

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6733 OF 2017

Nakshatra Properties Private Limited

101, Ratneshwar Building, 208,

Bhagwandas Indrajit Road, Banganga

Mumbai 400 006

..Petitioner

Vs.

Hiya Associates and Others

..Respondents

Mr. Vineet Naik, Senior Advocate a/w Mr. Prahlad Paranape, Ms. Neha Shah, Mr. Rushabh Sheth, Ms Pooja Batra i/b M. S. Bodhanwalla and Co, for the Petitioners

Mr. Atul Damle, Senior Advocate A/W Shivani Samel and Akshay Petkar, for the Respondents.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JULY 21, 2017.

ORAL JUDGMENT [PER B. P. COLABAWALLA,J.] :-

1 This Writ Petition filed under Article 227 of the Constitution of India challenges the order dated 26th September, 2016 passed in Revision Application No.333 of 2015 in Execution

Application No.31 of 2013. By the impugned order, the Revisional Authority (the Small Causes Court, Appellate Bench, Mumbai) set aside the order dated 28th October, 2015 passed by the Executing Court in Execution Application No.31 of 2013 and further ordered that the Application filed by the Defendants at Exhibit-22 for production of documents was allowed and the Executing Court was directed to reconsider the objections raised by the Defendants. The Revisional Authority further directed that the objection of the Defendants was to be considered by following the procedure laid down under Order 21 Rule 97 to 105 of the Code of Civil Procedure, 1908 (for short the “CPC”).

2 This Petition had originally come up before me for admission on 14th June, 2017. After hearing the learned counsel for the respective parties, I was of the opinion that the arguable questions were raised and hence “Rule” was issued. Since the issue in this Writ Petition was a narrow one, it was fixed for final hearing on 29th June, 2017 at 3.00 p.m. Due to paucity of time, on the said date, the matter could not be taken up and has now, therefore, come up before me. This is how the Petition has come up for hearing and final disposal.

3 Very few facts need to be noted to dispose of this Writ Petition. The Petitioner is a monthly tenant of Flat No. 101 on the First Floor of Ratneshwar Temple Building owned by Shri Ratneshwar Temple and Smt Kesharbai Jamnadas Majithia, Hindu Sanatorium Trust (for short **“the landlord”**) and situated at 208, Bhagwandas Indrajit Road, Mumbai- 400 006 (for short **“the suit premises”**). The Petitioner was the Plaintiff before the Trial Court. Respondent No.1 herein is a partnership firm and Respondent Nos.2 and 3 are the partners of Respondent No.1. The Respondents were the Defendants before the Trial Court. For the sake of convenience, I shall refer to the parties as they were arrayed before the Trial Court.

4 It is the case of the Plaintiff that with the consent of the landlord, the Plaintiff sub-let and/or created a sub-tenancy in respect of the suit premises in favour of Defendant No.1 from 1st October, 2003 at a monthly rent of Rs.9,800/- per month. The purpose for which the suit premises were let out to Defendant No.1 was for running a school.

5 It is the case of the Plaintiff that thereafter it noticed that the suit premises were used by the Defendants for office and other commercial purposes along with running the school. This was objected to by the Plaintiff. Despite this objection, the Defendants continued with the aforesaid unauthorized use, and therefore, the Plaintiff was constrained to file a suit for eviction in the Court of Small Causes Court at Mumbai being R. A. E. Suit No.872/1383 of 2007. The ground of eviction averred in the Plaint was that the Defendants were guilty of a change of user contrary to the provisions of the Maharashtra Rent Control Act, 1999. It is on this basis that the Plaintiff sought a declaration that the Defendants have become liable to be evicted from the suit premises and that they be ordered and decreed to handover vacant possession of the suit premises to the Plaintiff.

6 After this suit was filed, a settlement was reached between the Plaintiff and the Defendants and therefore Consent Terms were entered into on 5th September, 2007. The Consent Terms inter alia recorded that the Defendants waived service of the writ of summons and submitted to a decree on admission in terms of prayer clauses (a) and (b) of the Plaint. The Consent

Terms further recorded that at the request of the Defendants, the Plaintiff agreed not to execute the decree of possession against the Defendants till 31st January, 2009. An undertaking was also recorded of the Defendants to hand over vacant and peaceful possession of the suit premises to the Plaintiff on/before 31st January, 2009 and till then not to part with possession or any part thereof and/or induct any outsiders therein or to not carry on any other activity save and except that of running a school. The Consent Terms further provided that if the Defendants fail to hand over possession by 31st January, 2009, the Plaintiff would be entitled to execute the decree and the Defendants would also be jointly and severally liable to pay a sum of Rs.5,000/- per day by way of mesne profits for wrongful occupation till the Defendants remove themselves from the suit premises. It was further agreed that to enable the Plaintiff to take over possession of the suit premises (in the event the same is not handed over by 31st January, 2009), the Registrar of the Small Causes Court was to stand appointed as a Receiver of the suit premises with all powers under Order XL Rule 1 of the CPC and to remove the Defendants from the suit premises and put the Plaintiff in possession thereof. After this, the Receiver was to stand discharged on the payment of

his costs, charges and expenses.

7 These Consent Terms were tendered before the Small Causes Court at Mumbai on 5th September, 2007. The Small Causes Court at Mumbai passed an order wherein it opined that in view of the Consent Terms, the suit stood compromised and disposed of and compromise decree can be drawn up in view of the Consent Terms. Pursuant to this direction, a Consent Decree was also drawn up by the Small Causes Court and which can be found at pages 33 to 37 of the paper book.

8 Despite this Consent Decree, and as required by it, the Respondents did not vacate the suit premises on/before 31st January, 2009. According to the Plaintiff, they made several requests to the Defendants to hand over vacant and peaceful possession of the suit premises without any success. In fact, it is the case of the Plaintiff that the Defendants did not even pay the mesne profits of Rs.5,000/- per day as agreed to by them in the Consent Decree. It is in this light that on 18th December, 2012 the Plaintiff was constrained to file an Execution Application before the Small Causes Court being Execution Application No.31 of 2013

seeking execution of the Consent Decree dated 5th September, 2007.

9 Once this Execution Application was filed, notice was issued to the Defendants, pursuant to which, the Defendants appeared before the Executing Court and filed their affidavit in reply dated 9th May, 2013 opposing the said Execution Application. In a nutshell, the defence taken in the reply was that the suit filed by the Plaintiff was not maintainable in view of the fact that the Plaintiff himself was a tenant and the Maharashtra Rent Control Act, 1999 did not permit a tenant to initiate a suit against the sub-tenant without joining the landlord as a party to the suit. According to the Defendants, the maintainability of the suit was overlooked by both parties and they filed Consent Terms on 5th September, 2007 which itself is bad in law and not binding on parties. This, according to the Defendants, was a fraud and therefore the decree could not be executed. It was accordingly prayed that the Consent Terms arrived at between the Plaintiff and Defendant Nos.1 to 3 dated 5th September, 2007 may be cancelled and set aside as Defendant Nos.1 to 3 were withdrawing the said Consent Terms being void and unlawful.

10 After this reply was filed, the Execution Application came to be argued at length and vide its order dated 28th October, 2015, the Executing Court was pleased to allow the Execution Application filed by the Petitioner and accordingly issued a possession warrant in respect of the suit premises against the Defendants.

11 Being aggrieved by this order of the Executing Court, the Defendants filed a Revision Application before the Small Causes Court, Appellate Bench, Mumbai being Revision Application No.333 of 2015. The Revisional Authority, by the impugned order dated 26th September, 2016, allowed the Revision Application filed by the Defendants and set aside order of the Executing Court. It further remanded the matter back to the Executing Court and directed it to allow the Defendants to produce certain documents as per Exhibit-22 and thereafter reconsider the objections raised by the Defendants. These objections were to be considered by following the procedure as laid down in Order 21 Rule 97 to 105 of the CPC. It is aggrieved by this order of the Revisional Authority that the Plaintiff is before me (as the

Petitioner) in my equitable, extraordinary and discretionary jurisdiction under Article 227 of the Constitution of India.

12 In this factual drop, Mr. Naik, the learned Senior Counsel appearing on behalf of the Plaintiff (the Petitioner herein), submitted that the Revisional Authority had completely misdirected itself in passing the impugned order. He submitted that the Executing Court by its order dated 28th October, 2015 had considered in detail all objections raised by the Defendants and thereafter allowed the Execution Application. He brought to my notice paragraph 29 of the order of the Executing Court wherein it is specifically recorded that when the Execution Application was placed “for orders”, the Defendants attempted to file on record various new documents. When this request was turned down, the Defendants orally made submissions that the transaction in question between the Plaintiff and the Defendants was really a loan transaction and the Plaintiff intended to grab the property worth crores of Rupees for a meager amount. The Executing Court was of the view that since the Consent Decree was not challenged either before the superior forum nor any proceedings were taken to set it aside, the stand now taken that the transaction between

parties was a loan transaction could not be sustained. Mr. Naik submitted that this finding of the Executing Court was fully justified as the Court executing the decree cannot go behind the same. If the Defendants were assailing the Consent Decree that ought to have approached the very Court that passed the Consent Decree on whatever grounds the Defendants were so advised to take. In this regard Mr. Naik placed reliance on the provisions of Order 23 Rule 3 as well as Rule 3A to contend that a compromise decree can be set aside only by the Court that had passed it and no separate suit would lie to set aside such a Consent Decree. Mr. Naik submitted that this being the case, the Revisional Authority had totally gone wrong in setting aside the order of the Executing Court dated 28th October, 2015 and remanding the matter back to the Executing Court asking it to examine additional documents that were sought to be produced by the Defendants to contend that the transaction in question was really a loan transaction.

13 Mr. Naik further submitted that the Revisional Authority had completely gone wrong in directing the Executing Court to consider the objection of the Defendants by following the procedure laid down under Order 21 Rule 97 to 105 of the CPC.

According to Mr. Naik, Order 21 Rule 97 had absolutely no role to play whilst considering the objections of the Defendants. According to Mr. Naik, the provisions of Order 21 Rule 97 to 105 of the CPC apply to only a third party who seeks to resist the decree of possession of immovable property and who is not a party to the suit. He is a stranger to the decree and claims an independent right in the decretal property dehors and independent of the judgment debtors. In the facts of the present case the decree was being executed against the judgment debtors themselves and there was, therefore, no question of considering any alleged objections of these persons under Order 21 Rule 97 of the CPC. He submitted that the Revisional Authority had completely misconstrued and misunderstood the provisions of Order 21 Rule 97 of the CPC whilst giving the aforesaid directions. For all the aforesaid reasons, Mr. Naik submitted that the impugned order suffers from grave infirmities and perversity and/or an error apparent on the face of the record requiring my interference under Article 227 of the Constitution of India.

14 On the other hand, Mr. Damle, the learned Senior Counsel appearing on behalf of the Defendants, submitted that

there was nothing wrong in the order passed by the Revisional Authority. He submitted that Mr. Naik is incorrect in his submissions that Order 21 Rule 97 of the CPC is only for the benefit of third parties and not for the benefit of the judgment debtor. It was the submission of Mr. Damle that Order 21 Rule 97 clearly stipulates that where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree, is resisted or obstructed “by any person” in obtaining possession of the property, then the decree holder or the purchaser as the case may be, may make an application to the Court complaining of such resistance or obstruction. Once such a complaint is made, the application of the decree holder/purchaser as the case may be, is to be adjudicated in terms of Order 21 Rule 101. Once the questions are determined and adjudicated as required under Order 21 Rule 101, under Order 21 Rule 98, the Executing Court passes its order, either allowing the application filed by the decree holder/purchaser and direct that they be put into possession of the property or dismiss the application. He submitted that looking at the scheme of Order 21 Rule 97 along with the other Rules, namely rules 98 to 106, it was clear that it was a Code in itself and there was no reason to

restrict the applicability of Order 21 Rule 97 only to third parties and not to the judgment debtor. To bolster this argument, Mr. Damle also placed reliance on Order 21 Rule 98(2), which according to Mr. Damle, clearly states that upon determination under sub-section (1), if the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment debtor, or any person acting at his instigation or on his behalf, to be detained in a civil prison for a term which may extend to thirty days. He submitted that therefore there was intrinsic evidence in the aforesaid provisions to show that the words “by any person” appearing in Order 21 Rule 97 would take within its sweep even the judgment debtor. In support of this proposition, Mr. Damle relied upon two following decisions:-

- (a) **Brahmdeo Chaudhary v/s Rishikesh Prasad Jaiswal and Another** reported in (1997) 3 Supreme Court Cases 694; and

**(b) Bhanwar Lal v/s Satyanarain and Another
reported in (1995) 1 Supreme Court Cases 6.**

15 Without prejudice to the aforesaid argument, Mr. Damle submitted that in any event, the Consent Decree dated 5th September, 2007 that was entered into between the Plaintiff and the Defendants was unexecutable. He submitted that a Consent Decree entered into between a Plaintiff and a Defendant in Rent Act proceedings stands on a different footing than from a compromise decree that would be entered into in a normal suit. He submitted that the Maharashtra Rent Control Act, 1999 is a beneficial legislation to protect the bonafide and genuine tenant and under the Act, a decree for possession can be passed against a tenant only if the landlord makes out a ground as stipulated under section 16 of the Act. This being the case, even in a case where a Consent Decree is passed for eviction, the court has to be satisfied that a ground as stipulated under section 16 is made out. If this satisfaction is not recorded by the court, then the Consent Decree is unexecutable, was the submission. In support of this proposition, Mr. Damle relied upon following decisions:-

**(c) Abedali Khan s/o Rahematali Khan v/s Devidas
s/o Dhonduji Poghe reported in 2012 (1) Mh. L. J.
466; and**

**(d) Ferozi Lal Jain v/s Man Mal and Another reported
in 1970 (3) SCC 181.**

16 Placing reliance on these decisions, Mr. Damle submitted that in the facts of the present case the compromise decree does not in any way reflect a ground as stipulated under Section 16 (1) to entitle the Small Causes Court to pass a decree of eviction against the Defendants. This being the case, he submitted that the decree itself was unexecutable and therefore the order of the Executing Court dated 28th October, 2015 was correctly set aside. For all the aforesaid reasons, Mr. Damle submitted that the order of the Revisional Authority ought to be maintained, at least in so far as it set aside the order dated 28th October, 2015 passed by the Executing Court.

17 In rejoinder, Mr. Naik submitted that the argument of Mr. Damle that the decree is unexecutable because no ground is made out under Section 16(1), is factually incorrect. He submitted that in the facts of the present case, the Defendants had submitted to a decree on admission, as is clearly recorded in the compromise decree. This clearly means that the Defendants admitted all that was stated in the Plaint. In the Plaint, it was

specifically averred that the Defendants were guilty of change of user which was a ground for eviction under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999, and therefore, it was not correct on the part of Mr. Damle to contend that no ground as set out under Section 16(1) was made out for the Small Causes Court to pass a decree of eviction. He submitted that once the Defendants submit to a decree on admission, they automatically admit that they have expressly agreed to suffer a decree of eviction because the landlord is entitled to have such a decree under the law. In this regard, Mr. Naik placed reliance upon a decision of the Supreme Court in the case of **Roshan Lal and Another v/s Madan Lal and Others reported in AIR 1975 SC 2130.**

18 I have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Writ Petition. I have also carefully gone through the order dated 28th October, 2015 passed by the Executing Court as well as the impugned order dated 26th September, 2016 passed by the Revisional Authority. I shall first examine the argument of Mr. Damle whether Order 21 Rule 97 takes within its sweep also the judgment-debtor or the same applies only to a third party, namely,

a person who is stranger to the decree.

19 The Mode of execution of a decree for immovable property is governed by Order 21 Rule 35 of the CPC. Order 21 Rule 35 reads thus:-

ORDER 21 RULE 35

“35. Decree for immovable property -

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

20 As can be seen from sub-rule (1) of Order 21 Rule 35, where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary by removing any person

bound by the decree who refuses to vacate the property. Sub-rule (3) of Order 21 Rule 35 stipulates that where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession. What is clear from reading the aforesaid provision is that when the person who is bound by the decree refuses to vacate the property for which a decree of possession has been passed, the Executing Court can pass necessary orders to have that person removed and vacate the said property. A Judgment-debtor would certainly be a person who would be bound by the decree as he is a party to the *lis*.

21 Having said this, I shall now turn my attention to Order 21 Rule 97 which reads thus:-

“Rule 97 Resistance or obstruction to possession of immovable property :

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution

of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

22 Order 21 Rule 97 clearly stipulates that where the holder of a decree for possession of immovable property, or the purchaser of any such property sold in execution of a decree, is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction. Once this application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions contained thereafter, namely Rules 98 to 106. On the other hand, Order 21 Rule 99 deals with dispossession of a person other than the judgment debtor, by the decree holder or purchaser and reads thus:

“Rule 99 Dispossession by decree-holder or purchaser :

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

23 This Rule clearly stipulates that when any person other than the judgment-debtor, is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. When such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained, namely, Order 21 Rule 98 to Rule 106.

24 On a careful reading of these provisions, I am clearly of the opinion that the words “**by any person**” appearing in Order 21 Rule 97 can never take within its sweep a judgment-debtor. Once a judgment-debtor, and who is a party to the *lis*, has suffered a decree for handing over possession of immovable property, he cannot, obstruct that very decree and drive the decree-holder to file an application under Order 21 Rule 97. This is also clear from Order 21 Rule 101 which stipulates what questions are to be determined in an application filed under Order 21 Rule 97. Order 21 Rule 101 clearly stipulates that all questions (including questions relating to right, title or interest in the property) arising

between the parties to a proceeding on an application under rule 97 or rule 99 shall be determined by the Court dealing with the application, and not by a separate suit. For this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. Once these questions are determined, and adjudicated upon, under Rule 98 Or Rule 100, the order passed thereon have the same force and are subject to the same conditions as to an appeal as if it were a decree. If the judgment-debtor also falls within the sweep of Order 21 Rule 97, the results would be quite startling. It would effectively mean that though the judgment-debtor has suffered a decree after a full trial, he would again be entitled to object to the decree under Order 21 Rule 97 and that obstruction would then have to be tried as if it were a suit. It would therefore effectively mean that the judgment-debtor would be getting a second bite at the cherry. This to my mind, can never be the import of Order 21 Rule 97. It would be ludicrous to suggest that a judgment debtor, who after a full trial, has suffered a decree for handing over possession of immovable property, would again be able to obstruct the execution of the very same decree under Order 21 Rule 97 of the CPC, which

obstruction has to be decided by the Executing Court as if were a suit and let parties lead evidence, if necessary. This would mean that the judgment debtor would be able to agitate all issues once again, notwithstanding that he has suffered a decree after a full trial. If Order 21 Rule 97 were to be interpreted in this fashion, then a decree for possession of immovable property against the judgment debtor would be absolutely worthless. Therefore, in my view, the words “by any person” appearing in Order 21 Rule 97 can never include the judgment debtor or any person who is bound by the decree. It can only be a person who is stranger to the decree and/or claiming an independent right in the immovable property.

25 There is another reason for taking this view. If the provisions of Order 21 Rule 97 were to take within its sweep also a judgment-debtor, then, the provisions of Order 21 Rule 35 would be rendered completely otiose. As set out earlier, Order 21 Rule 35 clearly stipulates that where a decree is for delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such a person as he may appoint for delivery on his behalf, and if necessary by removing any person bound by the decree who refuses to vacate the

property. In other words, if a decree for possession of immovable property is being executed against the judgment-debtor, the decree holder is entitled to get possession straightaway under Order 21 Rule 35. This is because the judgment-debtor is a person bound by the decree and who refuses to vacate the property. If the interpretation of Mr. Damle was to be accepted, that a judgment-debtor would be included in the words “by any person” appearing in Order 21 Rule 97, the provisions of Order 21 Rule 35 and more particularly sub-rule (1) thereof, would be rendered otiose in as much as the Court would not have the power to remove him if he refuses to vacate the property unless and until his obstruction is adjudicated upon under Order 21 Rule 97. I am therefore of the view that the words “by any person” appearing in Order 21 Rule 97 can never take within its sweep a judgment-debtor.

26 Another reason that lends support to the aforesaid conclusions are the wordings in Order 21 Rule 99. Order 21 Rule 99 clearly stipulates that where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property, or where such property has been sold in execution of a decree, by the

purchaser thereof, he may make an application to the Court complaining of such dispossession. It is interesting to note that a third party, namely, stranger to the decree has a right to approach the Court even after dispossession of the immovable property which he was occupying. This protection is not offered to the judgment-debtor at all. This is for the simple reason that the judgment-debtor, being bound by the decree, would be dispossessed under Order 21 Rule 35. Mr. Damle was unable to explain why the Legislature would not give this opportunity to the judgment-debtor to be put back in possession under Order 21 Rule 99, and yet give an opportunity to him to obstruct the decree under Order 21 Rule 97. This again leads to the irresistible conclusion that under Order 21 Rule 97, the words “by any person” can never take within its sweep the judgment-debtor or any person bound by the decree. Once a decree is passed against a person who is bound by it, he has to honour the same and cannot drive the decree-holder to make an application under Order 21 Rule 97.

27 In this regard, it would be relevant to refer to a decision of the Supreme Court relied upon by Mr. Damle in the

case of **Brahmdeo Chaudhary (supra)**. The facts of this case have been set out by the Supreme Court in paragraph 3 thereof and which would reveal that Respondent No.1 therein filed an eviction suit in relation to six and a half dhurs of the suit land against Respondent No.2 and his mother. A decree was passed in favour of Respondent No.1 against the judgment-debtor-Respondent No.2. Thereafter, Respondent No.1 filed execution proceedings against Respondent No.2 - judgment-debtor. These proceedings were registered as Execution Case No.25 of 1990. On 25th April, 1991, Respondent No.1 - decree-holder obtained a warrant for delivery of possession from the Executing Court against Respondent No.2. When the Bailiff went to the spot to execute the warrant on 28th April, 1991, he was resisted by the appellant (before the Supreme Court) along with 20 to 25 other persons. Because of the resistance offered by them, the bailiff was unable to execute the warrant of possession. In these circumstances, the decree-holder (Respondent No.1), by his application dated 6th May, 1991, requested the help of a Magistrate and Armed Force to execute the decree. This application remained lingering on the file of the Executing Court for a number of years and ultimately the Executing Court directed

execution of the warrant for possession by affording help of police force to the decree-holder. It was at that stage that the Appellant before the Supreme Court filed an application before the Executing Court to stay the operation of the said warrant and to decide his objections. The Executing Court, without adjudicating upon the objections of the Appellant on merits and without deciding whether the obstruction or resistance offered by him was legally justified, dismissed the Appellant's application. The Executing Court took a view that the remedy of the Appellant was to be first dispossessed and thereafter move an application under Order 21 Rule 99 of the CPC. Since that stage had not yet been reached, the request of the Appellant to adjudicate his claim could not be entertained. This order of the Executing Court was confirmed by the High Court of Judicature at Patna and this is how the matter was carried to the Supreme Court. The Supreme Court in paragraphs 4, 5, 6 and 9, after analyzing the provisions of Order 21 Rule 35 and Order 21 Rule 97 held thus:

“4. In the background of the aforesaid factual matrix it is necessary to have a look at the relevant statutory provisions governing the controversy between the parties. As Respondent 1 decree-holder seeks to execute his decree for possession of immovable property against the judgment-debtor Respondent 2 he has rightly invoked provisions of Order 21 CPC by putting the decree for possession of immovable property into execution. His application for issuance of a fresh warrant for possession with

the police aid as moved by him on 6-5-1991 purports to invoke the provision of Order 21, Rule 35 CPC which reads as under:

“35. Decree for immovable property.—(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

5. A mere look at the aforesaid provision shows that a warrant for possession can be straightaway sought against persons occupying immovable property which is the subject-matter of decree by the decree-holder provided such persons who are occupying the suit property are judgment-debtors or persons claiming through the former. We are concerned with the situation in which the appellant resisted the execution proceedings on the ground that he was a stranger to the decree and claimed an independent interest in the suit immovable property possession of which was decreed in favour of Respondent 1 decree-holder. The Nazir in his report dated 28-4-1991 has noted that the warrant for possession could not be executed on the spot on account of the resistance and obstruction offered by the appellant, amongst others. Once that report was received by the executing court Respondent 1 decree-holder naturally became alive to the fact of such resistance on the spot by the appellant, amongst others. Thereafter when he moved the application on 6-5-1991 for issuance of fresh warrant for possession with the help of police force though the application purported to be under Order 21, Rule 35 it would strictly not fall within that provision as the decree-holder wanted to bypass the

obstruction and resistance offered by a stranger to the decree, namely, the appellant who was not claiming any right, title or interest through the judgment-debtor. Whether his claim was right or wrong on merits is a different matter. But once such resistance was offered by him the proper procedure which was required to be followed by Respondent 1 decree-holder was the one contemplated by Order 21, Rule 97 CPC. The said provision reads as under:

“97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

6. On the undisputed facts on record it has, therefore, to be held that because of the resistance or obstruction offered by the appellant, amongst others, on 28-4-1991 the application moved by the respondent decree-holder on 6-5-1991 was necessarily to be one falling within the scope and ambit of Order 21, Rule 97. It is pertinent to note that the resistance and/or obstruction to possession of immovable property as contemplated by Order 21, Rule 97 CPC could have been offered by any person. The words “any person” as contemplated by Order 21, Rule 97, sub-rule (1) are comprehensive enough to include apart from judgment-debtor or anyone claiming through him even persons claiming independently and who would, therefore, be total strangers to the decree. It is not in dispute between the parties that no decree for possession has been obtained by Respondent 1 against the appellant. He is, therefore, prima facie a stranger to the decree. When he offered obstruction or resistance to the execution of the decree he would squarely fall within the sweep of the words “any person” as found in Order 21, Rule 97, sub-rule (1). Consequently it must be held that Respondent 1's application dated 6-5-1991 though seeking only reissuance of warrant for delivery of possession with aid of armed force in substance sought to bypass the previous resistance and obstruction offered by the appellant on the spot. Thus it was squarely covered by the sweep of Order 21, Rule 97, sub-rule (1) CPC. Once that

happened the procedure laid down by sub-rule (2) thereof had to be followed by the executing court. The Court had to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order.....

9. In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the executing court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order 21, Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21, Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the executing court it is difficult to appreciate how the executing court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order 21, Rule 99 CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order 21, Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order 21, Rule 99. Order 21, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings

where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order 21, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order 21, Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the executing court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order 21, Rule 97 CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the executing court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order 21, Rules 97 to 103 would remain a complete code and the sole remedy for the

parties concerned to have their grievances once and for all finally resolved in execution proceedings themselves.

(emphasis supplied)

28 Mr. Damle laid great stress on paragraph 6 of this decision to contend that the Supreme Court has held that the judgment-debtor would also come within the sweep of Order 21 Rule 97. On carefully reading paragraph 6 of this decision, I am unable to agree with Mr. Damle. What the Supreme Court has held is that the words “any person” as contemplated by Order 21 Rule 97 sub-rule (1) are comprehensive enough to include, apart from judgment-debtor or anyone claiming through him, even persons claiming independently and who would, therefore, be total strangers to the decree. To my mind, this paragraph clearly indicates that judgment-debtors are excluded from the purview of Order 21 Rule 97 and not included, as was sought to be contended by Mr. Damle. This, to my mind, becomes clear when one reads paragraph 5 of this decision reproduced above along with paragraph 9, which clearly states that the statutory provisions of Order 21 lay down a complete Code for resolving all disputes pertaining to execution of a decree for possession obtained by decree-holder and whose attempts at executing the said decree

meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder, the remedy available to the decree-holder against such an obstructionist is only under Order 21 Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21 Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21 Rule 97. Reading this judgment in its entirety, I do not think that it lays down any law to hold that a judgment-debtor also would be a person which would be entitled to obstruct a decree and drive the decree holder to thereafter file an application under Order 21 Rule 97 of the CPC.

29 Similar is the situation in the case of **Bhanwar Lal (supra)** relied upon by Mr. Damle. What is important to note is that in both the aforesaid cases, the resistance was not offered by the judgment-debtor but was offered by a stranger to the decree. Mr. Damle has not been able to bring to my notice a single decision either of the Supreme Court or of this Court or of any other High Court where the delivery of possession was resisted by a

judgment-debtor and the Court had ordered that his resistance/obstruction be adjudicated under Order 21 Rule 97 of the CPC.

30 One must not lose sight of the fact that placing reliance on a decision without looking into the factual background of the case is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. A decision is an authority for what it actually decides and not what logically follows from it. What is of the essence in a decision is its ratio and not every observation found therein. If one must refer to any authority on this subject, the Supreme Court in the case of **Sarva Shramik Sangh v/s State of Maharashtra reported in (2008) 1 SCC 494** has very succinctly and elaborately reiterated the said proposition. Paragraphs 14 to 18 which reads thus:-

14. On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem [1901 AC 495 : (1900-1903) All ER Rep 1 (HL)] : (All ER p. 7 G-I)

“Before discussing *Allen v. Flood* [1898 AC 1 : (1895-1899) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

(emphasis supplied)

We entirely agree with the above observations.

15. In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] (vide SCC p. 221, para 18) this Court observed:

“18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

16. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111] (vide SCC p. 130, para 59) this Court observed:

“59. ... It is also well settled that *a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.*”

(emphasis supplied)

17. As held in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In

the same judgment this Court also observed: (SCC pp. 584-85, paras 9-12)

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. *Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context.* These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

‘The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge, ...’

10. In *Home Office v. Dorset Yacht Co. Ltd.* [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said,

‘Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.’ (All ER p. 297g)

Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] , observed: (All ER p. 1274d)

‘One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;’

And, in *British Railways Board v. Herrington* [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

‘There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.’

11. Circumstantial flexibility, *one additional or different fact may make a world of difference between conclusions in two cases*. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT* [AIR 1962 SC 680] , AIR p. 688, para 19)

‘19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because *even a single significant detail may alter the entire aspect*, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.’

‘*Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches*. My plea is to keep the path to justice clear of obstructions which could impede it.’ ”

(emphasis supplied)

18. *We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC*

(Cri) 19 : AIR 1987 SC 88] cannot be treated as a Euclid's formula."

31 I, therefore, have no hesitation in rejecting the argument of Mr. Damle that even a judgment-debtor can resist and obstruct a decree for delivery and possession as contemplated under Order 21 Rule 97 and that thereafter, the decree holder has to be driven to file an application under Order 21 Rule 97 of the CPC to adjudicate the said obstruction. This being the case, I find that the impugned order cannot be sustained in so far as it remands the matter back to the Executing Court allowing the judgment-debtor to produce certain additional documents and thereafter decide the objection of the Defendants under the procedure as set out under Order 21 Rule 97 and the subsequent provisions thereto.

32 Having held this, I shall now deal with the argument of Mr. Damle that in any event the order of the Executing Court was correctly set aside, as the compromise decree, in the facts and circumstances of the present case, was unexecutable. This argument proceeds on the basis that a compromise decree in a suit for eviction of the tenant cannot be passed unless and until a

ground as set out in Section 16(1) of the Maharashtra Rent Control Act, 1999 for evicting the tenant is made out. There is no dispute with this proposition and I am in agreement with this submission of Mr. Damle and the judgments relied upon by him in support of the propositions. However, the question is whether this proposition would apply to the facts of the present case.

33 To understand this controversy, it would be apposite to reproduce the Consent Terms dated 5th September, 2007 in its entirety. They read as under:-

“CONSENT TERMS FOR PASSING DECREE ON ADMISSION

- 1. The defendants waive service of writ of summons.**
- 2. The defendants submit to the Decree on admission in terms of prayers (a) and (b) of the plaint.**
- 3. At the request of the Defendants the Plaintiff agrees not to execute the Decree for possession against the Defendants till 31st January, 2009.**
- 4. The Defendants through its Partner Mrs. Krutika Ketan Vira undertake to this Hon'ble Court to hand over vacant and peaceful possession of the suit premises viz., Flat No. 101 on 1st Floor of Ratneshwar Building situated at 208, Bhagwandas Indrajit Road, Mumbai-400 006, to the Plaintiff on or before 31st January, 2000 and till then not to part with the possession thereof or any part thereof and/or to induct any outsiders therein or to carry on any other activity therein save and except that of running the school.**
- 5. The Defendants shall not be liable to pay any compensation for use of the suit premises upto 31st January, 2009. However, in the event of Defendants not handing over vacant possession of the suit premises on or**

before 31st January, 2009 and thereby Plaintiff is required to execute this Decree then the Defendants will without prejudice to the Plaintiff's right to execute this Decree jointly and severally pay to Plaintiff a sum of Re.5,000/- (Rupees Five Thousand only) per day by way of mesne profits for wrongful occupation till the Defendants remove themselves from the Suit premises and hand over vacant possession thereof to the Plaintiff as provided herein.

6. In the event of the Defendants committing default in handing over vacant possession of the suit premises as stipulated in clause 4 hereinabove, the Registrar of this Court do stand appointed as Receiver of the suit premises with all powers under Order XL Rule 1 of the Code of Civil Procedure 1908 to remove the Defendants and to put the Plaintiff in possession of the suit premises. This shall be without prejudice to the other rights of the Plaintiff in law to execute the Decree for acquiring possession of the suit premises.

7. On the Receiver putting the Plaintiff in possession of the suit premises as stipulated in clause 6 hereinabove, the Receiver shall stand discharged on the payment of costs, charges and expenses by the Plaintiff subject to the Plaintiff's right to recover the same from the Defendants.

8. The Receiver to act on the certified copy of this Consent Terms for Passing Decree on Admission.

9. No order as to costs."

34 As can be seen from the Consent Terms, it is for passing a decree on admission. The Consent Terms provide that the defendants waive service of the writ of summons and the defendants submit to a decree on admission in terms of prayers (a) and (b) of the plaint. What this effectively means is that there is an admission on the part of the Defendants in the compromise

decree that what is stated in the Plaint is accepted by them and they are expressly agreeing to suffer a decree for eviction because the landlord is entitled to have such a decree under the law. In the Plaint it is specifically averred that though the suit premises were given for the purposes of running a school, the Plaintiff noticed that the same was used by the Defendants for office and other commercial purposes along with running the school. The Plaintiff objected to the said use, and therefore, the Plaintiff averred that the same tantamounts to a change of user. This is a ground for eviction under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 which stipulates that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. This fact is further fortified in the compromise decree when the Defendants undertake that until 31st January, 2009 (the date on which they were to hand over possession), the suit premises shall be used only for running the school. Looking to the Consent Terms which were accepted by the Court and on the basis of which the Consent Decree was drawn up, I am clearly of the view that the Defendants

had admitted that a case for eviction was made out and expressly agreed to suffer a decree for eviction because the Plaintiff was entitled to have such a decree under the law.

35 In this regard, it would be apposite to reproduce the observations of the Supreme Court in the case of **Roshan Lal and Another (supra)** relied upon by Mr. Naik. The factual matrix of this case would show that the plaintiff-respondent (the landlord), filed a suit against the Defendants (Appellants before the Supreme Court) in the Court of Second Civil Judge, Class II, Gwalior for a decree of eviction and certain other reliefs. The Appellants' eviction was sought on the statement of facts mentioned in paragraph 3 of the plaint which squarely fell within clause (f) of sub-section (1) of Section 12 of the Madhya Pradesh Accommodation Control Act, 1961. The Appellants filed a written statement and in paragraph 3, they denied the Respondents' assertion in plaint at paragraph 3. It appears that the suit which was filed in the year 1966 proceeded to trial in October, 1967 and some evidence was also adduced. But eventually, the parties entered into a compromise and filed a petition to that effect in the Trial Court which passed a decree for eviction and other reliefs, in

accordance with the terms of the compromise. Pursuant to the said compromise decree the Appellants were to vacate the the suit premises by 31-12-1970. On their failure to do so, execution was levied by the Respondents. The Appellants objected to the execution on the ground that the compromise decree was void and unexecutable as being against the provisions of the Act. The Executing Court accepted the Appellants' objection to the execution of the decree and dismissed the execution case. A miscellaneous appeal filed by the Respondents was dismissed by the Third Additional District Judge Gwalior. Accordingly, the Respondents preferred a second miscellaneous appeal before the Madhya Pradesh High Court. A learned single Judge following another Bench decision of that Court, came to the conclusion that the decree was not a nullity and was executable. This is how the judgment-debtors, namely the tenant and who were Defendants in the suit, approached the Supreme Court. The Supreme Court thereafter reviewed the law on the subject in great detail which can be found in paragraphs 2 and 3 of its decision. Thereafter, the Supreme Court in paragraphs 5, 6 and 7 held thus:-

“5. In order to get a decree or order for eviction against a tenant whose tenancy is governed by any Rent Restriction or Eviction Control Act the suitor must make out a case for eviction in accordance with the provisions of the Act. When the suit is

contested the issue goes to trial. The Court passes a decree for eviction only if it is satisfied on evidence that a ground for passing such a decree in accordance with the requirement of the statute has been established. Even when the trial proceeds ex parte, this is so. If, however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law.

6. It is too late in the day to contend that the provisions of Order 23 Rule 3 of the Code of Civil Procedure cannot apply to eviction suits governed by the special statutes. Undoubtedly, a compromise of such suit is permissible under the said provision of law. The protection of the tenant is inherent in the language of Order 23 Rule 3 when it says:

"Where it is proved to the satisfaction of the Court that a suit has been adjusted by any lawful agreement or compromise . . . the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit."

If the agreement or compromise for the eviction of the tenant is found, on the facts of a particular case, to be in violation of a particular Rent Restriction or Control Act, the Court would refuse to record the compromise as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, that the agreement is lawful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith. Passing a decree for eviction on adjudication of the requisite facts or on their admission in a compromise, either express or implied, is not different.

7. We now proceed to consider the facts of the case on hand. The ground for eviction from the accommodation let for non-residential purposes mentioned in clause (f) of Section 12(1) of the Act is that the accommodation

“is required bona fide by the landlord for the purpose of continuing or starting his business . . . and that the landlord . . . has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned”.

In para 3 of the plaint the respondents' necessity was pleaded both in the positive and the negative aspects of clause (f). Both were denied in para 3 of the written statement of the appellants. Para 1 of the compromise petition says:

“That due to the necessity of the plaintiffs for their own business — opening grocery shop, decree for ejectment may be granted to them against the defendants.”

In this case it is not necessary to refer to any piece of evidence adduced at the inconclusive trial. The meaning of para 1 of the compromise petition is clear and definite especially in the background of the pleadings of the parties and in our opinion it squarely makes out a case of eviction within the meaning of Section 12(1)(f) of the Act on admission of the appellants. We reject the argument of Mr Andley, learned counsel for the appellants, that para 1 of the compromise petition was an admission in respect of only the first part, namely, the positive aspect of clause (f) and not of the second part, namely, that the landlord has no other reasonably suitable non-residential accommodation. The admission, by necessary implication, was in respect of both.”

(emphasis supplied)

36 I find that the facts of the present case also would squarely be covered by the ratio laid down by the Supreme Court in the case of **Roshan Lal and Another (supra)**. I, therefore, have no hesitation in rejecting the argument made by Mr. Damle

that the decree was unexecutable because the same did not reflect any ground for eviction as set out in Section 16(1) of the Maharashtra Rent Control Act, 1999.

37 Thereafter, it was feebly sought to be contended by Mr. Damle that this decree is unexecutable because the real transaction between the parties was a loan transaction and the decree was never meant to be acted upon. Mr. Damle submitted that this being the case, the remand order of the Revisional Authority be modified and the Executing Court be asked to examine this issue after letting the Defendants produce the documents in this regard and which was allowed by the Revisional Authority. I am afraid I am unable to accept this submission. It is now well settled that the Executing Court cannot go behind the decree unless it is shown that the Court passing the decree inherently lacked jurisdiction to do so. Only if it is shown that a decree is a nullity, can the Executing Court refuse to execute the decree. Even if the decree is held to be illegal, unless it is set aside by a Superior Court, it cannot be denuded of its efficacy by any collateral attack or in incidental proceedings. In this regard, reliance placed by Mr. Naik on a decision of the Supreme Court in

the case of **Rafique Bibi (D) By Lrs vs Syed Waliuddin (D) By Lrs. and Ors reported in 2004 (1) SCC 287**, is well founded. Paragraphs 5 to 10 of this decision read thus:-

“5. Having heard the learned counsel for the parties, we are satisfied that the appeal has no merit and is liable to be dismissed.

6. What is “void” has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7. Two things must be clearly borne in mind. Firstly, “the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be ‘a nullity’ and ‘void’ but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results.” (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. “The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.” (ibid., p. 312)

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or

not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

9. *In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman [(1970) 1 SCC 670] it has been held: (SCC pp. 672-73, para 7)*

When the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. But where the objection as to jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

10. *It is not the plea of the appellant judgment-debtors that the court which passed the decree did not have the jurisdiction to do so. It is also not their case that a ground for eviction of the tenants on the ground of default in payment of arrears of rent was not available to the respondent landlords within the meaning of the Delhi and Ajmer Act or the successor Rajasthan Act. The only submission made is that before passing the decree the Court should have afforded the tenant an opportunity of depositing the rent in arrears, which was not done. Firstly, we find merit in the submission of the learned counsel for the respondents that it was for the tenants to have invited the attention of the Court by making an application in that regard so as to avail an opportunity of wiping out the effect of their default, which gave rise to cause of action to the respondents, by depositing the rent during the pendency of the suit. That having not been done, the appellant tenants cannot be heard to urge any infirmity in the decree. Secondly, accepting it at its face value, in the eyes of law,*

the challenge seeks to expose a procedural irregularity which may, at best, result in the decree being termed as an “illegal decree”, but that in itself would not amount to branding the decree as “without jurisdiction” or “a nullity”. The plea which is sought to be urged in the execution proceedings was available to be raised by the tenants before the High Court in an appeal against the decree. Such a plea was not taken before the passing of the decree and cannot now be allowed to be urged during the execution proceedings. It is unfortunate that a decree of eviction passed in a suit commenced in the year 1956 and culminating in a final decree in the year 1986 is still starving for its execution.

(emphasis supplied)

38 In view of this clear enunciation of the law by the Supreme Court, I am unable to accept the submission of Mr. Damle that the Defendants be allowed to assail the compromise decree on the ground that it was actually never to be acted upon and the real transaction was something else. To my mind, the Executing Court cannot examine this issue at all.

39 In view of the foregoing discussion, Rule is made absolute and the Petition is granted in terms of prayer Clause (a), which reads thus:-

“(a):That this Hon'ble Court be pleased to issue a writ of certiorari and/or any other appropriate writ, order or direction in the nature of Certiorari under Article 227 of the Constitution of India calling for the papers and proceedings in the said Revision Application No.333 of 2015 passed in Execution Application No.31 of 2013 before the Hon'ble the Small Causes Court (Appellate Bench), Mumbai and after going through the

legality and validity of the said order to quash and set aside the said order dated 26th September, 2016 and restore the order dated 28th October, 2015 passed by the Hon'ble Small Causes Court in Execution Application No.31 of 2013.”

40 It is clarified that this order shall not preclude the Respondents from availing of any other remedy that may be available to them in law to challenge Consent Terms dated 5th September, 2007 along with the Consent Decree. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)