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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 736 OF 2017

Mr Firoze Adi Vakil	...Petitioner.
vs	
Miss Zarene Framroz Munshi	...Respondent.

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Mr P.S.Dani, Sr. Advocate a/w Mr Rohan Kelkar i/b Amin Kherada
for the Petitioner.
Dr Milind Sathe, Sr. Advocate a/w Mr Gaurav Thakur i/b A.S.Dayal &
Associates for the Respondent.

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CORAM : **B. P. COLABAWALLA, J.**
JULY 06, 2017.

ORAL JUDGMENT:

By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner challenges the order dated 20th July, 2016 passed below Exh.53 in RAE & R Suit No. 744/1770 of 1992 as well as the order passed by the Revisional Authority dated 27th July, 2016 passed in Revision Application No.260 of 2015.

2 The Petitioner is the sole Defendant No.1B in RAE & R Suit No.744/1770 of 1992. The Respondent, as the sole surviving executrix of the last Will & Testament of the late Framroze Pestonji Munshi dated 20th August, 1984, is the Landlord (and the Plaintiff in

the said RAE & R Suit No.744/1770 of 1992). The application below Exh.53 was filed by the Petitioner (Defendant No.1B) for dismissal of the said RAE & R Suit No.744/1770 of 1992 on the basis of some alleged admissions contained in the additional Written Statements filed by the Respondent in answer to a suit filed by one Ardeshir Framroze Vakil (for short **“the said Ardeshir”**) being RAD Suit No.2447 of 1991. This application (Ex. 53) was filed under the provisions of Order XII Rule 6 and Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short **“the CPC”**). To put it in a nutshell, it was the case of Defendant No.1B (the Petitioner herein) that in the additional Written Statements filed by the Respondent herein (the Plaintiff in RAE & R Suit No.744/1770 of 1992 and Defendant in RAD Suit No. 2447 of 1991), the landlord had expressly denied that Original Defendant No.1 in RAE & R Suit No.744/1770 of 1992 (the said Ardeshir, who is since deceased) was not the tenant of the Plaintiff. It was the case of Defendant No.1B (who is an heir of the said Ardeshir) that since this was a clear admission made by the Landlord in her additional Written Statements in answer to RAD Suit No.2447 of 1991 filed by the said Ardeshir, the Small Causes Court did not have jurisdiction to entertain RAE & R Suit No.744/1770 of 1992 filed by the Plaintiff – Landlord for eviction of the tenant.

3 The brief facts that need to be noted are that the Petitioner herein is the sole Defendant (Defendant No.1B) in RAE & R Suit No.744/1770 of 1992. He is the heir of original Defendant No.1 – the said Ardeshir. This suit is still pending before the Court of Small Causes at Mumbai. The Respondent herein is the sole surviving executrix of the last Will and the Testament of the late Framroze Pestonji Munshi dated 20th August, 1984, and who was the landlord of the residential premises being Flat No.7 on the third floor of the building known as “Forjett House”, situate at Forjett Street, Gowalia Tank, Mumbai – 400 026 (for short the “**suit premises**”). For the sake of convenience, I shall refer the parties as they were arrayed before the Trial Court in RAE & R Suit No.744/1770 of 1992.

4 It is the case of Defendant No.1B (the Petitioner herein) that prior to 25th October, 1991 one Roshan Kaikhushroo Bharucha (for short “**Roshan**”) was the lawful tenant of the late Framroze Pestonji Munshi in respect of the suit premises. The said Roshan died in Mumbai on 25th October, 1991. According to Defendant No.1B the said Roshan, during her life time and until her death, continuously and uninterruptedly resided in the suit premises and duly paid the rent in respect thereof. It is the case of Defendant No.1B that due to Roshan's advancing age, she was unable to independently manage

her own affairs. Consequently, on or about 13th October, 1987, she executed a Power of Attorney appointing Defendant No.1B (her nephew and the son of her brother – the said Ardeshir) as her duly constituted attorney. It is the case of Defendant No.1B that thereafter it was he who, as the attorney of said Roshan, tendered all rents and otherwise dealt with the landlord in respect of the suit premises.

5 It is the further case of Defendant No.1B that on 26th October, 1988, the said Roshan had also made a declaration *inter alia* solemnly affirming (i) that she was the lawful tenant of the suit premises and that the rent receipts in respect thereof were being issued in her name; and (ii) that it was her desire that upon her death, her tenancy rights in respect of the suit premises and all her other rights, title and interest therein should go to her brother – the said Ardeshir and to the Petitioner, to the exclusion of any and all other persons. After the death of said Roshan on 25th October, 1991, the original landlord (the late Framroze Pestonji Munshi) did not take necessary steps to transfer the tenancy in the name of the said Ardeshir (brother of the said Roshan).

6 Accordingly, the advocates of the said Ardeshir addressed a notice dated 24th November, 1991 to the then executor and

executrix of the last will and testament of the said Framroze Pestonji Munshi dated 20th August, 1984, asserting his tenancy rights in respect of the suit premises and also informed them that he was in possession and effective control of the suit premises as a lawful successor tenant in respect thereof. Since, the landlords failed to acknowledge the tenancy rights of the said Ardeshir, on or about 30th November, 1991, the said Ardeshir instituted a declaratory suit being R.A.D. Suit No.2447 of 1991 *inter alia* seeking a declaration that he was the true and lawful tenant in respect of the suit premises and was fully protected under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

7 Thereafter, on or about 16th September, 1992, the Respondent herein along with one Mr Dossu Nariman Paymaster instituted RAE & R Suit No.744/1770 of 1992 (eviction suit) *inter alia* seeking to evict the said Ardeshir from the suit premises. After filing this suit, on 16th April, 1998, the Respondent herein filed her Written Statement in R.A.D. Suit No.2447 of 1991 filed by said Ardeshir and in this Written Statement, she claimed to have accepted the tenancy rights of said Ardeshir. This Written Statement can be found at page 51 of the paper book and at paragraph 6 it is stated that the Respondent has filed RAE & R Suit No.744/1770 of 1992 for

eviction of said Ardeshir and the said suit is filed on the footing that the said Ardeshir is a tenant of the suit premises.

8 On 18th January, 2002, the said Ardeshir died and the plaint in R.A.D. Suit No.2447 of 1991 was amended by bringing on record his wife Khorshed Ardeshir Vakil and his son Firoze Adi Vakil (the Petitioner herein). After these amendments were carried out, the Respondent herein filed two additional Written Statements in R.A.D. Suit No.2447 of 1991. The first additional Written Statement is dated 31st July, 2003 (Exh. “D” to the Petition) and the second additional Written Statement is dated 20th November, 2006 (Exh “E” to the Petition). According to the Petitioner herein, the Respondent in these Written Statements clearly denied the relationship of landlord and tenant between the said Ardeshir on the one hand and the landlords of the suit premises on the other.

9 Thereafter, on 30th July, 2009, the wife of said Ardeshir (namely Khorshed) also passed away and consequently her son (the Petitioner herein) was duly transposed as Plaintiff No.1D in the said R.A.D. Suit No.2447 of 1991. Thereupon the Respondent herein filed a further additional Written Statement dated 17th September, 2010.

10 It is the case of the Petitioner (Defendant No.1B in RAE & R Suit No.744/1770 of 1992) that on a conjoint reading of the Written Statements filed by the Respondent in R.A.D. Suit No.2447 of 1991, it is clear that the Respondent does not accept and unequivocally denies the tenancy rights of the said Ardeshir, the late Khorshed Ardeshir Vakil as well as the Petitioner. This being the case, the Petitioner herein filed an application (Exh.53) in RAE & R Suit No.744/1770 of 1992 seeking a Judgment of dismissal / rejection of the said eviction suit in accordance with the provisions of Order XII Rule 6 read with Order VII Rule 11 and Section 151 of the CPC. As mentioned earlier, the rejection of the RAE & R Suit No.744/1770 of 1992 was on the premise that the Plaintiff in this suit (being the landlord) had denied the landlord - tenant relationship, and therefore, the Small Causes Court was divested of its jurisdiction.

11 Be that as it may, on 4th March, 2014 the Respondent herein filed her reply resisting this application (Exh.53). This application was thereafter heard by the Trial Court on 20th July, 2015 wherein the contentions of the Petitioner were rejected. Being aggrieved by this order of the Trial Court, the Petitioner challenged the same before the learned Appellate Bench of the Small Causes

Court by filing Revision Application No. 260 of 2015. The Revisional Authority also, by the impugned Judgment and order dated 27th July, 2016, rejected the Revision Application. It is, in these circumstances, that the Petitioner is before me under Article 227 of the Constitution of India challenging the legality and validity of these two impugned orders.

12 In this factual backdrop, Mr Rohan Kelkar learned counsel appearing on behalf of the Petitioner, submitted that for the Small Causes Court to get jurisdiction, the dispute has to be one which is between the landlord and the tenant. He submitted that this was *sine-quo-non* for the institution of the suit in the Court of Small Causes at Mumbai. In this regard he placed reliance on Section 28 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short “**the Rent Act**”). He submitted that in the facts of the present case, on a conjoint reading of all the Written Statements filed by the Respondent herein in R.A.D. Suit No.2447 of 1991, it was clear that it was the case of the Respondent that the said Ardeshir, the said Khorshed, or the Petitioner herein, were not the tenants of the Respondent/Plaintiff – landlord in RAE & R Suit No.744/1770 of 1992. This being the admission by the Respondent, RAE & R Suit No.744/1770 of 1992 ought to have been dismissed under the

provisions of Order XII Rule 6, Order VII Rule 11 and Section 151 of the CPC. He submitted that these admissions have not been read in their proper perspective by the Courts below and if one were to read them correctly, it would be clear that there is an unequivocal admission by the Respondent in the Written Statements about the denial of the landlord – tenant relationship between the Petitioner and the Respondent herein. For these reasons, he submitted that the impugned orders suffer from serious irregularities and infirmities that require my interference under Article 227 of the Constitution of India.

13 On the other hand, Dr. Sathe, learned Senior Counsel appearing on behalf of the Respondent, submitted that there was no merit in the contentions canvassed on behalf of the Petitioner. He submitted that on a conjoint reading of the Written Statements, it certainly cannot be said that the Respondent herein had denied the relationship of landlord and tenant which would divest the Small Causes Court of its jurisdiction. He submitted that in the facts of the present case, the original tenancy of Roshan has been admitted by the Respondent – landlord. The R.A.E. Suit was filed after the said Roshan expired and was therefore against the said Ardeshir and one Manek Vakil who were arrayed as Defendant Nos.1 and 2 in the said

R.A.E. & R Suit No.744/1770 of 1992. They were sued in their capacity as the heirs and legal representatives of the said Roshan. Dr. Sathe pointed out the averments in paragraph 5 of the plaint in RAE & R Suit No.744/1770 of 1992 to contend that it was the specific case of the Respondent herein that the statutory tenancy rights of the deceased tenant (said Roshan) would in no event vest in Roshan's executors but only in one of the heirs, namely original Defendant No.1 (said Ardeshir, since deceased) or original Defendant No.2 (said Manek Vakil, since deceased), and in default of any agreement, as decided by the court. It is in these circumstances that both these parties were joined as Defendant Nos.1 and 2 in the suit. He submitted that the so called admissions that have been relied upon by the Petitioner are to be read along with these averments in the plaint in RAE & R Suit No.744 / 1770 of 1992. Dr. Sathe submitted that it is in this light that in the additional Written Statement dated 20th November, 2006 it was stated that the landlord never accepted the said Ardeshir as a tenant as the Court had not declared him as a tenant. Consequently, his wife Khorshed also could not claim any right, title and interest in the tenancy rights in relation to the suit premises. He submitted that this can certainly never be an admission whereby the same would divest the Small Causes Court, Mumbai of its jurisdiction. In this regard, Dr.Sathe brought to my attention the provisions of Section

5(11)(c)(i) of the Rent Act which defines the term “**tenant**” to mean any person by whom or on whose behalf the rent is payable of any premises and includes, in relation to any premises let for residence, when the tenant dies, where the death has occurred before or after the commencement of the *Bombay Rents Hotel and Lodging House Rates Control (amendment) Act, 1978*, any member of the tenant's family residing with the tenant at the time of his death or in the absence of such a member, any heir of the deceased tenant as may be decided in default of any agreement, by the Court. He submitted that the said Ardeshir as well as the said Manek, both claimed to be the heirs of said Roshan. It is in these circumstances that they were sued as Defendant Nos.1 & 2 in RAE & R Suit No.744/1770 of 1992. It is looking to the provisions of the Rent Act and more particularly section 5(11)(c)(i) thereof, that the tenancy of the said Ardeshir was not accepted by the landlord in the additional Written Statements filed by her in R.A.D. Suit No.2447 of 1991. Once the Written Statements are read in this context, Dr. Sathe submitted that there was no question of any admission on the part of the landlord denying the landlord – tenant relationship as contemplated under Section 28 of the Rent Act to divest the Court of Small Causes at Mumbai of its jurisdiction.

14 In the alternative, Dr. Sathe submitted that in any event, considering that in the first Written Statement the landlord had specifically taken a stand that RAE & R Suit No.744/1770 of 1992 was filed against the said Ardeshir on the basis that he is a tenant and thereafter in the additional Written Statements an alleged contrary stand was taken, it cannot be said that there is any unequivocal admission on the part of the landlord which would entitle the Petitioner herein to seek a Judgment of dismissal under Order XII Rule 6 of the CPC. This being the case, Dr. Sathe submitted that there was absolutely nothing wrong in the orders passed by the Courts below that requires my interference under Article 227 of the Constitution of India. Consequently, he submitted that there was no merit in this Writ Petition and the same ought to be dismissed.

15 I have heard learned counsel for the parties at length and have also perused the papers and proceedings in the present Writ Petition. I have also given my careful consideration to the orders passed by the Courts below, which have been impugned before me in this Writ Petition. As mentioned earlier, the application filed by the Petitioner herein in RAE & R Suit No.744/1770 of 1992 was Exh.53. This application sought dismissal of RAE & R Suit No.744/1770 of 1992 under the provisions of Order XII Rule 6 and Order VII Rule 11

read with section 151 of the CPC. At the outset I must state that as far as Order VII Rule 11 of the CPC is concerned, this relief could never been granted to the Petitioner. For a plaint to be rejected under Order VII Rule 11 of the CPC, it is now well settled that all that has to be looked at are the averments in the plaint and not the defences raised. As far as the averments in the plaint in RAE & R Suit No.744/1770 of 1992 are concerned, it is clear that the Small Causes Court would certainly have jurisdiction to entertain and try the suit. This is for the simple reason that it is the case of the Plaintiff in this suit that Roshan was its original tenant and whose tenancy is accepted by the Plaintiff. Defendant Nos.1 and 2 in this suit are the legal heirs of said Roshan. Since, only one of the legal heirs would be entitled to the tenancy under Section 5(11)(c)(i) of the Rent Act, out of abandon caution, both the legal heirs have been joined as Defendants. This being a clear and unequivocal averment in the plaint, there is no question of the plaint being rejected under Order VII Rule 11 of the CPC.

16 This now, therefore, only leaves me to consider whether there was any unequivocal admission by the Respondent herein (the landlord) which would entitle the Petitioner herein for a Judgment of dismissal in RAE & R Suit No.744/1770 of 1992 under the provisions

of Order XII Rule 6 of the CPC. In this regard, it would be appropriate to reproduce the alleged admission on the basis of which the Petitioner seeks a Judgment of dismissal. In the first Written Statement dated 16th April, 1998 filed in R&AD Suit No.2447 of 1991, paragraphs 6 and 14 read thus:-

“6. Without prejudice to what is stated above, this Defendant states that they have already filed R. A. E. & R. Suit No.744/1770 of 1992 for eviction of the present Plaintiff who is one of the Defendants in the said suit and the said suit is filed on the footing that the present Plaintiff is tenant of the suit premises, hence, the present suit is infructuous and the same is liable to be dismissed with cost.

14. With reference to para 6 of the Plaint, the tenancy right of the Plaintiff is accepted by filing the aforesaid RAE&R Suit against him for eviction from the suit premises, hence there is no substance in the contention of the Plaintiff and as such the present suit is liable to be dismissed with cost. This Defendant crave leave to refer to and rely upon the said Plaint of the said Suit when produced. Hereto annexed and marked as Annexure “I” is a copy of the said Plaint. This Defendant states that in view of the above mentioned suit filed by the Defendant, there is no substance in the contention of the Plaintiff that the Defendant wants to forcibly dispossess the Plaintiff from the suit premises as alleged. This Defendant states that the due process of law is already adopted and this Defendant has initiated proceedings for evicting the Plaintiff, hence there is no substance in the contention of the Plaintiff. This Defendant states that in view of the above mentioned fact, there is no substance in the contention of the Plaintiff that he has good reason to apprehend that either the Defendant by themselves or through their agents, servants or representatives intend to take law into their own hands and forcibly and physically dispossess the Plaintiff from the suit premises as alleged. This

Defendant denies that it is just or convenient or absolutely necessary for the protection and preservation of the rights or interest of the Plaintiff in respect of the suit premises, the Defendant, their servants or agents or representatives are required to be permanently or otherwise restrained by any order or injunction of this Hon'ble Court from trespassing or encroaching or entering upon the suit premises or any part or portion thereof or bringing any third person in the suit premises or any part or portion thereof or from doing any act or deed or things so as to disturb or interfere in any manner whatsoever with the quiet and peaceful possession or enjoyment of the suit premises by the Plaintiff or to do any act or deed or thing or to transfer the rent receipt in respect of the suit premises to any third person other than the Plaintiff or to dispossess the Plaintiff from the suit premises except through due process of law, as alleged. This Defendant denies that if the injunction as prayed for is not granted in favour of the Plaintiff, he will suffer irreparable loss or injury which cannot be compensated in terms of money as alleged. This Defendant states that there is no case in favour of the Plaintiff for seeking the injunction as prayed, hence, the Plaintiff is not entitled to any reliefs as prayed and the suit of the Plaintiff is liable to be dismissed with cost."

17 Thereafter in the additional Written Statement dated 20th November, 2006 at paragraph Nos.3 and 4 it is stated as under:

- "3. This Defendant states that original tenant was Mrs Roshan Kaikhushroo Bharucha. On her death Shri Ardeshir Framroze Vakil filed the present suit stating that as per the wish of the deceased tenant, which is recorded in her so called declaration dated 26.10.1988 that on her death the original plaintiff viz. Ardeshir Framroze Vakil alone should succeed to the tenancy rights of the suit premises. This Defendant states that by declaration declared was not entitled to transfer tenancy rights and therefore transfer to Ardeshir Framroze Vakil was illegal and unlawful. Thus, Ardeshir Framroze Vakil does not get tenancy right in respect of suit premises. The Original Plaintiff died on 18th January, 2002 pending the above suit and his widow Mrs Khorshed Ardeshir Vakil, the Plaintiff No.1A was brought on record as his heir. This

Defendant states that looking to the averment made in the plaint, Ardeshir Framroze Vakil could not have become the tenant in respect of the suit premises and said Ardeshir Framroze Vakil never resided in the suit premises and also was not residing with the deceased tenant at the time of her death, nobody was residing in the suit premises. The original deceased plaintiff Ardeshir Framroze Vakil being brother of deceased original tenant not entitled as per the Succession u/s 55 and 56 of Indian Succession Act.

4. Without prejudice to the above this Defendant states that on the death of Ardeshir Framroze Vakil, his wife claims tenancy rights. This Defendant states that as Shri Ardeshir Framroze Vakil was never accepted as tenant and this Hon'ble Court not declared him as tenant, as claimed by him, no right, title and interest in the tenancy rights passed to his wife, the present Plaintiff No.1A. It is pertinent to note that Mr Ardeshir Framroze Vakil has not given his residential address in the plaint, when he claimed the tenancy right in respect of suit premises in the suit filed by him. Thus it is very clear that Ardeshir Framroze Vakil was also not residing in the suit premises. The present Plaintiff No.1A has stated that she is residing at 1A, Somerset Place, Bhulabhai Desai Road, Mumbai – 400 026 which clearly proves that she was also not residing in the suit premises. The Defendant No.2 who is joined to the present suit had continued the suit as constituted Attorney of his mother, Mrs Khorshed Ardeshir Vakil. As the said Firoze Ardeshir Vakil now Defendant No.2 continued the suit as Constituted Attorney of Mrs Khorshed Ardeshir Vakil, the Plaintiff No.1A, the said Firoze Ardeshir Vakil could not have been transposed as Defendant No.2, as he continued the suit as Constituted Attorney of Plaintiff No.1A, thus the same person cannot be Plaintiff and Defendant No.2. This Defendant further states that as persons claiming to be tenants have got independent residence and are not residing in the suit premises and therefore cannot claim any protection under the Rent Act and therefore liable to vacate and not entitled to any declaration.”

18 In the additional Written Statement dated 17th September, 2010 in paragraph Nos.5 and 6 it is stated as follows:

- “5. This Defendant states that no case was made out in

order to transpose Defendant No.2 as Plaintiff in place and stead of Plaintiff No.1(A), Mrs Roshan Kaikhushroo Bharucha. It is pertinent to note that when Plaintiff No.1(A) was joined, Mr Firoze Ardeshir Vakil has not made an application for transposing him as Plaintiff. This Defendant states that right to sue does not survive in favour of the present Plaintiff. This Defendant denies that the present Plaintiff as the son and the present Defendant No.2 as the daughter, are the only heirs and legal representatives of Plaintiff No.1(A), succeeded to her estate as alleged.

- 6. This Defendant states that when the original tenant died, the present Plaintiff did not claim any right in the suit premises and thus the present Plaintiff had abundant right, if any, in the suit premises by his conduct and therefore he is not entitled to continue the present suit, as he has no right, cannot claim any declaration of his any right."**

19 It is reading these averments together that Mr Rohan Kelkar submits that there was a clear admission that the said Ardeshir was not accepted as a tenant, and therefore, the Small Causes Court, Mumbai lost its jurisdiction to entertain and try RAE & R Suit No.744/1770 of 1992. In view of these admissions, he submitted, the said suit ought to be dismissed.

20 I do not find that these submissions are well founded. On a conjoint reading of all these averments, I do not find that there is any unequivocal admission whereby the relationship of landlord and tenant has been denied. What is important to note and which is not in dispute before me, is that the tenancy of the original tenant, namely Roshan, has been admitted and never denied by the landlord.

What is stated is that the said Ardeshir, as an heir of the said Roshan is not entitled to claim tenancy in relation to the suit premises. This is simply because the said Ardeshir is claiming to be an heir of said Roshan, and thereby claiming tenancy rights in the suit premises. It is this tenancy which is not accepted by the landlord unless there is an agreement, or a declaration by the Court as contemplated under Section 5(11)(c)(i) of the Rent Act. In fact, the averments in the plaint of RAE & R Suit No.744/1770 of 1992 make it abundantly clear that the said Ardeshir and the said Manek Vakil are being sued as the heirs of the original tenant Roshan. It is in this light that the averments made in all these Written Statements have to be read. If it is read in this context, I do not think that there is any unequivocal admission on the part of the landlord whereby she denies the landlord - tenant relationship, as sought to be contended by the Petitioner herein.

21 In this regard, it would also be apposite to refer to a decision of the Supreme Court in the case of **Babulal Bhuramal & Anr. Vs. Nandram Shivram & Ors.** reported in **A.I.R. 1958 SC 677**. Paragraph 7 of this decision reads thus:

“7. *In a suit for recovery of rent where admittedly one party is the landlord and the other the tenant, Section 28 of the Act explicitly confers on courts specified therein jurisdiction to entertain and try the suit and expressly prohibits any*

other court exercising jurisdiction with respect thereto. Similarly, in a suit relating to possession of premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the courts specified in Section 28 and no other. All applications made under the Act are also to be entertained and disposed of by the courts specified in Section 28 also have the jurisdiction to decide all claims or questions arising out of the Act or any of its provisions. The words employed in Section 28 make this quite clear. Do the provisions of Section 28 cover a case where in a suit one party alleges that he is the landlord and denies that the other is his tenant or vice versa and the relief asked for in the suit is in the nature of a claim which arises out of the Act or any of its provisions? The answer must be in the affirmative on a reasonable interpretation of Section 28. Suit No.483/4400 of the Court of Small Causes, Bombay was admittedly by a landlord. Eviction of the tenant and those to whom he had sublet the premises was sought on the ground that the latter were trespassers and the former was not entitled to remain in possession, that is to say, that none of the defendants to that suit were protected from eviction by any of the provisions of the Act. The suit, in substance, was a denial of the right of the defendants as tenants. The claim of the defendants was that they were protected by the provisions of the Act. In such a suit the claim of the defendants was one which arose out of the Act or any of its provisions and only the courts specified in Section 28 and no other could deal with it and decide the issue."

22 I think that the ratio of this Judgment would squarely apply to the facts of the present case. In the present case also, the tenancy of the original tenant, namely, Roshan is admitted. Even the suit has been filed against the said Ardeshir and Manek Vakil as the heirs of the original tenant. The landlord obviously does not accept either of them as a tenant in absence of an agreement or declaration by the Court as contemplated under Section 5(11)(c)(i) of the Act.

Merely because the landlord does not accept any of the heirs as the tenant, does not mean that the Small Causes Court would be divested of its jurisdiction. In any event, I do not find that in the facts and circumstances of the present case, it can be said that there is any unequivocal and unambiguous admission by the Respondent herein which would entitle the Petitioner herein to seek a Judgment of dismissal under Order XII Rule 6 of the CPC.

23 I must mention here that Mr Rohan Kelkar, learned Advocate for the Petitioner, relied upon several decisions on the question of what is an admission and when a Judgment based on an admission can be passed. I have not referred to them in this order because there is no dispute about the propositions laid down therein. The question that would arise is whether these propositions would apply in the facts of the present case. As I am of the view that there is no unambiguous and unequivocal admission made in the Written Statements (which have been reproduced above) which would entitle the Petitioner to a Judgment of dismissal under Order XII Rule 6 of the CPC, these decisions cited by Mr. Kelkar would not carry his case any further. Hence I havent dealt with each decision individually.

24 For all the foregoing reasons, I do not find that any case is

made out for interfering with the orders passed by the Courts below. In the circumstances, the Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)