

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.437 OF 2016

Shri Abdul Sattar Kulli,
Major r/o. Muzawar Wada,
Near Petrol Pump,
Sanquelim, Goa.

... Petitioner.

V/s.

Smt. Aisham Bi Mamlekar
(since deceased) represented by
her legal representatives

- a) Mr. Shaikh Issuf Adam Mamlekar
s/o late Adam Mamlekar,
Aged 50 years, service.
- b) Mrs. Dilshakbee Issuf Mamlekar
w/o Shaik Issuf Mamlekar
Aged 41 years, housewife,
Both r/o. H.No. 2002, Vasant
Nagar, Sankhali, Goa.
- c) Mr. Shaikh Abdulla Adam
Mamlekar
son of Shaikh Adam Mamlekar,
Aged 44 years, service.
- d) Mrs. Ramiza Bi Shaikh
Alias Mrs. Ramiza Bi Shaikh
Abdulla Mamlekar
w/o. Shaikh Abdulla Mamlekar
Both R/o 2470, Desai Nagar,
Sankhali, Bicholim, Goa.
- e) Mr. Abdul Sattar Adam Mamlekar,
Son of Shaikh Adam Mamlekar,
Aged 45 years, unmarried,
r/o. H.No. 859, Muzawarwada,
Sankhali, Goa.
- f) Mrs. Dilshad Bi Mulla
Alias Dilshad Bi Mamlekar
d/o. Shaikh Adam Mamlekar,
w/o. Mr. M. Aftabodin Mulla,
Aged 44 years, housewife

- g) Mr. M. Aftaboddin Hassan Mulla,
son of Hassan Mulla,
Aged 49 years, business,
Both r/o. H.No.277/4,
Safa Masjid, Shapur,
Bandora, Ponda- Goa.
- h) Mrs. Shamimbi Rahimkhan Pathan
Alias Najbunbi Adam Mamlekar
d/o. Shaikh Adam Mamlekar,
w/o. Mr. Rahimkhan Pathan,
Aged 52 years, housewife.
- i) Mr. Rahimkhan Gafur Pathan
s/o. Mr. Gafur Khan Pathan
Aged 52 years, service,
Both r/o. H. No. 299/1.
Karapur Tisk, Bicholim – Goa.
- j) Mrs. Yasmeen Yacub Mamlekar
w/o. Yacub Mamlekar,
Aged 42 years, housewife,
- k) Mr. Shaik Yakub Adam Mamlekar
s/o. Late Shaikh Adam Mamlekar,
Aged 56 years, business,
Both r/o. H. No.859
Muzarwarwada, Nr. Petrol Pump,
Sankhali, Goa.
(respondent Nos.(a) to (k)
represented by their duly
constituted attorney, Respondent
No.k) Respondents

Shri R.G. Ramani, Advocate for the Petitioner.

Ms. A. Agni, Senior Advocate with Ms. G. Xettigar, Advocate for the Respondents.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 10th November,2017.

PRONOUNCED ON: 1st February, 2018.

JUDGMENT:

The petition challenges the Judgment and Order dated 29/12/2016 passed by the Appellate Board, North Goa, Panaji, filed by the petitioner challenging the Judgment and Order dated 15/01/1997 passed by the Additional Rent Controller-II, Mapusa whereby the appeal filed by him was dismissed with costs and the respondents case for his eviction from the suit premises was allowed with a direction to the petitioner to handover the vacant and peaceful possession thereof to the respondent within a defined time.

2. Shri R.G. Ramani, learned Counsel came to be heard on behalf of the petitioner who submitted at the outset that in the absence of the Lease Deed, there was no jurisdiction vested in the Rent Controller to deal with the eviction proceedings. He adverted to the pleadings and submitted that there were neither any rent receipts on record nor a written Lease Deed. The petitioner had taken a clear plea of Mundkarship in respect of the suit premises and in the absence of any landlord tenant relationship, there was no jurisdiction in the Rent Controller. The learned Appellate Court had not assigned proper reasons and dismissed his appeal. The Appellate Court held that he had failed to prove the issue of Mundkarship, disputed the status of the respondents as his landlord

and by reverse arguments, decided in favour of the respondents. He adverted to the evidence led on record and submitted that the Rent Controller and the Appellate Court on the basis of stray admissions of arrears of rent held against him and his plea of Mundkarship.

3. Shri R.G. Ramani, learned Advocate for the petitioner relied in an unreported Judgment in **Shri Ankush Wadkar v/s. Shri Shaik Nuha Shaikh** (Writ Petition No.213/1986), referred to Section 34 of the Rent Control Act ('the Act', for short hereinafter) requiring the execution of a written Lease and submitted that no evidence could be brought contrary to the terms of Section 91 of the Indian Evidence Act. In the absence of any Lease Agreement and rent receipts, there was no jurisdiction in the Rent Controller in respect of the suit premises. He relied in **Smt. Sumati Naik v/s. Shri Dilip Fatarpekar** [2002(1) Goa L.T. 38], **Smt. Safiabi w/o Shaikh Abdul Razak and others v/s. Smt. Delfina Gomes and others** [2002(2) ALL MR 61], **Delfina Gomes Pinto and others v/s. Safiabi and others** [2004 Goa L.R. 266] and **Janki Vashdeo Bhojwani and another v/s. Indusind Bank Ltd. and others** [(2005) 2 SCC 217] and submitted that the respondent had not at all entered the witness box but her son had entered the box and deposed on the basis of what the mother had stated. The

orders passed by the Rent Controller and the Appellate Board were both required to be interfered with and, therefore, the petition had to be allowed in his favour.

4. Ms. A. Agni, learned Senior Counsel contended at the outset that there were concurrent finding of facts by the Courts below. There was a denial of the title of the landlord by the petitioner which was not bonafide. She relied in **Jai Sing and others v/s. Municipal Corporation of Delhi and another** [(2010)9 SCC 385]. She too adverted to the pleadings and the Written Statement in particular where the petitioner had denied the status of the respondents and referred to the evidence led on record. She distinguished the Judgment in **Sumati Naik**(supra), and relied in **Shri Nestor Augusto Fortunato Gomes v/s. Caetano Ficardo** [1007(2) Goa L.T. 4]. It was further her contention that no ratio was laid down in **Ankush Wadkar** (supra), which merely gave a finding on facts and ultimately remanded the file to the Tribunal to comply with its direction. She further relied in **Krishena Kumar v/s. Union of India and others** [AIR 1990 SC 1782], **Arasmata Captive Power Company Private Limited and another v/s. Lafarge India Private Ltd.** [(2013) 15 SCC 414] and **Vishal N. Kalsaria v/s. Bank of India and others** [(2016)3 SCC 762]. She adverted to the definition of the 'landlord' contained in the Act

under Section 2(i), that of the 'tenant' under Section 2(o) and the issuance of the receipts in terms of Section 17 apart from Section 21 dealing with the bar on eviction of tenants and submitted that Section 34 of the Act was directory. She also referred to Section 29 on the effect of dismissal of petition for ejectment and submitted that it was not the intention of the legislature that Section 34 be construed as mandatory.

5. Ms. Agni, learned Senior Counsel on behalf of the respondents relied in **Raj Prasanna Kondur v/s. Arif Khan and other** [2005(4) Bom.C.R. 383] which was in the context of The Maharashtra Rent Control Act where Section 55 was pari materia to Section 34 of this Act. She placed further reliance in **Shashikant Ramrao Kulkarni V/s. Nirmala Vasantrao Gore** [2011(4) Bom.C.R. 762] and **State Represented by Inspector of Police, Chennai v/s. N.S. Gnaneswaran** [2013(3) SCC 594] and submitted that there were no fetters on the right of the landlord to issue an eviction notice in terms of Section 22 of the Act only because there was no agreement. She further relied in **Shri Srirang Subraia Kamat Tarcar and others v/s. The Administrative Tribunal of Goa at Panaji and others** [1992(1) Bom. C.R. 326], **Anthony v/s. K.C. Ittoop and sons and others** [(2000)6 SCC 394] and **Nutan Kumar and others v/s. IInd**

Additional District Judge and others [(2002) 8 SCC 31] and justified the judgment in **Safiabi** and **Delfina Gomes** (supra). There was no basis for the Writ Court to re-appreciate the matter and therefore, the petition had to be dismissed.

6. Shri Ramani, learned Advocate for the petitioner too referred to the definition of the landlord and tenant apart from Section 34 and submitted that a Written Agreement was mandated by the said provision and which found due support from the judgment in **Ankush Wadkar** (supra), which laid down the law that Section 34 was mandatory. He distinguished the judgments in **Raj Prasanna Kondur, Jai Sing** and **Anthony** (supra) and submitted that there was no written Lease and, therefore, the judgment in **Anthony** (supra) too did not help the respondent's case. There was no evidence on record to show the nexus between the landlord and the tenant and yet there was total dereliction of duties by the Rent Controller and Appellate Board in appreciating the matter in its proper perspective requiring the interference by this Court in exercise of its writ jurisdiction.

7. The Act has been enacted to provide for the control on the rents and evictions, rates of hotels and lodging houses, and for the requisition of vacant buildings. Section 2(i) defines 'landlord'

means a person who, for the time being, is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant. The 'Tenant' is defined under Section 2(o) means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes (in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who had been living with him as a member of his family upto the date of his death and) a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order, or decree for eviction has been made.

8. Section 17 of the Act provides that every tenant shall pay rent within the time fixed by contract or, in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Sub-section (2) reads thus every tenant who makes a payment of rent or advance to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a written receipt for the amount paid to him,

signed by the landlord or his authorised agent. Sub-Section (3) contemplates a situation where the landlord or his authorised agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), or does not accept any rent tendered by a tenant, the tenant shall remit the rent to the landlord by money order after deducting the money order commission and continue to remit any rent which may subsequently become due in respect of the building in the same manner until the landlord signifies by a written notice to the tenant his willingness to accept the rent and deliver a receipt as required by sub-section (2). In sum and substance, Section 17 mandates the tenant to pay rent and his entitlement to obtain the receipt from his landlord in respect of the amount so paid and the remedy to deposit the rent by money order in case there is a failure or neglect by the landlord to accept the rent. In other words, the tenant is not remedyless in the event the landlord refuses to accept the rent or to issue the receipts.

9. Section 21 deals with the bar on eviction of tenants and opens with the non-obstante clause that notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Chapter. It is circumscribed by the proviso that where the tenant denies the title

of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim is bonafide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the court may pass a decree for eviction on any of the grounds mentioned in this Chapter even though the court finds that such denial does not involve a forfeiture of the lease or that the claim is unfounded.

10. Section 22 of the Act provides the grounds of eviction which are available to the landlord by invoking the jurisdiction of the Controller, who shall after giving the tenant a reasonable opportunity of showing cause, decide the application accordingly. However, in terms of Sub-section 3 no order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (2), if the tenant, within thirty days of the service of the summons of proceedings on him, pays or tenders to the landlord or deposits with the Controller the arrears of rent due by him upto the date of such payment, tender or deposit together with the costs of the application. It is circumscribed by the proviso that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any building he again makes a default in the payment of rent of that building for a total period of three months. Sub-section 4 which is the highlight of

Section 22 provides that in any proceeding falling under clause (a) of sub-section (2), if the controller on an application made to it is satisfied that the tenant's default to pay, tender or deposit rent was not without reasonable cause, he may, notwithstanding anything contained in sub-section (3) or in section 32, after giving the parties an opportunity of being heard, give the tenant a reasonable time, to pay or tender the rent due by him to the landlord upto the date of such payment or tender and on such payment or tender the application shall be rejected.

11. The next provision which is necessary and relevant for the consideration of the petition and having a material bearing is Section 34 which deals with the execution of the Lease Deed of a building. It opens with the non-obstante clause and reads thus "Notwithstanding anything contained in clause (c) of sub-section (1) of section 3 or any other law for the time being in force a Lease Deed shall be executed between the landlord and the tenant whenever a building is let out after this Act comes into force." In the backdrop of all these relevant provisions and the judgments relied upon by Shri R.G. Ramani, learned counsel for the petitioner and Ms. A. Agni, learned Senior Counsel for the respondents, I would address myself on the legality of the order passed by the Courts below and whether any interference is called for with the

impugned orders.

12. **Ankush Wadkar** (supra), challenged the order of eviction made by the Rent Controller, Margao and the order made by the Administrative Tribunal dismissing the appeal. In the brief facts, an application under Section 22(2)(a) of the Act was instituted against the petitioner for non-payment of rent and the notice was issued to the petitioner calling upon him to pay the arrears within thirty days. The petitioner by his reply contested the claim of the respondent no.1 and denied that he had ever paid any rent to him and took a specific plea that he was a mundkar in respect of the premises and therefore protected by the provisions of the Mundkar Act. On initiation of the proceedings under Section 22(2)(a), he took up a similar plea compelling the Rent Controller to hold that once he adopted the stand of being a mundkar and denied the title of the respondent and therefore ordered his eviction under Section 21 of the Act. The Controller on the basis of the evidence held that the petitioner was a tenant in respect of the room of the respondent and as he had taken a plea that he was a mundkar denying the tenant-landlord relationship as also the payment of the rent, made an order directing his eviction under Section 21 of the Act. His appeal did not find favour with the Appellate Board which endorsed the findings that as there was a

denial of the title of the petitioner, he was rightly ordered to be evicted. During the pendency of the proceedings the petitioner had moved the Mamlatdar of Margao for a declaration that he was a mundkar, who however found on the basis of the evidence before him that he was not a mundkar.

13. In **Ankush Wadkar** (supra), the learned Single Judge considered Section 34 of the Act in the light of the Act being brought into force w.e.f. 01/10/1969 and observed that a Lease Deed shall have to be executed between the landlord and tenant whenever the building is let out on coming into force of the Act. It was contended on behalf of the petitioner that no Lease Deed was produced on record, neither the Controller nor the Tribunal could have rendered a finding that he was a tenant of the respondent and even conceding that he failed to obtain a declaration of mundkarship, the onus still lay on the respondents to prove that he was a tenant and which could be done only by producing the Lease Deed. It was also contended on behalf of the petitioner that if he was held to be a trespasser, the Controller would have no jurisdiction to make any order against him under the Act and the respondents would have to approach the Civil Court for eviction of the petitioner. The learned Judge found merit in this contention and held that by operation of Section 34 of the Act after coming

into force of the Act, a Lease Deed shall be executed between the landlord and the tenant. It was observed that though his stand as a mundkar was rejected it would not ipso facto confer any jurisdiction on the Controller to evict the petitioner and much less under Section 21 of the Act if he is held not to be a tenant.

14. In **Ankush Wadkar** (supra), the learned Judge found from the material before him that there was no written Deed of Lease and therefore failed to appreciate how the Courts below could hold that the petitioner was required to bring in negative evidence. In that view of the matter, the learned Single Judge held that the Tribunal which is not an appellate authority being a court of fact ought to render a finding firstly as to when if at all the respondent proves that the lease in favour of the petitioner commenced and secondly the effect of the non-existence of Lease Deed in terms of Section 34 of the Act and in that view of the matter remanded the matter to the Tribunal to decide the eviction appeal afresh. A detailed reference is made to this Judgment since it has been the contention on behalf of Ms. A. Agni, learned Senior Advocate that no ratio had been laid down in **Wadkar** (supra), that the learned Judge had discussed the facts and given his finding while ultimately remanding the matter to the Tribunal for a decision afresh.

15. With respect the judgment in **Wadkar** (supra) does not lay down any specific ratio on its proper and indepth reading as otherwise there was no basis for the learned Judge to relegate the case to the Rent Tribunal. There was a clear finding in **Wadkar** (supra) that Lease had come into force after the coming into force of the Act. A reading of paragraph 8 of the said judgment would indicate that no ratio was laid down in the said case. If at all the contention of Shri R.G. Ramani, learned Advocate is to be accepted that the said judgment laid down a proposition of law that Section 34 was mandatory; a reading of paragraph 11 thereof would indicate that the learned Judge had not opined on the status of the petitioner or the mandatory effect of Section 34 of the Act. The fact that the learned Judge remitted the matter back to the Tribunal to decide the eviction appeal afresh would also fortify a conclusion that no proposition of law as canvassed by Shri R.G. Ramani, learned Advocate for the petitioners was laid down.

16. In **Safiabi** (supra), the question involved in the petition was whether the Additional Rent Controller III was right in passing the decree of eviction under Section 22(2)(g) of the Act and the Administrative Tribunal, Goa, was right in confirming the same by

the Judgment and Order dated 18th August 1997. The respondents had issued a notice calling upon the petitioners to pay the arrears of rent. Thereafter, the petitioners filed an application under Section 8A of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, contending that they were mundkars of the house and which claim was rejected finally on 23rd July 1987. The respondents filed an application for eviction on 21/12/1981 on the ground of arrears of rent and under Section 21 read with Sections 22(2)(g) of the Act for the denial of their title and being not bonafide. The Additional Rent Controller-III did not accept the ground of arrears of rent but concluded that as the petitioners had filed an application under Section 8A of the Mundkar Act, there was a denial of the title of the respondents which was not bonafide and passed the decree under Section 22 (g) of the Act. The Administrative Tribunal confirmed the said findings in appeal. It was held that there was no finding recorded regarding the relationship of landlord and tenant between the parties. Both the Authorities had virtually proceeded on the assumption. It held that mere claiming a right to reside in a mundkarial house, did not amount to a denial of title of the landlord within the meaning of Section 21 r/w. Section 22(g) of the Act.

17. **Delfina Gomes Pinto** (supra), was the Letters Patent

Appeal against the Order passed by the Single Judge in Safiabi (supra). The predecessor of the appellant had issued a notice to the respondent no.1 demanding arrears of rent in respect of the suit tenement. The proceedings were filed on the ground of non-payment of rent and that the suit tenement was required for the purpose of demolition and re-construction. The respondents in their reply took a plea that they were mundkars of the suit tenement and paying ground rent and they further pleaded that the Rent Controller had no jurisdiction to entertain the eviction application. They prayed that a preliminary inquiry be held in the matter and accordingly an inquiry was held under Section 21 of the Act to find out whether a denial of title of the landlord by the respondents was bonafide or not. The Rent Controller held that the claim of the respondents claiming mundkarship was not bonafide within the meaning of Section 21 of the Act whilst holding that there was a landlord-tenant relationship between the parties and ordered eviction of the respondents. The Respondent no.1 had filed a mundkar case against the predecessor of the appellants and an ex-parte injunction was granted restraining him from interfering with the execution of repairs being carried out to the suit tenement. At a later date the Mamlatdar, on examining the evidence held that the respondents were not mundkars in respect of the suit tenement and dismissed their application. The

respondents preferred an appeal before the Tribunal being aggrieved by the order of the Rent Controller but the Tribunal dismissed the appeal precipitating the Writ Petition under Article 226 and 227 of the Constitution of India allowed by the learned Single Judge.

18. In **Delfina Gomes Pinto** (supra), it was contended on their behalf that the plea of mundkarship taken by the respondents amounted to an express denial of the appellant's title and, therefore, the Rent Controller was entitled to hold an enquiry under the Act in order to decide whether the denial was bonafide or not and to recorded a finding to that effect. If the Rent Controller recorded a finding that the denial was bonafide, then the landlord was entitled to sue for eviction of the tenant in a Civil Court and the Civil Court could evict the tenant on any of the grounds under Section 22 or 23 of the Act. Their Lordships formulated a question as to whether pleading the status of mundkar would amount to the denial of title of the landlord and would attract the proviso to Section 21 warranting the Rent Controller to hold an inquiry and record a finding whether denial or claim is bonafide? Secondly considering the finding by the learned Single Judge that the Rent Controller had not decided the issue whether there is prima facie relationship of landlord and tenant between the parties and

whether the matter has to be remanded to the Rent Controller for a finding and thirdly what was the appropriate order to be passed in the proceedings, considering that the appellants had filed an application for eviction on the ground of non-payment of rent and seeking possession for re-construction? Their Lordships considered Section 21 and observed therefrom that the plea raised by the tenant must amount to a denial of the title of the landlord or claim a right of permanent tenancy and found from the fact that they were not on issue of a claim of right of permanent tenancy. The limited issue was whether there was a denial of the title of the landlord. The Rent Controller then had recorded a finding whether such denial was bonafide in which event the Civil Court could pass a decree for eviction.

19. In **Delfina Gomes Pinto** (supra), the Division Bench considered the definition of the landlord which had an extended meaning and included not only the owner of the land but by a deeming fiction any person entitled to receive the rent of any building. Therefore, for a respondent in a proceedings to fall within the expression 'denies the title of the landlord' there must be a denial, that such a person who is receiving or is entitled to receive rent, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or

receiver. Their Lordships found that the respondents did not deny the title of the landlord. What the respondents set up was a right conferred on them by Statute under which a person paying rent for area occupied also fell within the ambit of the provisions of the Act. It was found that the mundkar application was rejected and the only dispute, therefore, was as to for what purpose the amount was payable, had been answered in favour of the appellants. In their opinion, a mere plea of setting up a status would not amount to a denial of title of the landlord and, therefore, did not interfere with the finding of the learned Single Judge.

20. **Gurudas Salgaonkar and others** (supra), challenged the order dated 03/01/2014 passed by the Appellate Board in the Rent Appeal challenging the Judgment and Order dated 30/07/2003 passed by the Deputy Collector and Rent Controller. The respondent was the applicant in the eviction case while the petitioners were the respondents therein. The respondent had filed an application under 22(a) and 22(b) (i) and (ii) of the Act claiming to be the owner of a room which was leased out to the original petitioner for the purpose of using the same as a motor workshop. The eviction case was precipitated against him for non-payment of rent but which was dropped as the respondent deposited the arrears of rent. Subsequent thereto he had paid the rent till

September 1987 and as there was a failure and neglect to pay the rent and that he had sublet the suit premises and also changed its user, was the relief sought for his eviction from the the suit premises. The original petitioner Gurudas took a plea that there was no written lease with the respondents as required under Section 34 of the Act which came into force with effect from 30/09/1969 whereas he had started occupying the suit premises as from 01/07/1975, on a monthly payment of the license fees of ₹125/- and, therefore, the provisions of the Act were not applicable to the parties in the absence of a written Lease. The petitioner had also taken a plea that though he was regular in payment of the lease fees, the respondent never issued the receipts to him and although he was in error due to wrong legal advise, he had paid the entire license fees from June, 1982 to 1987. There was no sub-letting nor change of user of the premise and, therefore, the respondent was not entitled to his eviction.

21. In **Gurudas Salgaonkar and others** (supra), the respondent examined himself, the petitioner examined two witnesses while the Rent Controller by the Judgment and Order dated 30/07/2003 observed that considering Section 34 of the Act and that no lease Agreement had been executed, no documentary evidence was produced to prove the claim seeking eviction, the

arrears of rent and that there was a failure to prove the grounds of sub letting and change of user and dismissed the application for eviction giving rise to the appeal at his instance. The Appellate Board allowed the appeal quashing and setting the said order and allowing the application for eviction with a direction to the petitioner to vacate the suit premises and put the respondent in possession of the building within a period of one month from the date of the order. It was contended on behalf of the petitioner that as a written Lease Deed was mandatory in terms of the Section 34 of the Act and as admittedly there was no Lease Agreement, the jurisdiction of the Rent Court could not be invoked and pressed for the petition being admitted and to quash the impugned order. It was contended on behalf of the respondent that the Act did not apply to any newly constructed building for a period of 15 years from the date of its completion and hence there was no need of any written Lease and even otherwise there would be an absurdity if strict interpretation of Section 34 of the Act is made. Besides, the petitioner had earlier already taken the benefit under the Act in the earlier Eviction case and, therefore, they could not turn around and allege that they were not tenants.

22. In **Gurudas Salgaonkar and others** (supra), the learned Single Judge of this Court considered the scope and extent of

Section 34 of the Act that came into force as from 01/10/1969 and, therefore, considering that the petitioner started occupying the suit premises as from June 1975, the execution of the Lease Deed was mandatory. It considered the Judgment in Ankush Wadkar (supra), where it was observed by another Single Judge of this Court that a reading of Section 34 made it clear that once the provisions of the Act are in force the Lease Deed shall have to be executed between the landlord and the tenant whenever a building is let out after coming into force of the Act. The learned Judge in this case was seized of the fact that in the absence of the Lease Agreement a party is not a tenant and the Rent Controller cannot make an order of eviction against him who was equally cognizant of the facts that previously the respondent had filed an eviction case against the petitioner on the ground of non-payment of rent under the provisions of the Act in which the petitioner had not only filed the written statement within 30 days of the receipt of the summons but had deposited the rent claimed resulting in the withdrawal of the case. The learned Singled Judge further did not render any findings inasmuch as it observed in paragraph 14 that the point of the requirement or non requirement of the written Lease in the present case was a serious question of law, the decision on which would have a far reaching effect since according to the learned Senior Counsel for the respondent there would be

absurdity if strict interpretation of Section 34 of the Act was done and in that view of the matter issued Rule and stayed execution and operation of the impugned order. This judgment with respect, therefore, does not lay down any proposition of law.

23. In **Janaki** (supra), the respondent Bank had extended loan facilities to the 6th and 7th Respondents which were run by the respondents No.2 to 5 and to the extent of ₹22 crores in one case and ₹3.75 crores in the other. The Respondents No.2 to 5 were also guarantors and some of the properties belonging to the parties had been mortgaged to the bank. Though initially, Plot No.38 in Koregaon Park, Pune was also stated to have been mortgaged to the bank, it was later admitted by the bank that the plot was not mortgaged to it. Since, the loan was not repaid, the respondent-bank filed a suit before the Debt Recovery Tribunal against the 2nd and 7th respondents and another against the respondent Nos.2 to 6 and another. The Tribunal had allowed the husband of the appellant no.2 / Power of Attorney holder to appear in the witness box on their behalf and which was opposed by the respondent Bank. In that backdrop, the Apex Court considered Order III Rules 1 & 2 CPC which empowers the Power of Attorney holder to act on behalf of the principal and in their view observed that the word "acts" employed in Order III, Rules 1 and 2 CPC

were confined only in respect of "acts" done by the Power of Attorney holder in exercise of the power granted by the instrument. The term "acts" would not include depositing in place and instead of the principal. In other words, if the Power of Attorney holder rendered some "acts" in pursuance to the power of attorney, he may depose for the principal in respect of such acts, but he could not depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal could have a personal knowledge and in respect of which the principal is entitled to be cross-examined. The Apex Court further went on to hold at paragraph 14 that having regard to the directions in the order of remand by which this Court placed the burden of proving on the appellants that they had a share in the property, it was obligatory on the part of the appellants to enter the box and discharge the burden. Instead, they allowed Mr. Bhojwani to represent them and the Tribunal erred in allowing the Power of Attorney holder to enter the box and depose instead of the appellants. Thus, the appellants had failed to establish that they had any independent source of income and they had contributed for the purchase of the property from their own independent income. The Apex Court considered the judgment in **Humberto Luis & Anr. Vs. Floriano Armando Luis & Anr.** [2002 (2) Bom.C.R.754] on which reliance was placed

by the Tribunal and where the High Court had taken a dissenting view and held that the provisions contained in Order III Rule 2 of CPC cannot be construed to disentitle the power of attorney holder to depose on behalf of his principal. The High Court further held that the word "act" appearing in order III Rule 2 CPC takes within its sweep "depose". The Apex Court further did not find agreement with the view taken by the Bombay High Court and held that the view taken in the said case cannot be said to have laid down the correct law and accordingly overruled.

24. In **Sumati Naik** (supra), the respondent No.1 filed an application for her eviction on the ground that his father had leased out two rooms of the house to her and she had defaulted in the payment of rent since May, 1981 and inspite of the notice served upon her, no payment was made in relation to the arrears as required under the law. She sought to dispute the claim of the respondent no.1 on the premise that she was the mundkar of the house located in the property belonging to Fabrica and that she had never paid any rent to the respondent No.1. She denied his case that she was the tenant of the respondent No.1. Therefore, the matter was proceeded under section 21 of the Act and on account of the denial of title, she was called upon to establish the bonafide of her denial by leading necessary evidence prior to the evidence of

the respondent No.1. She examined herself and two more witnesses while the respondent No.1 examined himself and another and the Rent Controller by its Order held that the denial of title of the respondent No.1 as a landlord of the premises was not bonafide and, therefore, by exercising powers under Section 22(2)(g) of the Act, ordered her eviction from the premises which was challenged before the Administrative Tribunal and dismissed by the impugned order.

25. In **Sumati Naik** (supra), it was contended on her behalf that the Rent Controller and the Tribunal had adopted a wrong approach while considering the matter in controversy and analysed the materials on record assuming that the burden of proving the denial of title to be bonafide was upon the petitioner without considering and overlooking the basic requirement of law which required the respondent No.1 to establish the existence of the relationship of tenant-landlord between himself and the petitioner. It was contended on behalf of the respondent no.1 that the Rent Controller and the Tribunal after a detailed consideration of the entire material on record had held that the denial of the title of the respondent no.1 as being the landlord of the suit premises by the petitioner was not bonafide and that itself disclosed that both the authorities held that there existed a relationship of tenant and

landlord between the petitioner and the respondent No. 1. It was also contended that the finding was based on the assessment of the materials on record and a perusal of the evidence recorded before the Rent Controller clearly disclosed that the findings arrived at by the authorities could in no way be held either perverse or arbitrary. Even after the order of eviction was confirmed by the Administrative Tribunal, the petitioner had filed a suit before the Civil Court without succeeding to obtain any injunctive relief against the respondent No.1 and even approached the Appellate Court against the order of the trial Court but could not succeed in getting any favourable order. Therefore, it was not permissible for the petitioner to seek the intervention of this Court in exercise of its powers under Article 227 of the Constitution of India.

26. In **Sumati Naik** (supra), the learned Single Judge held at paragraph 5 that there was no dispute in the exercise of power under Article 227 of the Constitution of India, but the High Court was not empowered to appreciate the evidence on record and to arrive at a finding different from the finding arrived at by the authorities merely because a different view could be taken on an assessment of the entire evidence. The point which was sought to be raised by the petitioner was not relating to the incorrect finding arrived at by the authorities on the basis of the evidence on record

but relating to the approach of the Courts below while considering the dispute between the parties and the manner in which the same was considered. The point which was sought to be raised in the petition was whether the Rent Controller could have held the denial of title of the landlord claimed by the respondent No.1 in respect of the suit premises was bonafide or not, without first addressing itself to the point as to whether there exists a relationship of landlord and tenant between the respondent No.1 and the petitioner respectively.

27. In **Sumati Naik** (supra), the learned Single Judge on a perusal of the judgment of the Rent Controller observed that there was not even an attempt on the part of the Rent Controller to apply his mind to the fact whether there ever existed a relationship of landlord and tenant between the respondent No.1 and the petitioner, before considering the issue of lack of bonafide. On going through the records, the learned Single Judge found that the Rent Controller did not at all analyse the evidence produced by the respondent No.1 and only on the basis of the analysis of the evidence produced by the petitioner held that she had failed to establish that the suit premises were constructed with her own expenses and with the permission of the Chapel Committee. Simultaneously, the Rent Controller had also concluded that the

petitioner had failed to establish that there exists no relationship between the parties as that of tenant and landlord.

28. In **Sumati Naik** (supra), the learned Single Judge considered Section 21 of the Act pursuant to which the tenant could not be evicted from the leased premises except in accordance with the provisions of Chapter V of the Act. The proviso to Section 21 provides that where the opponent tenant denies the title of the landlord, the Controller shall decide whether the denial is bonafide and record a finding to that effect and, thereafter eviction of the opponent tenant through a Civil Court may follow and the Civil Court may then pass a decree for eviction on any of the grounds mentioned in the said Chapter V of the Act even though, the Civil Court finds that such a denial does not involve forfeiture of the lease. In other words, if the Controller finds the denial of the title of the applicant landlord to be bonafide then the landlord had to seek eviction of the opponent tenant through a Civil Court. However, if the Rent Controller finds the denial to be not bonafide, certainly the landlord could seek eviction of the opponent tenant under the provisions contained in section 22(2)(g) of the Act.

29. In **Sumati Naik** (supra), the learned Single Judge considered the expression "tenant" defined in Section 2 (p) and the landlord as

defined in Section 2(j) of the Act viz as viz the right of the landlord who seeks the eviction of his tenant under Section 22(1) of the Act. In that context, it was observed that the eviction by the Court of the Rent Controller could be sought of a person who can qualify to be a tenant within the meaning of the expression "tenant" under the said Act and by a person who can qualify to be a "landlord" within the meaning of the said expression under the said Act and not otherwise. Therefore, it was necessary for the Rent Controller in order to assume jurisdiction to entertain the application for eviction of the opponent, that there must be a relationship of landlord and tenant between the applicant and the opponent. Therefore, when the Rent Controller decides to proceed to hold an enquiry on the ground of denial of title of the landlord by the opponent, the Rent Controller has of necessity primarily to satisfy himself that, prima facie, there exists a relationship of landlord and tenant between the parties to the proceedings. In the facts of the case, on perusal of the impugned Judgment passed by the the Tribunal as well as the Rent Controller, the learned Single Judge observed that it was apparent that both the authorities had not at all bothered to find out whether prima facie there exists the relationship of the landlord and the tenant between the respondent No.1 and the petitioner. The entire exercise had been to find out whether the denial of the title of landlord of the respondent No.1 by the petitioner is bonafide

or not ignoring the basic issue regarding the existence or non-existence of the relationship of the landlord and the tenant between the parties.

30. In **Sumati Naik** (supra), the learned Single Judge proceeded to examine the records in the proceedings before the Rent Controller and the Tribunal and observed that the fact that the petitioner was in occupation of the premise, was not in dispute. What was relevant for the decision was the existence of the relationship of landlord and tenant between the respondent No.1 and the petitioner. The absence of the name of the petitioner in the Record of Rights could not be of any assistance to decide the issue. The testimony of the respondent No.1, therefore, on the whole did not in any manner help to decide about the existence of the relationship of the landlord and the tenant between the parties. It ultimately held that as seen from the material on record did not disclose the existence of such relationship and hence the findings arrived at by the Courts below were apparently arbitrary and perverse and were not borne out from the record and quashed and set aside the Judgment of the Rent Controller and the Tribunal dismissing the application for eviction of the petitioner by the respondent No. 1.

31. **Jai Sing** (supra), held that the High Court under Article 227 of the Constitution of India has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of the judgment of a Court, or Tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. It quoted the Judgment in **The Estralla Rubber Vs. Dass Estate (P) Ltd.**[(2001)8 SCC 97] where the scope and ambit of Article 227 of the Constitution

was observed in paragraph 6 thus : "The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of the fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

32. In **Jai Sing** (supra) the Hon'ble Apex Court considered the nature and scope of the power of the High Court under Article 227 of the Constitution of India being supervisory and observed at para 15 as below.

"15..... Undoubtedly the High Court, under

this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

33. **Nestor Gomes** (supra), had filed two separate applications against the respondent no.1 for eviction on the ground of arrears of rent and bonafide requirement. The respondent no.1 raised

objections disputing the landlord-tenant relationship and alternatively, the quantum of rent which was required to be deposited under Section 32 of the Act. The Additional Rent Controller ordered an enquiry into the existence of landlord-tenant relationship in order to decide whether the respondent no.1 was required to deposit the rent under Section 32 of the Act. The learned Single Judge held at Paragraph 6 that when the landlord-tenant relationship is denied, the burden of proof to prove that the denial is bonafide is on the tenant and it is the tenant who should be asked to lead evidence first. What happened in the applications under consideration was exactly the opposite, that is to say the landlord was asked to lead evidence first. After the landlord, namely, the petitioner, had closed his evidence, the respondent no.1 filed his applications that a regular enquiry was conducted in the matter and a full fledged enquiry be held instead of summary enquiry which was being conducted. The Additional Rent Controller accepted the said contention of the respondent no.1 and held that a regular enquiry was required to be conducted to determine whether the denial of the claim of the title of the landlord was bonafide or otherwise. After recording evidence of the respondent no.1, the Additional Rent Controller did not give any opportunity to lead evidence in rebuttal to the petitioner and relying upon the evidence of the petitioner, which had been recorded prior to the

order, the order was passed that the denial of landlord-tenant relationship was bonafide and the petitioner should approach the Civil Court for redressal of his grievances.

34. In **Nestor Gomes** (supra), the learned Single Judge held that in a case of denial of landlord-tenant relationship, the burden is on the tenant denying the said relationship and it is the tenant who has to start evidence first and the landlord has to lead evidence in rebuttal. In following the reverse procedure which seems to have been approved by the Administrative Tribunal, there was miscarriage of justice and the petitioner was certainly prejudiced by adopting such type of procedure, especially when the Additional Rent Controller by an Order dated 03/09/1983 had come to the conclusion that a regular enquiry was required to be conducted into whether the denial/ claim to the title of the landlord was bonafide or otherwise. The Administrative Tribunal, therefore, erred in law in not remanding the matter to the Additional Rent Controller for the purpose of granting proper opportunity to the petitioner to lead evidence in rebuttal and under the circumstances held that the order of the Administrative Tribunal as well as that of the Additional Rent Controller was liable to be set aside.

35. In **Krishena Kumar** (supra), the Hon'ble Apex Court

observed that the doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required." It further held at paragraph no.19 that the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consist of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury "the concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi

in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they are the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

36. In **Arasmeta** (supra), the Hon'ble Apex Court reiterated whatever held in [Ambica Quarry Works v. State of Gujarat and others](#) [(1987) 1 SCC 213], and stated that the ratio of any decision must be understood in the background of the facts of that case. The case is only an authority for what it actually decides, and not what logically follows from it.

30. It quoted Lord Halsbury in the case of Quinn (supra) 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."

37. The Apex Court further referred to the Judgment in **Union of India v. Amrit Lal Manchanda and another** [(2004) 3 SCC 75], where it has been stated at paragraph 15 that "observations of courts are neither to be read as Euclid's theorems nor as provisions

of the statute and that too taken out of their context. The observations must be read in the context in which they appear to have been stated. 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. Last but not the least the Apex Court reproduced the following words of Lord Denning which had become locus classicus: -

“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.”

38. In Vishal Kalsaria (supra), the respondents no.4 and 5 had availed a loan from the respondent no.1 Bank against the mortgage of several properties belonging to them, including the property in which the appellant was allegedly a tenant. They failed to pay the dues within the stipulated time and thus in terms of the SARFAESI Act their account became a non-performing asset. Consequently, the respondent no.1 Bank served notice on them under Section 13(2) of the Act but they failed to clear dues. The Bank filed an

application before the Chief Metropolitan Magistrate, Mumbai under Section 14 of the Act for seeking possession of the mortgaged properties which were in actual possession of the appellant. The Chief Metropolitan Magistrate allowed the application and directed the Assistant Registrar to take possession of the secured assets. The respondent no.4 served a notice on the appellant, asking him to vacate the premises in which he was residing within 12 days from the receipt of the notice and fearing eviction filed a suit before the Small Causes Court and obtained an ad-interim order of injunction restraining the respondent no.4 from obstructing the possession of the appellant over the suit premises. On the basis of the said order, the appellant filed an application as an intervenor seeking stay against the execution of the order passed by the Chief Metropolitan Magistrate who dismissed the application observing that in **Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.** [(2014) 6 SCC 1], the Apex Court had held that alleged tenant himself produced proof of execution of a registered documents in his favour by the lessor and where he did not produce proof of execution of a registered instrument in his favour and instead relied on an unregistered instrument or oral Agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, would have to come to the conclusion that the alleged tenant

was not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.

39. In **Vishal Kalsaria** (supra), the broad point which required attention and consideration before the Apex Court was whether a 'protected tenant' under The Maharashtra Rent Control Act, 1999 could be treated as a lessee, and whether the provisions of the SARFAESI Act would override the provisions of the Rent Control Act. The Hon'ble Apex Court observed at para 26 of that the Rent Control Acts have been enacted by the different State Legislatures to secure the rights of the weaker sections of the society, viz., the tenants and the Rent Control laws were basically designed to protect tenants because scarcity of accommodation is a nightmare for those who own none and if evicted, will be helpless. The Apex Court observed that the protection of tenants against unjust eviction become more pronounced when examined in the light of Section 15 of the Act which provides that no ejectment is ordinarily to be made if the tenant pays or is ready and willing to pay standard rent and permitted increases. Section 15 thus thereby restricts the right of a landlord to recover possession of the tenanted premises from a tenant. At the same time, the Apex Court was not oblivious of the fact that in the factual matrix there

was a necessity to understand the objectives of the two legislations namely SARFAESI Act and the Rent Control Act. There was an interest of the bank in recovering the Non Performing Asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Act, more so when the two legislations, i.e. the SARFAESI Act and the Rent Control Act operate in completely different fields. While SARFAESI Act is concerned with Non Performing Assets of the Banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. The Apex Court at para 33 reiterated the well settled position of law that a word or sentence cannot be picked up from a judgment to construe that it is the ratio decidendi on the relevant aspect of the case. It is also a well settled position of law that a judgment cannot be read as a statute and interpreted and applied to the fact situations. It further held at paragraph 37 that it was a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant

cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. It ultimately held that if the interpretation of the provisions of SARFAESI Act as submitted by the learned Senior Counsel appearing on behalf of the Banks is accepted, it would not only tantamount to a violation of the rule of law, but would also render a valid Rent Control statute enacted by the State Legislature in exercise of its legislative power under Article 22(A) of the Constitution of India useless and nugatory and in that view of the matter set aside the impugned Judgment and Order passed by the High Court / CMM.

40. In **Shashikant Ramrao Kulkarni** (supra), the respondent/plaintiff has instituted a suit claiming recovery towards the arrears of rent in the amount of ₹39,000/- against the defendant. It was the plaintiff's plea that the defendant was a tenant in respect of the residential premises of which the monthly rent was fixed at ₹1500/- and occupied by the defendant from December 2006. However, since May 2007 for a period of 26 months the defendant had failed to pay the rent and which was claimed by the plaintiff. The defendant / petitioner had opposed the suit disputing the status of the plaintiff as the owner of the suit premises, disputing the relationship of landlord and tenant and presented an application

under Order VII Rule 11(d) CPC for rejection of the plaint on the premise that in view of the provisions of Section 55 of the Maharashtra Rent Control Act,1999, an Agreement in respect of payment of rent was compulsory required to be in writing and be registered and the consequence of failure to record the Agreement in writing and getting the same registered would lead to penal consequences. The Plaintiff therefore on the basis of an illegal Agreement could not raise a claim for recovery of rent and the plaint was liable for rejection. The learned Single Judge considered the provisions of Order VII Rule 11(d) CPC in the matter of rejection of plaint where the suit appeared from the statement in the plaint to be barred by any law. The learned Single Judge considered Section 55 of the Maharashtra Rent Control Act,1999, which mandates that the tenancy Agreement for leave and license or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, shall be in writing and shall be registered under the Registration Act, 1908. The responsibility of securing registration of the Agreement was on the shoulders of the landlord and in the absence of written registered agreement, the contention of the tenant about the terms and conditions, subject to which premises had been given to him by the landlord on leave and licence or had been let to him, shall prevail, unless proved otherwise.

41. In **Shashikant Ramrao Kulkarni** (supra), reliance was placed in **Shanta Tukaram Kasare Vs. Milton Gonsalves & others** [2005 (3) Bom.C.R.]. It was contended that Section 22 of the said Act also mandates an Agreement to be in writing while creating a service tenancy. The tenancy created in favour of the tenant was not in consonance with Section 22(1) of the Act, and as such, an objection was raised as regards the tenability of the application before the competent authority seeking eviction of the tenant, as contemplated by Section 22(2) of the Act, which was upheld by this Court. The petitioner contended that a parallel could be drawn in respect of the Agreement required to be entered into with the tenant, as contemplated by Section 55 and creation of service tenancy as contemplated in Section 22(1) of the Act. As the Court has held in **Shanta Tukaram Kasare** (supra), that the contravention of provisions of Section 22(1) of the Act leads to the consequences of dismissal of a plaint under Section 22(2) of the Act, a similar parallel could be drawn in respect of a claim raised in the present matter for recovery of rent based on tenancy Agreement, which, according to the defendant, was not in consonance with Section 55(1) of the Act and the suit would have to be held as not maintainable. The learned Single Judge did not find the Judgment in **Shanta** (supra), applicable to the case and no parallel could be drawn between Section 22 and Section 55 of the

Act and instead referred to the Judgment in **Raj Prasanna Kondur** (supra), where it was held that the right of a landlord under Section 24 to get a person evicted from the premises on expiry of license is not curtailed in any manner on account of absence of the Agreement being in writing or registered, as contemplated by Section 55 of the Act. Section 55 of the Act nowhere provides for "any other consequence" for failure on the part of the landlord to get the Agreement drawn in writing or getting the same registered, except those provided in sub-section (3) of Section 55. In other words, on account of failure of the landlord to get the Agreement registered, he could not be precluded or prohibited from presenting a plaint in Civil Court seeking recovery of rent. Section 55 of the Act nowhere puts an embargo in respect of entertainability of any civil action by the landlord either for recovery of rent or for recovery of possession of the tenanted premises on account of his failure to secure an Agreement of tenancy in the form as contemplated by Section 55(1) of the Act. In that view of the matter it was held that the Trial Court was justified in rejecting the application tendered by the petitioner-original defendant seeking rejection of the plaint.

42. In **Raj Prasanna Kondur** (supra), the respondent Nos.1 and 2 as the owners of the suit premises had permitted the

petitioner to use the same for residential purposes since 1st April 2001 and an Agreement in that regard was executed by the parties on 3rd April 2001 for a period of 11 months with an option to the petitioner to extend the said Agreement for three further periods of 11 months each, subject to the license fees being increased by the petitioner after the second period of 11 months, and further that the petitioner as well as the respondents/owners were to have the right to terminate the Agreement by giving a three months' notice to each other. The said Agreement was lodged for registration by the respondents on 31st December, 2002. The respondents served a notice dated 13th January, 2003 which came to be served upon the petitioner by the respondents asking him to vacate the premises on 1st February, 2003 or within three months of the notice as they did not wish to renew the Agreement any further. Since the petitioner did not vacate the premises, the respondents filed an application before the Competent Authority under Section 24 of the Maharashtra Rent Control Act, 1999, for eviction of the petitioner from the suit premises and the summons came to be issued to the petitioner in respect of the said proceedings in accordance with the provisions of Section 43 of the said Act as well as by registered post. Since the petitioner failed to appear and to seek leave to defend in the matter within 30 days from the date of the service of the summons, the competent authority passed the

order dated 15th July, 2003 for his eviction from the suit premises. He filed an application before the competent Authority on 13th October, 2003, for setting aside the said ex-parte order and which came to be dismissed by the order dated 12th November, 2003. The petitioner filed a Writ Petition before the High Court, which was subsequently withdrawn and moved the revisional authority which dismissed his application giving rise to the petition again before the High Court.

43. In **Raj Prasanna Kondur** (supra), the learned Single Judge considered Section 24 of the Act entitling the landlord to seek the eviction from the premises on the expiry of the period of lease. The provision of law comprised under Section 24 of the Act by itself nowhere deals in the manner in which the license is required to be granted nor does it prescribe any form or methodology for grant of license by the landlord. The said provision nowhere provided that the license had necessarily to be either in writing or that the Agreement in that regard has necessarily to be a registered one and therefore, on a plain reading of Section 24, it revealed that the moment the license granted to a party to occupy the premises has come to an end, the right of the landlord to get such person evicted from the premises arises and the competent authority thereupon is empowered to pass an order of eviction in case it is satisfied that

the period of license had expired. The section nowhere imposes any embargo over such right of the landlord on account of the Agreement of license being not registered or even on account of such Agreement not being in writing. The learned Judge considered Section 55 of the Act dealing with the subject of requirement of registration of the Agreement executed between the landlord and the licensee and sub-section (2) of Section 55 providing that the responsibility of getting such Agreement registered shall be upon the landlord and in the absence of the registered written agreement, the contention of the licensee about the terms and conditions subject to which a premises had been given to him by the landlord on leave and license or let out to him, shall prevail, unless proved otherwise. Sub-section (3) was also considered which provided that any landlord who contravenes the provisions of the said section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding ₹ 5,000/- or with both.

44. In **Raj Prasanna Kondur** (supra), the learned Judge on a plain reading of Section 55 of the Act observed that it would disclose that since enforcement of the said Act, if any premises are allowed to be occupied on leave and license basis, then the Agreement in respect of such license has necessarily to be drawn in

writing and it should be registered under the Registration Act, 1908. Sub-section (2) of Section 55 clarifies that it would be the responsibility of the landlord to get such Agreement registered. Two consequences are enumerated under Sub-sections (2) and (3) of Section 55, in case of failure to comply with the obligation of the landlord to register such agreement. Under Sub-section (2), in the absence of registration of such agreement, the contention of the licensee regarding terms and conditions of the license would prevail unless proved otherwise. In other words, the contention regarding the terms and conditions by the licensee would have a presumptive value. Secondly, in terms of Sub-section (3) of Section 55 of the Act, the landlord would suffer penalty of punishment to the extent of three months' imprisonment or fine not exceeding ₹5,000/- or both. The said Act nowhere provided for any other consequences for failure on the part of the landlord to get the Agreement drawn in writing or being registered. In other words, the said Act specifically provides only for two consequences on account of failure on the part of the landlord to get the Agreement registered, as is otherwise required to be done under Sub-section (2) of Section 55 of the said Act. The said failure on the part of the landlord to get the Agreement registered, however, does not result in denying other rights assured to the landlord under the said Act. Obviously, therefore, the right of the landlord under Section 24 of

the said Act to get the person evicted from the premises of expiry of the license is not curtailed in any manner on account of absence of the Agreement being in writing or registered.

45. In **N.S. Gnanaswaran** (supra), the Hon'ble Apex Court observed at para 15 that while determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The law which creates public duties is directory but if it confers private rights it is mandatory. The Apex Court considered the constitution Bench Judgment in **State of UP v Banu Ram Upadhy**a [AIR 1961 SC 751] where it held at paragraph No.29 as under:

“For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the noncompliance with

the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.”

For that matter it considered **Rubber House v. Excelsior Needle Industries (P) Ltd.** [(1989)2SCC 413] where the Apex Court considered the provisions of Haryana (Control of Rent and Eviction) Rules, 1976 which provided for mentioning the amount of arrears of rent in the application was held that though the word “shall” has been used in the statutory provision for the reason that non-compliance of the rule, i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty. This judgment was particularly pressed into service by Ms. Agni in the context of interpretation of requirement of Section 34 of the Act being directory and not mandatory in nature.

46. In **Ittoop** (supra), the building which is the subject matter of the litigation being a shed originally belonged to a family the senior member of which inducted the appellant in possession thereof as per the Lease Deed dated 04/01/1974 and ostensibly meant for a period of five years with the monthly rent of the building as being

fixed at ₹140/-. The appellant paid rent of the building till October 1974. Sometime during this period, the ownership of the building happened to be allotted to a female member of the family as per the partition effected between its members. Thereafter the rent of the building was paid by the appellant to the aforesaid Devaki and subsequently the ownership of the building was transferred by her to the respondent who filed the suit as a plaintiff. The trial Court decreed the suit by repelling the contention of the appellant that the suit was not maintainable as he was protected from eviction under the provisions of the Rent Act. The trial Court found that the appellant was not a tenant as the lease was void on account of non-registration of the lease-deed. In the First Appeal, the District Judge held that inspite of non- registration of the instrument there was a valid tenancy of the building and hence the appellant could not be evicted except in accordance with the provisions of the Rent Act. In the Second Appeal filed by the respondent, a single judge of the High Court of Kerala set aside the judgment of the District Court and remanded the first appeal to that court by holding that the plaintiff was inducted into possession under a void lease and hence the court should consider whether, independent of this lease, the defendant was in possession as a lessee from month to month. The District Court entered upon a finding that despite the defect of non-registration of the instrument the facts and circumstances of

the case and the evidence clearly showed that the parties intended to create a lease and held that the appellant was the tenant as defined in the Rent Act and hence the plaintiff was not entitled to a decree in this case and his remedy was to apply before the Rent Control Court. The matter travelled again to the High Court in a second appeal where the learned single judge did not agree with the approach made by the District Judge after remand and held that the first defendant had not proved that independent of the void lease, a relationship of landlord and tenant had come into existence between the parties and in view of this finding, the plaintiffs would be entitled for a decree for recovery of possession of the plaint schedule property giving rise to the appeal by special leave.

47. In **Ittoop** (supra), the Hon'ble Apex Court considered the lease of an immovable property as defined in Section 105 of the Transfer of Property Act and the different modes of creation of lease in terms of the Section 107 of the said Act. The Apex Court went on to observe at paragraph 13 that a lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication. The mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than

through such deed. Further when it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellants possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second paragraph of Section 107 of the Transfer of Property Act above. From the pleadings of the parties there was no possibility for holding that the nature of possession of the appellant in respect of the property was anything other than as a lessee. When it was admitted that legal possession of the building has been transferred to the appellant there is no scope for countenancing even a case of license. A transfer of right in the building for enjoyment, of which the consideration of payment of monthly rent has been fixed, can reasonably be presumed. Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non registration of the document had caused only two consequences. One is that no lease exceeding

one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted.

48. **Nutan Kumar** (supra), held that where there was no conflict between different judgments of the Supreme Court judicial discipline and propriety demanded that binding authority of the Supreme Court be followed.

49. In **Srirang Kamat Tarcar** (supra), the petitioner's late father, brother and father of the Respondent Nos.4 and 5 were members of the Joint Hindu family who were carrying on the family business of grocery in the building belonging to the Respondent No.3. Later on they had opened another shop at Panaji in the building next to the Customs House where presently there is Vistar Hotel. On the opening of that shop the petitioner's father and his brother Vishnu reached an agreement whereby the petitioner's father started managing the said shop in the old building while Vishnu was looking after the business of the other shop. The respondent No.3 filed an eviction proceedings before the Rent Controller in 1979 against the respondents No.4 to 7 in respect of the said shop on the ground that the respondent had transferred

their rights under the lease in favour of the petitioners since 1964. The respondents No.4 to 7 filed their written statement contesting the proceedings and clearly stated that they had ceased to be tenants of the shop and, since about 1964, it was the petitioners who had been the bonafide tenants thereof. The respondent No.3 had filed the proceedings against the respondents Nos. 4 to 7 malafide and with ulterior motives with the object of securing the eviction of the petitioners from the leased premises behind their back inspite of the fact that they are the original tenants. When the petitioners came to know of the purported eviction proceedings they filed an application dated 11-2-1980, before the Rent Controller seeking their impleadment as parties in terms of Rule 9(2) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules. 1969 read with section 17 of the Mamlatdar's Court Act and which application came to be dismissed by the Rent Controller.

50. In **Srirang Kamat Tarcar** (supra), a Revision Application was filed before the Administrative Tribunal which by order dated 21-7-1981 allowed the petitioners' application and remanded the matter to the Controller for disposing off the said application afresh. However, the Rent Controller heard the parties on remand and by his order dated 11-10-1982 rejected for the second time

the petitioners' application which was again assailed before the Administrative Tribunal and the Tribunal by its judgment dated 27-12-1989 dismissed their petition and affirmed the order of the Rent Controller which was challenged in the writ petition filed by them under Articles 226 and 227 of the Constitution. It was contended on behalf of the petitioners that the Tribunal had failed to exercise jurisdiction vested in it and passed the impugned order in an erroneous exercise of its jurisdiction. It was further contended by him that Section 34 of the Act was not going to come in the way of the petitioners seeking a remedy in the proceedings started by the respondent No.3, under Section 22(2)(b)(i) of the Act, against the respondents No.4 to 7 because the nonexistence of the Lease Deed between the petitioners and the landlord could not mean that no legal protection was available to them. The learned Single Judge found substance in the submissions of Shri Mulgaonkar. The petitioner by themselves and on behalf of other petitioners, were always in physical possession of the suit premises even prior to the reconstruction of the old building. This being the position, when the respondent No.3 moved the Rent Controller for eviction of the heirs of the late Vishnu on the ground of illegal transfer of their tenancy rights to the petitioners, it was difficult to appreciate as to how the Rent Controller, and for that matter the Tribunal as well, simply brushed aside the petitioners' claim that they were the real tenants

of the shops, as otherwise pleaded by the respondents Nos.4 to 7 without even holding an inquiry and by just refusing to entertain their request to be impleaded as parties in the proceedings. Obviously that, in the absence of any written contract, the stand taken by the petitioners and the facts alleged by them as well as by the heirs of the purported original tenant Vishnu about their statutory tenancy should have alerted the Rent Controller and the Tribunal and make them realize that their attempt to take part in the proceedings in defence of their legitimate interests was not to be discarded. For all purposes, the petitioners should have been considered in those proceedings not only proper but also necessary parties very much required for a just and fair adjudication of the real issues in controversy. The learned Single Judge held that by rejecting their prayer to intervene in the proceedings and depriving them from substantiating this plea the Rent Controller and the Tribunal had committed a gross error of jurisdiction, calling for an intervention of this Court in the exercise of its writ powers, under Article 227 of the Constitution, to meet the ends of justice and allowed the petition.

51. **Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil** [(2010) 8 SCC 329] on a consideration of various judgments including that in **Surya Dev Rai vs Ram Chander**

Rai and others [(2003) 6 SCC 675] culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution

a. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

b. In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

c. High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

d. The parameters of interference by High Courts in

exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

e. According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

f. In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

g. Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

h. In exercise of its power of superintendence High

Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

i. High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar v/s. Union of India & others*, [(1997) 3 SCC 261] and therefore abridgement by a Constitutional amendment is also very doubtful.

j. It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

k. The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

l. On a proper appreciation of the wide and unfettered

power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

m. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

n. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

o. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

52. In **Radhey Shyam & Anr. V/s. Chhabi Nath & Ors.** [(2015) 5 SCC 423], the Hon'ble Apex Court held that under Article 227 of the Constitution, the High Court did not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

53. The respondent had filed the application for eviction of the petitioner carving a case that she had leased out a room to him on payment of rent of ₹50/- per month for residential purpose, that he was always irregular in the payment of the monthly rent and on account of his failure and neglect to pay the monthly rent, a legal notice was served on him calling upon him to pay the arrears of rent from March, 1988 to August, 1990 within a period prescribed in the notice and also to demolish the illegal construction made by him. On that premise the respondent had sought for the eviction of the petitioner from the suit premises and delivery of the vacant possession thereof. The petitioner had taken a plea that he was

residing in the suit premises as a mundkar for more than 25 years and that the application for his eviction was not maintainable. His application for registering him as a mundkar in respect of the suit premises was pending in the Court of Mamlatdar of Bicholim. He did not have any written contract with the respondent and therefore raised objection to the maintainability of the proceedings before the Rent Controller. The parties had gone to trial in these proceedings and on an appreciation of the evidence, the learned Rent Controller on assessing the evidence brought on record by the Petitioner and the Respondent had come to a clear finding that there was no bonafide denial of title of the respondent and allowed the eviction application directing the petitioner herein to vacate the suit premises and to deliver its vacant possession.

54. An appeal was preferred against the said order before the Administrative Tribunal and in view of the change in the jurisdiction, the appeal was heard by the Appellate Board comprising of the Adhoc District Judge who by the Judgment under challenge and on assessing the material at large before her held that the petitioner had failed to establish his status as a mundkar to the suit premises, that he had disputed the title of the respondent as a landlord, that there was a failure by him to place on record the application filed to declare him as a mundkar and in

the circumstances held that there was no reason to interfere with the impugned Judgment and dismissed the rent appeal.

55. The learned Ad-hoc District Judge had assessed the evidence on record including that of the son of the original Respondent who had deposed on her behalf as her constituted attorney and the evidence led by the Petitioner and only then had come to a finding that the Petitioner herein had not disclosed what had happened to his application to declare him as a mundkar. The Adhoc District Judge for that matter had considered the predicates of Section 2(p) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, the explanation thereto and only on an assessment of the entire material on record concluded that he had failed to produce any evidence on record to prove that he had resided in the suit premises as a mundkar with the consent of his landlord and even failed to disclose what was the outcome of his application filed before the Mamlatdar to declare him as a mundkar. The learned Adhoc District Judge had dealt with the matter at great length and then come to a clear finding that the Rent Controller had rightly come to the conclusion that he was not a mundkar of the respondent and quite on the contrary there existed the relationship of landlord and tenant between them. The clear findings given by the learned Adhoc District Judge do not at all indicate that there

was any exercise of jurisdiction contrary to that possessed in it or that she had exercised the jurisdiction not vested in her while deciding the appeal as the Appellate Board.

56. A cursory perusal of the evidence adverted to by Shri Ramani, learned Advocate for the petitioner and Ms. A. Agni, learned Senior Advocate for the respondent would show that there is no basis in his contention that the respondent's witness was tutored. There is also no force in his contention considering the assessment of the evidence both by the Rent Controller and the Appellate Board that they had held against the petitioner on the plea of mundkarship on the basis of the stray admission of arrears of rent. Rather the concurrent findings of the facts by the Courts below as rightly submitted by Ms. A. Agni, learned Senior Advocate would disentitle the petitioner from claiming a reversal of the Judgment in his favour particularly when both the Courts below had held that the denial of the title of landlord by the Petitioner was not bonafide. Besides, the submission of Shri Ramani, learned Advocate for the petitioner that Section 34 of the Act relating to the execution of the Lease Deed was mandatory also cannot stand the test of scrutiny reading the act as a whole and the definition of the Landlord in terms of Section 2(j) with that of a tenant in terms of Section 2(p) coupled with the issuance of the Rent Receipts in

terms of Section 17 and last but not the least the bar on eviction of tenants as contemplated in Section 21 of the Act. Therefore, though Section 34 of the Act reads that a Lease Deed shall be executed between the Landlord and the Tenant whenever the building is let out after coming into force of the Act the expression "shall" is directory and not mandatory. The interpretation of "shall" being directory and not mandatory also flows from a reading of Section 29 of the Act which deals with the effect of dismissal of a petition for ejectment in terms of Section 22 or 23 of the Act contemplating that the tenancy shall be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned therein. Last but not the least there is no fallout of Section 34 of the Act that it would entail a penalty in case the Lease Agreement is not in writing as is contemplated in terms of Section 55 of the Bombay Rent Control Act which is otherwise pari passu with Section 34 of the Act. The Lease Agreement in writing not being mandatory is also borne out from the fact that there are no fetters on the rights of a landlord to issue an eviction notice in terms of Section 22 of the Act only because no written Agreement is executed between the parties.

57. **Wadkar** (supra), unlike the submissions of Shri Ramani,

learned Advocate does not laid down any proposition of law that Section 34 of the Act is mandatory. Even otherwise, there is no basis in his contention on a total appreciation of the material at large that there was a dereliction of duties by the Rent Controller and the Appellate Board in approaching the matter in a proper perspective as to justify interference by this Court in exercise of its power of superintendence.

58. i am, therefore, constrained to hold against the Petitioner and in that view of the matter dismiss the petition confirming the concurrent findings of the Court below by falling back on the principles laid down in **Radhey Shyam, Shalini Shetty and Jai Sing** (supra).

NUTAN D. SARDESSAI,J

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