

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1659 OF 1997

S.R. Paradkar and ors.	..	Petitioners
vs.		
Aditya Hotels Private Limited and anr.	..	Respondents

WITH

WRIT PETITION NO. 1660 OF 1997

Shashikant R. Paradkar	..	Petitioner
vs.		
Aditya Hotels (P) Limited and ors.	..	Respondents

WITH

WRIT PETITION NO. 1661 OF 1997

S.R. Paradkar and ors.	..	Petitioners
vs.		
Aditya Hotels Private Limited and anr.	..	Respondents

WITH

WRIT PETITION NO. 4770 OF 1997

M/s. Aditya Hotels Pvt. Ltd & anr.	..	Petitioners
vs.		
S.R. Paradkar and ors.	..	Respondents

WITH

WRIT PETITION NO. 4777 OF 1997

M/s. Aditya Hotels Pvt. Ltd	..	Petitioner
vs.		
M/s. Penosh Transport & ors.	..	Respondents

WITH

CIVIL APPLICATION NO. 3470 OF 1997

IN

WRIT PETITION NO. 1659 OF 1997

Aditya Hotels Pvt. Ltd.	..	Applicant
vs.		
S.R. Paradkar & ors.	..	Respondents

**WITH
CIVIL APPLICATION NO. 3422 OF 1997
IN
WRIT PETITION NO. 1659 OF 1997**

S.R. Paradkar and ors.	..	Petitioners
vs.		
Aditya Hotels Private Limited and anr.	..	Respondents

Mr. P. B. Shah for the Petitioners in Writ Petition Nos.1659, 1660 & 1661 of 1997, for the Applicants in CAW No. 3422 of 1997 and for the Respondent Nos.1 to 4 in Writ Petition No. 4770 of 1997 & CAW No. 3470 of 1997 and for the Respondent Nos.2 to 5 in Writ Petition NO. 4777 of 1997.

Mr. Madhav Jamdar for the Respondent No.1 in Writ Petition No. 1659 of 1997, for the Respondent Nos.1 and 2 in Writ Petition No. 1660 & 1661 of 1997, for the Applicant in CAW No. 3470 of 1997, for the Respondents in CAW No.3422 of 1997 and for the Petitioners in Writ Petition No. 4770 of 1997 and for the Petitioner in Writ Petition No. 4770 of 1997.

Mr. Charles D'Souza for the Respondent - M/s. Penosh Transport in Writ Petition Nos. 1659 & 4777 of 1997 and CAW No. 3470 of 1992 .

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment	:	24 July 2015.
Date of Pronouncing the Judgment	:	05 October 2015.

JUDGMENT :-

1. The learned counsel for the parties agree that these batch of petitions can be disposed of by common judgment and order. Even otherwise, most of the issues of law and fact are common and therefore, it would be convenient to dispose of these batch of petitions by common judgment and order.

2. In these petitions, we are concerned with Flat No. 4, City Survey No. 322, Mahatma Gandhi Road, Pune – 411 001 (Suit premises). The suit premises originally belonged to Adarji J. Anklesaria (Adarji), Yasmin J. Anklesaria (Yasmin), Minocher J. Anklesaria (Minocher) and Khodu J. Irani (Khodu), each having 1/4th undivided right, share and title therein. Adarji was, however, looking after and managing the affairs relating to the suit premises and collecting rents in respect thereof. By Sale Deed dated 6 October 1988, Yasmin and Minocher conveyed their undivided rights in respect of suit premises in favour of M/s. Aditya Hotels Private Limited (Aditya Hotels). In August 1989, Adarji and Khodu also conveyed their undivided rights in favour of Aditya Hotels. The suit premises were let out to Paradkars by Adarji. For the purposes of these batch of petitions, therefore, Paradkars are the tenants of the suit premises and Aditya Hotels are the landlords.

3. There is material on record to indicate that the suit premises had initially been let out by erstwhile owners to one of their relatives Pesi Anklesaria, a Partner of M/s. Penosh Transport, who were in the transport business. M/s. Penosh Transport had its office at Flat No. 94A, Mahatma Gandhi Road, Pune-411 001. Adjacent to this office,

there were premises earlier held by Paradkars. Paradkars, M/s. Penosh Transport and Adarji arrived at arrangement, in terms whereof Paradkars handed over the premises held by them to M/s. Penosh Transport, in lieu of M/s. Penosh Transport surrendering rights in respect of suit premises to Adarji in order to enable Adarji to allot same to Paradkars on tenancy basis. It is on this basis that Paradkars obtained possession of the suit premises as tenants thereof. There is no doubt, some dispute with regard to such arrangement, particularly as Aditya Hotels has questioned the right and authority of Adarji and role of Adarji in such arrangement. Aditya Hotels maintain that the suit premises were let out to M/s. Penosh Transport, who in turn, has unlawfully sublet or otherwise assigned rights in the suit premises to the Paradkars.

4. Aditya Hotels instituted Civil Suit No. 437 of 1990 seeking recovery of possession of the suit premises, *inter alia*, on the ground of unlawful subletting/assignment. Paradkars instituted Civil Suit No. 240 of 1990 seeking declaration that they are the tenants in respect of suit premises and for relief of injunction restraining dispossession otherwise than by authority of law. Paradkars also instituted Civil Suit No. 489 of 1993 seeking restoration of water connection, which was cut off by the authorities at the instance of

Aditya Hotels. At some stage, all the three suits were clubbed and taken up for consideration together. The common evidence was recorded in Civil Suit No. 240 of 1990, Civil Suit No. 437 of 1990 and separate evidence was recorded in Civil Suit No. 489 of 1993. However, Purshis was filed by the parties to treat the evidence as common in all the three suits.

5. By separate judgments and decrees dated 30 June 1995, the Trial Court decreed the Civil Suit No. 437 of 1990 instituted by Aditya Hotels and dismissed Civil Suit Nos. 240 of 1990 and 489 of 1993 instituted by Paradkars.

6. Paradkars instituted three separate Civil Appeal Nos. 690, 691 & 692 of 1995 against the judgments and decrees dated 30 June 1995 in Civil Suit Nos. 240 of 1990, 489 of 1993 and 437 of 1990 respectively. By separate judgments and decrees dated 10 January 1997, the Appeal Court has dismissed each of the three appeals instituted by Paradkars. However, the Appeal Court has recorded a finding that Adarji used to deal with the affairs of the suit premises on behalf of himself as well as the other co-owners and therefore, had sufficient authority to induct Paradkars as tenants in respect of suit premises.

7. Paradkars have instituted Writ Petition Nos. 1659, 1660 and 1661 of 1997 questioning the judgments and decrees of the Appeal Court made in Civil Appeal No. 692 of 1995 (in Civil Suit No. 437 of 1990), in Civil Appeal No.691 of 1995 (in Civil Suit No. 489 of 1990) and in Civil Appeal No.690 of 1995 (in Civil Suit No. 240 of 1990) .

8. Aditya Hotels have instituted Writ Petition Nos. 4770 of 1997 and 4777 of 1997 mainly to question the finding of the Trial Court in the context of competence of Adarji to create tenancy in respect of suit premises for self and on behalf of other co-owners.

9. As noted earlier, in the aforesaid circumstances, it is only appropriate that all these batch of petitions are taken up for consideration together and are disposed of by common judgment and order.

10. Heard Mr. P.B. Shah, learned counsel for the Paradkars in each of the petitions, Mr. Madhav Jamdar, learned counsel for Aditya Hotels in each of the petitions and Mr. Charles D'Souza, learned counsel for M/s. Penosh Transport in Writ Petition Nos. 1659 and 4777 of 1997.

11. Mr. P.B. Shah, learned counsel for Paradkars, submitted that Paradkars were inducted as tenants in respect of suit premises by Adarji on 1 July 1988. This is evident from rent receipts dated 1 July 1988 and 13 July 1988 (Exhibit-32) under which Adarji has accepted the rents in respect of suit premises, not merely on behalf of himself but also on behalf of remaining co-owners. The Appeal Court has rightly held that Adarji was competent to create tenancy in respect of suit premises and that tenancy so created was binding upon remaining co-owners of the suit premises. There is no perversity in the record of such finding. In the light of such finding, however, the suit instituted by Aditya Hotels was required to be dismissed and non-dismissal thereof constitutes perversity and error apparent on face of record. The Appeal Court, by casting unwarranted doubts upon rent receipts, has non-suited the Paradkars and such exercise is in excess of jurisdiction. For all these reasons, Mr. Shah submitted that the petitions instituted by Paradkars are liable to be allowed and the petitions, instituted by Aditya Hotels, liable to be dismissed. Mr. Charles D'Souza supported the contentions of Mr. Shah. Mr. Charles D'Souza submitted that the arrangement between Pesi Anklesaria of M/s. Penosh Transport, Paradkars and Adarji was legal and valid and Paradkars, having

given up their tenancy rights in respect of premises were held by them, cannot now be left in a lurch, particularly since the material on record clearly establishes that Adarji was a part of such arrangement and further, Adarji had necessary authority to induct Paradkars as tenants in respect of suit premises not just on behalf of himself, but also on behalf of remaining co-owners.

12. Mr. Madhav Jamdar, learned counsel for the Aditya Hotels, submitted that the finding recorded by the Appeal Court with regard to the competence of Adarji is vitiated by perversity. At least two of the co-owners had clearly written to Adarji to refrain from dealing in any affairs in relation to suit premises. Therefore, at least from the date of such writing, Adarji ceased to have any authority to deal with the affairs of the suit premises and any action of Adarji post the receipts of such writing, was not clearly binding upon such co-owners. In these circumstances, it could not be said that any valid tenancy was created in favour of Paradkars and Paradkars were only unlawful assignees in respect of suit premises. In these circumstances, Mr. Jamdar submitted that decrees of evictions were rightly made by the two Courts and the same warrant no interference whatsoever.

13. The rival contentions now fall for my determination.

14. In these batch of petitions, following persons deposed in the proceedings:

- (i) Shashikant R. Paradkar (for Paradkars)
- (ii) Kaheyalal M. Talera (for Aditya Hotels)
- (iii) Adarji Anklesaria (for Paradkars)

15. The evidence of Adarji is most vital and therefore, some reference to the same is necessary. It is pertinent to note that the Appeal Court, though has confirmed the eviction decrees against Paradkars, has recorded a finding of fact that Adarji had the authority to create tenancy in respect of suit premises, not just on behalf of himself, but also on behalf of remaining co-owners of the suit premises. This finding of fact has been challenged by Aditya Hotels. If such challenge fails, it will be difficult to sustain the decrees of eviction made on the grounds of unlawful subletting or unlawful assignment by M/s. Penosh Transport in favour of Paradkars. Therefore, the main issue in these batch of petitions is whether Adarji was indeed competent to induct Paradkars as tenants in respect of suit premises, not merely on behalf of himself as one of

the co-owners of the suit premises, but also on behalf of remaining co-owners of the suit premises. It is for this reason that the evidence of Adarji is most vital.

16. Adarji, in his deposition, has stated that he has inducted Paradkars as tenants in respect of suit premises in the year 1988. Prior to such induction, he has stated that the suit premises were held by M/s. Penosh Transport Company, of which Pesi Anklesaria, the first cousin of Adarji, was one of the partners. Adarji has deposed that M/s. Penosh Transport Company was having two offices. In order to constitute one large and convenient office, understanding was arrived at between M/s. Penosh Transport, Paradkars and Adarji. In terms of this understanding, Paradkars, who held premises adjacent to office of M/s. Penosh Transport, were to surrender the same in favour of M/s. Penosh Transport and in lieu of the same, M/s. Penosh Transport were to surrender the suit premises, for eventual allotment by Adarji in favour of Paradkars. Adarji has confirmed that such understanding was indeed arrived at between parties and Adarji inducted and accepted Paradkars as tenants in respect of suit premises. Thereafter Adarji has deposed that he accepted rents from Paradkars and necessary rent receipts were

issued by Adarji in favour of Paradkars. Adarji has also deposed that he is the one who was collecting rents in respect of several premises, including the suit premises from all tenants and issuing necessary receipts in respect thereof. Adarji has deposed that other co-owners never issued any rent receipts in respect of suit premises. Adarji has also deposed that he gave consent for transfer of electricity meter in the name of Paradkars. Adarji denied the suggestion that he has colluded with Pesi Anklesaria and Paradkars to induct Paradkars as tenants in respect of suit premises.

17. Apart from, oral deposition of Adarji, there are on record rent receipts issued by Adarji in favour of Paradkars for the months between July and December 1988. The rent receipts though signed by Adarji, are in the printed form, which bear names of remaining co-owners of the suit premises. The remaining co-owners of the suit premises have not been examined in the matter. Since, Aditya Hotels had questioned the authority of Adarji to act for and on behalf of remaining co-owners, it was necessary for Aditya Hotels summon to the remaining co-owners or at least some of them to establish this aspect. For the purposes of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Act), the expression "*landlord*" means

any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf of, or for the benefit of any other person. Since the other co-owners of the suit premises were not examined by Aditya Hotels, the Appeal Court has rightly recorded a finding of fact that Adarji was a landlord in respect of suit premises, within meaning assigned to this expression under the Rent Act and consequently was entitled to induct Paradkars as tenants in respect of suit premises.

18. Section 5(3) of the Rent Act defines the expression '*landlord*' to mean as under:

Section 5(3) - "Landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf of, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his sub-tenant, a tenant who has sub-let any premises; (and also includes in respect of a licensee deemed to be a tenant by S.15A, the licensor who has given such licence;)"

19. The aforesaid statutory definition of the expression '*landlord*' confers a meaning upon this expression wider than that stated in a

dictionary¹. The definition is so wide that expression 'landlord' is not limited to the owner, freeholder or head landlord and includes an agent receiving rent on behalf of the owner.² Even a person with possessory title may be a 'landlord' within a meaning assigned to this expression under Section 5(3) of the Rent Act.³

20. In case of **Kanta Goel vs. B.P. Pathak & ors.**⁴, the Apex Court, in the context of rent control law, has observed thus:

6. *Nor do we set much store by the submission that the 1st respondent is not a landlord, being only a co-heir and the will in his favour having been disputed. Equally without force in our view is the plea that one co-lessor cannot sue for eviction even if the other co-lessors have no objection. Section 2(e) of the Act defines 'landlord' thus:*

"2(e) 'Landlord' means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant."

'Tenant', by definition [Section 2(1)] means any person by whom or on whose account or behalf the rent of any premises is payable. Read in the context of the Rent Control law, the simple sense of the situation is that there should be a building which is let. There must be a landlord who collects rent and a tenant who pays it to the one whom he recognizes as landlord. The complications of estoppel or even the concepts of the Transfer of Property Act need not necessarily

1 Mohommad Nurul Huda vs. Kikabhoy – AIR (1953) Nag. 251

2 Jagdishrai S. Hora Vs. Prabhakar Mahanubhav – 2000 (4) Bom.C.R. 778

3 Kesheoraj Deo Sanstahan Vs. Bapurao – 66 Bom.L.R. 519

4 (1977) 2 SCC 814

or inflexibly be imported into the proceedings under the Rent Control law, tried by special Tribunals under a special statute. In this case, rent was being paid to the late Dass who had let out to the appellant, on the death of the former, the rent was being paid by the 1st respondent who signed his name and added that it was on behalf of the estate of the deceased Dass. At a later stage the rent was being paid to and the receipts issued by the first respondent in his own name. Not that the little change made in the later receipts makes much of a difference, but the fact remains that the tenant in this case had been paying the rent to the 1st respondent. Therefore, the latter fell within the definition of 'landlord' for the purposes of the Act. We are not impressed with the investigation into the law of real property and estoppel between landlord and tenant, Shri Nariman invited us to make. A fair understanding of the relationship between the parties leaves little room for doubt that the appellant was the tenant of the premises. The 1st respondent, together with the other respondents, constituted the body of landlords and, by consent, implicit or otherwise, of the plurality of landlords, one of them representing them all, was collecting rent. In short, he functioned, for all practical purposes as the landlord, and was therefore entitled to institute proceedings qua landlord.

(emphasis supplied)

21. In case of **Jagdishrai Shivnathrai Hora vs. Prabhakar B. Mahanubhav**,⁵ the learned Single Judge of this Court, in the context of definition of expression 'landlord' under Section 5(3) of the Rent Act has observed thus:

10. Having considered the rival submissions, I would first proceed to deal with the objection raised by the petitioner with regard to the entitlement of the respondent to maintain the suit for eviction against the petitioner. No doubt the petitioner's Counsel has referred to various documents which would show that a trust has been created and the property,

5 2000 (4) Bom.C.R. 778

prima facie, vest in the said Trust. However, on careful examination of the said aspect I am inclined to reject the said objection mainly on the basis of the pleadings and the admission of the petitioner before the trial Court. It is material to point out that in the plaint the respondent has averred in para 2 of the plaint that he was the owner in respect of the said premises. The petitioner has not replied to the said averment, which has the effect of admitting the same. Moreover, in para 6 of the written statement, only a vague assertion has been made by the petitioner that the plaintiff alone is not the owner and hence he alone cannot file the suit. In my view, such an averment is of no avail at all. Besides the above pleadings, even during the evidence, the petitioner has admitted in so many words that the respondent plaintiff was collecting the rent in respect of the suit premises from him and further that he had no objection if the respondent continued to recover the rent thereof as owner. In view of the said admission and the above pleadings, nothing more was required to be examined by the rent Court. The definition of "landlord" under the Bombay Rent Act, as provided under section 5(3) would clearly cover this situation. Although the respondent cannot be strictly said to be the owner of the property, as claimed in the plaint, however, he was definitely the landlord within the meaning of section 5(3) of the Bombay Rent Act, thus competent to maintain the suit against the petitioner. We are in no way concerned with the issue of title in respect of the suit property and it is enough for this Court to record a finding that the respondent was the landlord within the meaning of the Act and for which reason he was competent to maintain the suit for eviction against the petitioner tenant. In my view, the decision of the Apex Court relied upon by the learned Counsel for the respondent reported in 1999 (7) S.C.C. Page 474, squarely applies on all fours to the present case. It is thus held that the suit as presented by the respondent is maintainable in law.

(emphasis supplied)

22. In case of **Vasudha Srivastava and ors. vs. Smt. Kamla Chauhan and anr.**⁶, the Hon'ble Apex Court has held that for the

6 (1992) 1 SCC 645

purposes of Rent Control Legislations, the expression '*landlord*' as may be defined under the Rent Act, is not limited to denote the owner of the house, but it has to be, for the purposes of the Act understood in the wide sense to include a person to whom a rent is payable as also his agent. This judgment is also relevant and applicable, particularly since none of the co-owners were examined in the present case by Aditya Hotels, which was questioning the authority of Adarji.

23. In case of *Tukaram Sawant vs. Mangalalaxmi C. Shah and ors.*⁷, this Court has held that a co-owner managing the property can bind other co-owners, unless her action is found to be a fraud upon the rights of the other co-owners. This Court, in the said case has observed that if the action of one of the co-owners, who was managing the premises was really to detriment of other co-owners, it is reasonable to think that such co-owners could promptly take action against such co-owner. This having not been done, the authority of such co-owner cannot be questioned, particularly by third party. One managing the property on behalf of the body of owners is entitled to create a tenancy, the tenancy so created, is binding upon all the co-owners. Therefore, the alleged disability of

⁷ 1989 (3) BomCR 313

one of the co-owners to create a tenancy does not stand scrutiny. This decision, is applicable to the facts and circumstances of the present batch of petitions, particularly since the Appeal Court has itself recorded the finding that Adarji was competent to create tenancy for and on behalf of other co-owners as well.

24. There is sufficient material on record to establish that though Adarji was only one of the co-owners in respect of suit premises, it is Adarji who was managing all the affairs in respect of not just the suit premises, but also the other premises let out to other tenants by the co-owners. The material on record indicates that it was Adarji who used to collect the rents and issue the rent receipts not just on behalf of himself, but also on behalf of remaining co-owners. The Appeal Court has very rightly held that Adarji was authorised to create tenancy in respect of suit premises not just on behalf of himself but also on behalf of other co-owners. In effect, therefore, the Appeal Court has rightly accepted that Adarji was the '*landlord*' within meaning assigned to this expression under Section 5(3) of the Rent Act. In the light of such facts as also legal position discussed above, there is really no reason to interfere with this finding recorded by the Appeal Court. The petitions filed by Aditya Hotels questioning such findings are, therefore, liable to be dismissed.

25. Mr. Jamdar, however, made reference to some correspondence *inter se*, between the co-owners to submit that Adarji lacked the competence to induct Paradkars as tenants in respect of suit premises. This correspondence was never produced before Trial Court. No cogent reason is assigned for such non-production. Neither were the authors on whose behalf such correspondence was addressed, examined nor was Adarji confronted with such correspondence so that he could have commented upon the same. Such material is however, sought to be produced at this stage, by resort to provisions of Order 41 Rule 27 of CPC. No attempt was made to even produce such material at appeal stage. The material indicates that by Agreement of Sale dated 2 April 1988, Aditya Hotels agreed to purchase 1/4th undivided share, right and title in the suit premises each from two of the co-owners that Yasmin and Minocher. This was followed by Sale Deed dated 6 October 1988 by which Yasmin and Minocher actually sold their 1/4th undivided share, right and title each in the suit premises in favour of Aditya Hotels. Subsequently, in August 1989, Aditya Hotels purchased the remaining one half undivided share, right and title in the suit premises from remaining two owners, i.e., Adarji and Khodu. There was some dispute *inter se*, between the co-owners and Mr. Jamdar

made reference to the correspondence between the parties during said period.

26. Mr. Jamdar made reference to notice dated 5 April 1988 issued by and on behalf of Yasmin and Minocher declaring that they have agreed to sale their share, rights and title in the suit premises in favour of Aditya Hotels and invited objections from any persons/members of the public in respect of such transactions. Mr. Jamdar also referred to letter dated 2 May 1988 addressed on behalf of Yasmin and Minocher to Adarji requiring him not to let out, transfer or dispose of the suit premises without their consent. There is response dated 10 May 1988, on behalf of Adarji complaining about approbation and reprobation by Minocher and Yasmin. This is followed by counter-reply by Yasmin and Minocher on 28 May 1988, to which there is a list of tenants annexed. In respect of suit premises, the name of M/s. Penosh Transport is indicated as tenant. Mr. Jamdar contends that in view of such correspondence, it is clear that only M/s. Penosh Transport was tenant in respect of suit premises and induction of Paradkars is possibly back dated and without authority of law.

27. In proceedings under Article 227 of the Constitution of India, this Court does not function as an appellate Court. Accordingly, re-appreciation of evidence is really not warranted. There is really no case made out to admit any additional evidence at this stage. However, the submission based upon the list of tenants is not correct. This is because the list, though indicates the name of M/s. Penosh Transport, the same is position in May 1988. It is the case of both Paradkars as well as Adarji that Paradkars were inducted as tenants in respect of suit premises in July 1988. As such, there is sufficient explanation with regard to absence of name of Paradkars in the list.

28. The Appeal Court has rightly accepted the position that Adarji was entitled to induct the tenants in respect of suit premises not just on behalf of himself, but also on behalf of other co-owners. The Appeal Court, however, on basis of case which was not even clearly pleaded by Aditya Hotels doubted the documents produced by Paradkars in support of tenancy created by Adarji and held that though Adarji had the authority to create such tenancy, such tenancy had not in fact been created by Adarji in favour of Paradkars. For this purpose, the Appeal Court has disbelieved that arrangement was

arrived at between Pesi Anklesaria (M/s. Penosh Transport), Paradkars and Adarji with regard to Paradkars shifting from the premises held by them, so that M/s. Penosh Transport could have one large and convenient office and M/s. Penosh Transport surrendering the tenancy rights in respect of suit premises, in order to enable Paradkars to be inducted as tenants in respect of suit premises. Such arrangement is doubted on the basis that no consideration in respect thereof has been proved. The Appeal Court has proceeded to state that such an arrangement is against '*human conduct*', particularly as no financial transactions between Paradkars, Adarji and M/s. Penosh Transport were either pleaded or established. Some doubts are also expressed in the context of address at the rent receipts, in terms of which Paradkars paid rents in respect of suit premises to Adarji.

29. In my judgment, the doubts expressed by the Appeal Court are totally unwarranted. In the first place, it was not even the case pleaded by Aditya Hotels that rent receipts were fabricated and/or manipulated or that Paradkars were not really inducted in the suit premises by Adarji. The case pleaded by Adarji Hotels was mainly that Adarji had no authority or competence to create tenancy in respect of suit premises, without specific consent of remaining co-

owners. The Appeal Court having rejected this case of Aditya Hotels, exceeded jurisdiction in expressing doubts upon the documents or transactions deposed to by both Adarji and Paradkar, on the alleged ground that the same was against human conduct. The issue of alleged lack of financial consideration was really irrelevant. This is not a case where M/s. Penosh Transport has simply surrendered tenancy in respect of suit premises for no consideration whatsoever. M/s. Penosh Transport, already had another office in the premises adjoining premises held by Paradkars. M/s. Penosh Transport desired to have one large office by combining the two premises. In these circumstances, M/s. Penosh Transport persuaded Paradkars to vacate the suit premises and shift into suit premises. Adarji, who was the first cousin of Pesi Anklesaria of M/s. Penosh Transport was a part of such transaction and agreed to accept Paradkars as tenants in respect of suit premises in place of M/s. Penosh Transport. These transactions cannot be said to be against human conduct. The observations or finding that the transactions never took place, or that the same are against '*human conduct*' are vitiated by perversity. The observations are in the nature of a surmises and conjectures. The same are not backed by any legal evidence on record. In fact, the same are contrary to the weight of legal evidence on record.

There was again, no reason to pick holes in the rent receipts produced on record. The rent receipts were validly admitted in evidence and accepted as such. The author of rent receipts, i.e., Adarji has deposed to issuance of said receipts. The rent receipts bear the signatures of Adarji, who has admitted the same. The rent receipts were produced by Paradkars, who were the natural custodians of the same. On the basis of spacious plea, Adarji has shifted to Harmees House in June 1989 and the printed receipts continued to bear the earlier address, there was no question of casting doubt or raising suspicion about printed receipts, which have been used as rent receipts in respect of suit premises for over a considerable period. The circumstance that electricity meter was transferred in April 1989, when in fact, Paradkars were inducted as tenants in suit premises in July 1988 has also been substantially explained. There is record, which establishes that the application for transfer were made much earlier and it is only that actual transfer was recorded at a later stage. There was really no basis for raising such suspicion or doubt as to whether at all Paradkars were inducted in the suit premises in July 1988, particularly in the light of categorical deposition of Adarji and the finding of fact recorded by the Appeal Court itself that Adarji had the authority to induct

tenants in respect of suit premises This is really not even a case where two categorical concurrent finding of fact have been recorded. The Appeal Court has merely raised certain doubts and suspicions. The doubts and suspicions are unwarranted in the facts and circumstances of the present case. In such circumstances, the finding of fact to the effect that there were no transactions as pleaded or that Paradkars were not inducted as tenants in respect of suit premises in July 1988 are vitiated by perversity. As noted earlier, such findings are contrary to the weight of evidence on record. The reasons which have persuaded the Appeal Court to raise doubts or surprises, are not reasons tenable in law. The finding that the transaction is against '*human conduct*' is vitiated by perversity and is in the nature of surmise and conjecture. Despite, the limited supervisory jurisdiction, it would be appropriate that such finding is interfered with.

30. Mr. Jamdar placed reliance upon certain decisions of the Hon'ble Apex Court explaining the scope and import of supervisory jurisdiction under Article 227 of the Constitution of India. The decisions lay down that under Article 227 of the Constitution of India, this Court is not expected to exercise appellate jurisdiction. However, the very judgments have held that a finding of fact can be

interfered with, if the same is vitiated by perversity or is contrary to the weight of evidence on record. In the present case, as noted earlier, the Appeal Court has itself recorded the finding of fact that Adarji was authorised to create tenancy in respect of suit premises on behalf of himself and the other co-owners. This finding of fact is duly supported by material on record. However, the further finding that in the present case no such tenancy was at all created by Adarji in favour of Paradkars, is a finding which is clearly vitiated by perversity. The same is totally contrary to the weight of evidence on record. The same overlooks depositions by both Paradkars as well as Adarji. The same proceeds on basis of unwarranted suspicions and doubts in the matter of documentary evidence produced on record and admitted into evidence. The observations and doubts based upon the underlying transactions being against '*human conduct*' are again vitiated by perversity and are in the realm of conjectures and surmises. Such findings, therefore, deserve to be interfered with, even keeping in mind the limited parameters of supervisory jurisdiction.

31. Civil Application No. 3470 of 1997 filed by Aditya Hotels and Civil Application No. 3422 of 1977 filed by Paradkars were for the purpose of taking into consideration certain additional evidence.

This aspect has been referred to in this judgment and order and consequently, there is no necessity of making any further specific orders in the context of said Civil Applications. Civil Applications are, accordingly, disposed of .

32. Therefore, upon cumulative consideration of the aforesaid aspects, Rule is made absolute in terms of prayer clauses (b) and (c) in Writ Petition Nos. 1659, 1660 and 1661 of 1997. Rule is, however, discharged in Writ Petition Nos.4770 and 4777 of 1997. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**