" appearing in Section 3(1) (b) of the Maharashtra Rent Control Act, 1999. Mr. Madon submits that the term "Foreign Mission", "International Agencies" and "Multi-National Companies" are grouped together, because there is an international element involved. They are all beyond the boundaries of India. They are capable of acquiring and holding property and particularly when they undertake trade and commerce so also other activities in the reciprocal territory/country. Therefore, they are advisedly kept out of the purview of the Rent Control Act, as they do not require any protection thereof. In such circumstances, the ordinary meaning of the term "Foreign Mission" is fully applicable and taking that definition as a guide, as it fits in the context as well, it can safely be held that the Maharashtra Rent Control Act, 1999 does not apply to the premises which were given on tenancy to the Applicants/Original Defendants. Therefore, the Suit has been rightly decreed by the lower Appellate Court as there was no defence. Once the tenancy was terminated by the notice issued prior to the Suit and the requisitions therein were not complied with and there was no dispute ever raised on facts, then, the Suit under the ordinary law was maintainable and is rightly decreed. There is no error of jurisdiction or perversity which requires interference in revisional jurisdiction. The Revision Application be, therefore, dismissed.

28. For properly appreciating rival contentions, a reference will have to be made to Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, which reads as follows:-

3. Exemption - (1) This Act shall not apply -

(a) ...

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid-up share capital of rupees one crore or more.

29. In the case of Smt. Leelabai Gajanan Pansare and Others Vs. The Oriental Insurance Co. Ltd. and Others, , the Hon"ble Supreme Court had an occasion to consider as to whether a Government Company falls within the expression "any Public Sector", "Undertaking" or "Corporation established by or in Central or State Act" as appearing in Section 3(1)(b).

30. While deciding that question, the Hon"ble Supreme Court held as under:-

31. In order to give purposive interpretation to Section 3(1)(b) of the said Rent act one has to go back in history to the object behind enactment of the Bombay Rent Act, 1947 ("1947 Act"). That Act was passed to amend and consolidate the law relating to rents, repairs, eviction of tenants, control of rates of hotels and lodging houses and to control charges of licensed premises since 1.2.1973. The Act was passed to control the rents so as to prevent the landlords from exploiting the tenants by charging exorbitant rents with a view to take wrong advantage of growing acute shortage of accommodation in urban areas. Thus, that Act was also enacted to give further protection to the tenants, it intended to provide for responsibility of carrying out usual tenable repairs by transferring the duty of the tenants to carry out such repairs under the Transfer of Property Act to the landlord and thereby compelling him to keep the premises let out in good condition at his costs. In short, the said 1947 Act stood enacted with the intention to control rents, repairs, rates of hotels and eviction of tenants.

37. The important point to be noted is that in the above judgment it has been held that with the passage of time the 1947 Act which was justified when enacted had become arbitrary and unreasonable with the change in economic circumstances. It has been further observed in the said Judgment that the 1947 Act relating to determination and fixation of standard rent can no longer be considered to be reasonable. However, this Court felt that though the provisions mentioned above were liable to struck down as unreasonable and arbitrary keeping in mind the consequences that the tenants may lose protection of the Rent Act, this Court gave an opportunity to the Government to consider enactment of a Model Law. This judgment was delivered by the apex Court on 19.12.1997.

38. Therefore, the legislature was required to keep in mind the vulnerability of fixing standard rent as on 1.9.1940. At the same time, the legislature had to keep in mind two aspects, namely, tenancy protection and rent restriction. The problem arose on account of economic factors. However, the legislature found the solution by evolving an economic criterion. The legislature evolved a package under which the prohibition on receiving premium u/s 18 of the 1947 Act stood

deleted. In other words, landlords were given the liberty to charge premium. The second package was to exclude cash-rich body corporates and statutory corporations from the protection of the Rent Act. This part of the economic package helps the landlords to enhance the rent and charge rent to the entities mentioned in Section 3(1)(b) who can afford to pay rent at the market rate. This was the second item in the economic package offered to the landlords under the present Rent Act. The third item of the Rent Act was to give the benefit of annual increase of rent @ 5% under the present Rent Act. All three items constituted one composite package for the landlords. The underlying object behind the said economic package is to balance and maintain the two-fold objects of the Rent Act, namely, tenancy protection and rent protection. The idea behind excluding cash-rich entities from the protection of the Rent Act is also to continue to give protection to tenants who cannot afford to pay rent at market rate.

39. The above discussion is relevant because we must understand the reason why Section 3(1)(b) came to be enacted. As stated above, in our view, with the offer of an economic package to the landlords, the legislature has tried to maintain a balance. The provisions of the earlier Rent Act, as stated above, have become vulnerable, unreasonable and arbitrary with the passage of time as held by this Court in the above judgment. The legislature was aware of the said judgment. It is reflected in the report of the Joint Committee. In our view, the changes made in the present Rent Act by which landlords are permitted to charge premium, the provisions by which cash-rich entities are excluded from the protection of the Rent Act and the provision providing for annual increase at a nominal rate of 5% are structural changes brought about by the present Rent Act, 1999 vis-a-vis the 1947 Act. The Rent Act of 1999 is the sequel to the judgment of this Court in the case of *Malpe Vishwanath Acharya* (supra).

40. The entire discussion hereinabove is, therefore, not only to go behind Section 3(1)(b) and ascertain the reasons for enactment of the said sub-section but also to enable this Court to give purposive interpretation to the said sub-section.

41. In the light of the discussion mentioned hereinabove, we need to interpret Section 3(1)(b). The said subsection excludes entities enumerated therein from the protection of the said Rent Act, namely banks, PSUs, statutory corporations, foreign missions, international agencies, multinational companies and private limited companies and public limited companies having a paid up share capital of Rs. 1,00,00,000 or more. The question which arises for determination concerns the character of PSUs in the context of Section 3(1)(b).

46. According to the respondents, the words "PSUs" in Section 3(1)(b) has to be read with the words any corporation established by or under Central or State Act. In other words, according to the respondents, only those PSUs which are established by or under any Central or State Act alone stand excluded from the protection of the Rent Act. According to the respondents, PSUs which are Government companies incorporated u/s 617 of the 1956 Act are entitled to the protection as they are not expressly excluded u/s 3(1)(b). We do not find merit

in this submission. Firstly, it may be noted that several entities have been enumerated in Section 3(1)(b), namely, banks, PSUs or statutory corporations, foreign missions, international agencies, multinational companies and private limited and public limited companies having a paid up share capital of Rs. 1,00,00,000 or more. As stated above, the said Rent Act, 1999 has brought about structural changes in the legislation. In this case, it was open to the legislature to opt for any of the tests, namely, test of origin, test of public character of the functions performed by each of these entities, test of public character of each of the undertakings, test of agency or instrumentality, test of monopolistic status, test of mobilization of resources etc. In the present case, we find that the legislature has opted for an economic criteria, namely, entities which are in a position to pay rent at market rates are to stand excluded from Rent Act protection. This is the test of Financial Capability. This is the golden thread which runs through Section 3(1)(a). Be it banks, PSUs, statutory corporations, multinational companies, foreign missions, international agencies and public and private limited companies having a paid up share capital of Rs. 1,00,00,000 or more stand excluded from the Rent Act protection. This criteria has been selected by the legislature knowing fully well that each of these entities including PSUs can afford to pay rent at the market rates. Secondly, we have given in-depth consideration to the contention advanced on behalf of the respondents on the interpretation of Sec. 3(1)(b). We are of the view that to accept the contention of the respondents, namely, that only PSUs which are established by or under the Central or State Acts will not get protection whereas PSUs which are Government companies incorporated under the 1956 Act would continue to get protection would make the Section 3(1)(b) vulnerable to challenge as violative of Article 14 of the Constitution. In this regard, it may be noted that in the insurance industry, we have LIC, banks, private sector companies and Government companies. To say that LIC being a statutory corporation stands excluded from the provisions of the Rent Act whereas Government companies incorporated under the Companies Act, 1956 would continue to get protection would lead to arbitrary discrimination under Article 14 to the Constitution. In the said case cited by Mr. Soli J. Sorabjee, learned counsel for the appellants, namely, Shah and Co., Bombay Vs. The State of Maharashtra and Another, , this Court held that to place such a construction as will save the statute from constitutional challenge in a well settled principle of interpretation. In the said Judgment, it has been held as follows:

to place such a construction as will save the statute from constitutional challenge ... having special regard for the principle of constitutional adjudication which makes it decisive in the choice of fair alternatives that one construction may raise serious constitutional questions avoided by another.....

(Emphasis supplied)

47. Moreover, if we are to hold that PSUs do not include Government companies, as held by the High Court, we would be disturbing the package offered by the

Legislature of allowing increase of rent annually at 5%, allowing the landlords to accept premium and exclusion of certain entities from the protection of the Rent Act u/s 3(1)(b). On the other hand, acceptance of the arguments advanced on behalf of the respondents on the interpretation of Section 3(1)(b) would make the Act vulnerable to challenge as violative of Article 14 of the Constitution. Therefore, we are of the view that on a plain meaning of the words "PSUs" as understood by the Legislature, it is clear that, India's PSUs are in the form of statutory corporations, public sector companies, government companies and companies in which the public are substantially interested (see; income tax Act, 1961). When the word PSU is mentioned in Section 3(1)(b), the State Legislature is presumed to know the recommendations of the various Parliamentary Committees on PSUs. These entities are basically cash-rich entities. They have positive net asset value. They have positive net worths. They can afford to pay rents at the market rate. Thirdly, we are of the view that, in this case, the principle of *noscitur a sociis* is clearly applicable. According to this principle, when two or more words which are susceptible to analogous meaning are coupled together, the words can take their colour from each other. Applying this test, we hold that Section 3(1)(b) clearly applies to different categories of tenants all of whom are capable of paying rent at the market rates. Multinational companies, international agencies, statutory corporations, Government companies, public sector companies can certainly afford to pay rent at the market rates. This thought is further highlighted by the last category in Section 3(1)(b). Private limited companies and public limited companies having paid up share capital of more than Rs. 1,00,00,000 are excluded from the protection of the Rent Act. This further supports the view which we have taken that each and every entities mentioned in Section 3(1)(b) can afford to pay rent at the market rates. We may note that to meet the challenge of discrimination under Article 14, it is not sufficient to state that there is an intelligible differentia but it is further essential requirement to show that the differentia has a rational nexus to the object sought to be achieved by the Statute in question. (See: *State of Rajasthan Vs. Mukandchand and Others*,). As stated above, Section 3(1)(b) strikes a balance between the interest of the landlords and the tenants; it is neither pro-landlords nor anti-tenants. It is pro-public interest. In this connection, one must keep in mind the fact that the said rent Act, 1999 involves a structural change visa-vis the Bombay Rent Act, 1947. As stated above, with the passage of time, the 1947 Act became vulnerable to challenge as violative of Article 14. As stated above, the legislature has strike to balance the twin objectives of Rent Act protection and rent restriction for those who cannot afford to pay rents at the market rates. To accept the interpretation advanced on behalf of the respondents for excluding government companies from the meaning of the words "PSUs" in Section 3(1)(b) would amount to disturbing the neat balance struck by the Legislature. OIC and UIC are government companies. They have paid up capital of more than Rs. 100 crores. They can easily afford to pay rents at the market rates. The legislature in its wisdom has kept PSUs, including government companies, outside the Rent Act. We have to proceed on the basis that the State

Legislature was aware of the meaning of the words PSUs as understood by the various Parliamentary Committees. If Government companies are to be excluded from Section 3(1)(b) then the test of intelligible differentia having rational nexus to the objects sought to be achieved by the said Rent Act would stand defeated. We cannot exclude such PSUs from Section 3(1)(b) as is sought to be contended on behalf of the respondents. PSUs including Government Companies are independent companies/corporations. They cannot be equated to the "Government" in Section 3(1)(a). We have to read Section 3(1)(b) in its entirety. We have to read the said section keeping in mind the reasons for its enactment. Lastly, we are of the view that the High Court judgment is erroneous when it adds words to Section 3(1)(b), namely, "which is not a Government company". In other words, the High Court states that OIC/UIC and BPCL are public undertakings, however, they are Government companies incorporated u/s 617 of the 1956 Act and, therefore, stand excluded from Section 3(1)(b). In this connection it may be stated that High Court has relied upon the definition of Government Company u/s 617 of the Companies Act. In the case of Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, this Court has enunciated the principle that "the definition of an expression in one Act must not be imported into another. It would be a new terror in the construction of Acts if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone." Lastly, the interpretation placed by the High Court on the word "PSUs" in Section 3(1)(b) amounts to judicial legislation and further it defeats the very object of Section 3(1)(b).

[Emphasis supplied]

31. Therefore, once there is an authoritative pronouncement which holds that there are classes of Entities which have been excluded from the purview of the Maharashtra Rent Control Act, 1999 and based on their economic and financial positions, then, I cannot hold that "Foreign Mission" will not include a "Foreign State".

32. Mr. Dani argued that Part IV of the Code of Civil Procedure, 1908 is entitled "Suits in particular cases". Mr. Dani submits that sub-heading of the same is "Suits by or against the Government or Public Officers in their official capacity". He submits that Section 79 falling in this Part deals with Suit by or against Government; Section 80 provides for notice; Section 81 grants exemption from arrest and personal appearance; Section 82 is entitled execution of decree. Then Section 83 onwards fall under another sub-heading "Suits by Aliens and by or against Foreign Rulers, Ambassadors and Envoys." Mr. Dani submits that Section 83 deals with the situation when Aliens may sue. Then, Foreign States and their right to sue is covered by Section 84. Section 85 is to facilitate Foreign Rulers to sue and defend any Suit. Then comes Section 86 and, according to Mr. Dani, no Foreign State may be sued in any Court otherwise competent except with the consent of the Central Government certified by in writing of the Secretary to that

Government. Therefore, Mr. Dani's attempt is to show that "Foreign State" and "Foreign Mission" are distinct and different concepts. A "Foreign Mission" will not include a "Foreign State" is the contention. Mr. Dani argues that only a Foreign State can sue or be sued.

33. None of the provisions that Mr. Dani relies upon will assist him in making the above distinction for the purpose of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999. These provisions are inserted in the Code of Civil Procedure, 1908 to enable Foreign State being sued in a Court in India. The requirement to sue that Foreign State in India is a matter dealt with by Section 86 of the Code of Civil Procedure, 1908. It becomes clear if one peruses the sub-sections of Section 86. In fact, if sub-section 4 of Section 86 is noticed, it will clarify that Section 86(1) to (3) applies to any Ruler of Foreign State, any Ambassador or Envoys of a Foreign State, any High Commissioner of a Common Wealth Country and any such member of the Staff. Therefore, these provisions enable a person in India to sue a Foreign State, Ambassadors and Envoys and such Officials of the Foreign State, who are working or performing their duties in India. It is also to give immunity to the Foreign State and the dignity and the independence of that State, which is finding recognition in Section 86 of the Code of Civil Procedure, 1908. That concept and the definition of the term "Foreign State" in Section 87-A will not be of any assistance. The lower Appellate Court is right in holding that the word "Foreign Mission" will have to be construed in its ordinary and common parlance meaning. The meaning of the term "Foreign Mission", therefore, has not been legally given. If it is not defined legally or legislatively, it does not mean that its plain and dictionary meaning cannot be resorted to. It can be taken recourse to if it is in accord with the object and purpose of a particular Statute and fits in the context in which that term is used by the Legislature. Therefore, the word "Foreign Mission" has rightly been understood by the lower Appellate Court to mean "a home in a foreign country", where a group of persons are sent to conduct negotiations, diplomatic delegation, embassy work etc. The Legislature has that broad meaning in mind. It has in the back-drop and context of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, and while exempting International Agencies, Multinational Companies and Foreign Missions, understood these terms as such Entities which are located or conducted in a country which is foreign to that where the home organization is established. That is clearly understood as belonging to another nation or country that which is out of a certain State, country, jurisdiction etc. It is in that context and where all functions of a Foreign Government are carried out, which is termed as a "Foreign Mission". It has been grouped together with International Agencies, Multinational Corporations primarily because these Entities are not having any domestic or national character. For the purposes of trading and diplomatic relations, they establish themselves in India and particularly in part of India, namely, Maharashtra State. They do not have to be protected by a State Rent Control Legislation as by their nomenclature and the nature of functions, they have certain financial and economic stability and they can afford to pay the rent at

market rate. It is with that intent and purpose that they stand out of the purview of the Maharashtra Rent Control Act, 1999. Mr. Dani, therefore, could not point out anything which can be said to be a distinguishing feature or not covered by the Judgment of the Hon"ble Supreme Court in the above quoted case.

34. As a result of the above discussion, I do not find any merit in his submission that the word "Foreign Mission" does not include "Foreign State". Equally, I do not find any merit in his submission that by virtue of the relations and reciprocity, these Entities should not be put on par with any trading and commercial enterprise. Mr. Dani's argument is that by virtue of Vienna Convention on Consular Relations, 1963 and the Diplomatic Relations (Vienna Convention) Act, 1974, these Missions enjoy a special status. They cannot be equated with manufacturing, trading, profit making and commercial organizations based, even, internationally.

35. To my mind, the exclusion from the provisions of the Maharashtra Rent Control Act, 1999, does not in any manner interfere with the principle of reciprocity or respect to Foreign States or friendly nations. The status and dignity of a Foreign Mission discharging diplomatic and consulate functions has nothing to do with their exclusion from the Rent Act. The Constitution of India by Article 51 provides that the State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organized people with one another and encourage settlements of international disputes by arbitration. Neither the promotion of international peace and security, nor maintaining just and honourable relations between nations and, equally, respect for International Law and treaty obligations and encourage men to settle international disputes by arbitration, which is the Mandate flowing from this Article, is adversely affected. The Legislation in question is excluding "Foreign Missions" from the purview of the Rent Control Act and the premises which have been let or sublet to these International Entities. The premises covered in this case do not belong to Government and are a private property. Therefore, they cannot be claimed as of right by paying meager rent or compensation. That such Entities will have to pay rent or compensation at market rate does not mean that Article 51 or any Convention internationally adopted is in any way violated. Therefore, the argument based on the applicability of Vienna Convention and the immunity given to the premises of Foreign Missions cannot be applied in this case.

36. In the above context, reference can safely be made to a Judgment of the Hon"ble Supreme Court in the case of Mirza Ali Akbar Kashani Vs. United Arab Republic and Another, . While interpreting Sections 84, 86, 87 and 87-A of the Code of Civil Procedure, 1908, the Hon"ble Supreme Court held as under:-

(30) The effect of the provisions of Section 86(1) appears to be that it makes a statutory provision covering a field which would otherwise be covered by the doctrine of immunity under International Law. It is not disputed that every

sovereign State is competent to make its own laws in relation to the rights and liabilities of foreign States to be sued within its own municipal Courts. Just as an independent sovereign State may statutorily provide for its own rights and liabilities to sue and be sued, so can it provide for the rights and liabilities of foreign States to sue and be sued in its municipal Courts. That being so, it would be legitimate to hold that the effect of S. 86(1) is to modify to a certain extent the doctrine of immunity recognised by International Law. This section provides that foreign States can be sued within the municipal Courts of India with the consent of the Central Government and when such consent is granted as required by S. 86(1), it would not be open to a foreign State to rely on the doctrine of immunity under International Law, because the municipal Courts in India would be bound by the statutory provisions, such as those contained in the code of Civil Procedure. In substance, S. 86(1) is not merely procedural; it is in a sense a counter-part of S. 84. Whereas S. 84 confers a right on a foreign State to sue, S. 86(1) in substance imposes a liability on foreign States to be sued, though this liability is circumscribed and safeguarded by the limitations prescribed by it. That is the effect of S. 86(1).

(31) In *Chandulal Khushalji v. Awad*, ILR 21 Bom 351 at pp. 371-372, Strachey, J., had occasion to consider this aspect of the matter in relation to the provisions of s. 433 of the Code of 1882. What S. 433 does, said the learned Judge, "is to create a personal privilege for sovereign princess and ruling chiefs and their ambassadors and envoys. it is a modified form of the absolute privilege enjoyed by independent sovereigns and their ambassadors in the Courts in England, in accordance with the principles of International Law. The difference is that while in England the privilege is unconditional, dependent only on the will of the sovereign or his representative, in India it is dependent upon the consent of the governor-General in Council, which can be given only under specified conditions. This modified or conditional privilege is, however, based upon essentially the same principle as the absolute privilege, the dignity and independence of the Ruler, which would be endangered by allowing any person to sue him at pleasure, and the political inconveniences and complications which would be result". We are inclined to think that this view correctly represents the result of the provisions of S. 433 as much as of those contained in S. 86(1).

37. In a further Judgment of the Hon"ble Supreme Court in the case of *Harbhajan Singh Dhalla Vs. Union of India (UOI)*, , in the context of immunity, independence and dignity of a Foreign State, this is what the Supreme Court holds:-

13. In India where rule of law prevails, the foreign State ought to be entitled to such immunities but to no more as are enjoyed by the domestic State before its own Tribunal. This was observed by Ray, J. sitting singly, as the Chief Justice of India then was, in *Mirza Akbar Kasini Vs. United Arab Republic and Another*, .

14. Lord Denning in *Rahimtoola v. Nizam of Hyderabad*, (1958) AC 379 418, observed in the context of English courts: "There is no reason why we should

grant to the departments or agencies of foreign governments as immunity which we do not grant our own, provided always that the matter in dispute arises within the jurisdiction of our courts and is properly cognizable by them.

17. With the observations of Lord Denning on the question of immunity of the foreign states, the other Law Lords disassociated themselves. Mr. Justice Bachawat, speaking for the division Bench of the Calcutta High Court, rejected the contention urged by counsel in United Arab Republic and Another Vs. Mirza Ali Akbar Kashani, that the foreign State enjoyed the same immunity as a domestic State enjoyed and no more. This decision came up in appeal before this Court in Mirza Ali Akbar Kashani Vs. United Arab Republic and Another, and this Court upheld the Bench decision of the Calcutta High Court and held that section 86(1) of the CPC as it stood at the relevant time was the statutory provision covering a field which would otherwise be covered by the doctrine of immunity under International Law and save and except in accordance with the procedure indicated in section 86 of the Code a suit against a foreign State would not lie.

23. It is well to bear in mind the two principles on which sovereign immunity rests. So far as the principle expressed in *maxim par in parem non habet jurisdictionem* is concerned with the status of equality. The other principle on which immunity is based is that of non-intervention in the internal affairs of other states. See in this connection Brownlie "Principles of Public International Law" Third Edition 322-325. Much has happened in different States since Marshall, C.J. of the United States in *The Schooner Exchange v. McFaddon*, (7) (1812) 7 Cranch 116; Green, p. 237; Briggs, p. 413; Bishop, p. 659 explained the principle and said that a State within its own territory as being "necessarily exclusive and absolute". In the days of international trade and commerce, international interdependence and international opening of embassies, in granting sanction the growth of a national law in this aspect has to be borne in mind. The interpretation of the provisions of CPC must be in consonance with the basic principles of the Indian Constitution.

38. In the light of these pronouncements, there is absolutely no necessity of deciding any wider question and in the context of the Conventions placed before me. Once the above conclusion is reached and none of the contentions of Mr. Dani can be accepted, then, the Civil Revision Application must fail. Then, the alternate argument of Mr. Dani that the word "Foreign Mission" carries a restricted or narrow meaning must also fail. If the classification is in broad terms, then, to construe the term "Mission" narrowly and restrict it to religious, charitable and philanthropic activity of a Foreign Association or Organization is not permissible.

39. I have also noticed that on facts the Suit has been filed against the Consulate General of Islamic Republic of Iran. The Suit has been properly filed. The correspondence on behalf of this Consulate is addressed to and by the Consul General. Therefore, the "Consulate General" and the "Consul General" are not distinct terms in this case. In the light of the fact that there is an admission

(Exhibit-20), then, the Suit was properly filed and was maintainable. It is not necessary to make any reference to any decisions in that regard.

40. Once the above view is taken, the Judgment of the lower Appellate Court does not suffer from any error of jurisdiction, nor can it be said that the jurisdiction has been exercised with material irregularity warranting interference in revisional jurisdiction. Mr. Madon, learned Senior Counsel appearing for the Respondents/Original Plaintiffs, is right in urging that all the arguments of the Applicants/Original Defendants are an attempt to delay handing over possession of the suit premises and once they have acquired another property. It is clear that the Suit has been instituted by a Partnership Firm and a Suit can be instituted by the Partners in the name of their Firm. The procedural aspects have also been complied with.

41. For the reasons indicated above, this Civil Revision Application fails. It is dismissed, but without any order as to costs.

42. Rule is discharged.

43. At this stage, learned Advocate appearing on behalf of the Applicants/Original Defendants, prays that the decree passed by the lower Appellate Court be not enforced and implemented for a period of twelve weeks to enable the Applicants/Original Defendants to challenge this Judgment in a higher Court.

44. This request is opposed by Mr. Kane, learned Counsel appearing on behalf of the Respondents/Original Plaintiffs, who states that in a Suit filed in the year 2004, the decree has been passed and also on finding that the Applicants/Original Defendants have secured alternate premises. After hearing both the learned Counsel on this point, I am of the opinion that in the larger interest of justice, by which no prejudice will be caused, it is directed that for a period of eight weeks from today, the decree passed by the lower Appellate Court shall not be enforced and implemented, but on the condition that the Applicants/Original Defendants file an undertaking in this Court in usual terms within a period of ten days from today stating that they will handover vacant and peaceful possession of the suit premises in the event they are unable to secure any protection or interim order in the matter, from a higher Court.