

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 1748 OF 1992

M/s.Jwel Buildcon Pvt. Ltd.	)	
a company incorporated under the	)	
Companies Act, 1956, having its	)	
registered office at Centre Point,	)	
2 nd Floor, Indira Marg,	)	
Jamnagar – 361 008, through its	)	
director Mr.Karangia Krishnakumar	)	
Keshurbai	)	...Petitioner

Versus

1. Shri Kohiyar T. Satarwala	)	
of Satara, Indian Inhabitant	)	
since deceased through his Legal heirs	)	
a. Mr.Shiraz K. Satarawala (Son)	)	
b. Ms.Zarina K. Satarawala (Daughter)	)	
c. Ms.Armeta K. Satarawala (Daughter)	)	
All adults, residing at C.T.S. No.99,	)	
Ripon Hotel, Hotel Ripon Road,	)	
Mahabaleshwar, District – Satara	)	

2. Mrs. Nargis Hector Karanjawala	)	
adult inhabitant residing at Sahny Villa,	)	
1 st Floor, Navrooj Gamdia Road,	)	
Off. Pedder Road, Mumbai – 400 026.	)	

3. Mr.Farhan Iqbal Patel	)	
Mumbai Indian Inhabitant residing at	)	
61, Amina Apartment, 6 th Floor, Farooq	)	
Umer Road, (Rebesch Street)	)	
Mumbai 400 008.	)	

4. Ms.Farkhunda Iqbal Patel)
 Mumbai Indian Inhabitant residing at)
 61, Amina Apartment, 6th Floor, Farooq)
 Umer Road, (Rebesch Street))
 Mumbai 400 008.)

5. Ms.Insha Iqbal Patel)
 Mumbai Indian Inhabitant residing at)
 61, Amina Apartment, 6th Floor, Farooq)
 Umer Road, (Rebesch Street))
 Mumbai 400 008.)

6. Ms.Ishra Iqbal Patel)
 Mumbai Indian Inhabitant residing at)
 61, Amina Apartment, 6th Floor, Farooq)
 Umer Road, (Rebesch Street))
 Mumbai 400 008.)

...Respondents

Mrs.Neha Bhide for the Petitioner.

Ms.S.M. Dandekar for the Respondents.

CORAM : G.S.Kulkarni, J.

Reserved on : 24th November, 2017

Pronounced on : 20 February, 2018

JUDGMENT:

1. It is well said that unknown are the ways of destiny. It is more a matter of concern when near relations and are entangled in a legal tussle on property. The wheels of justice in this case have unwillingly moved slowly, steering its way from brighter and darker clouds before the Courts below to halt in this Court in their penultimate legal journey.

2. Between two cousin brothers, this proceeding is a sad story of a suit property which is known as 'Ripon Hotel' at Mahabaleshwar. One Kurshed Nadirshah Satarwala-original plaintiff was the landlord and his first cousin Kohiyar T. Satarwala was the tenant-defendant. The genesis of the dispute is on a humble background between these two brothers. The landlord brother handed over the suit premises to his cousin to manage the same in the usual faith and trust such relations can espouse. The defendant-tenant brother had agreed to pay rent as he was managing the suit premises being a commercial property. The dispute started on the brothers not agreeing to the amount of arrears of rent of Rs.55,700/-. Both the brothers have expired during the pendency of the long legal journey which has commenced in the year 1970. In the intervening period Mrs. Bapsy N.Lawyer the residuary legatee of the landlord-plaintiff transferred the suit premises to the present petitioner M/s Jewel Buildcon Pvt.Ltd.

3. The petitioner/landlord is before the Court in this Writ Petition under Article 227 of the Constitution challenging the judgment and order dated 26 September 1991 passed by the Additional District Judge, Satara, whereby the appeal (Civil Appeal

No.135 of 1974) of the respondent-tenant (defendant) stands allowed by the appellate Court setting aside the judgment and order of the learned Civil Judge, Junior Division, dated 10 June 1974, decreeing the eviction suit of the petitioner/landlord, thereby dismissing the petitioner/landlord suit.

4. During the pendency of the appeal, the original plaintiff Khurshed Nadirshah Satarwala expired on 3 November 1976 and the legal heirs of the deceased were brought on record being respondent Nos.1(a), 1(b) and 1(c) before the Court of Additional District Judge in regular Civil Appeal No.135 of 1974. The deceased Khurshed had left a Will and Testament, which was subject matter of the Testamentary Petition No.675 of 1977 filed in this Court for grant of Probate. By an order dated 5 October 1989, this Court granted Probate of the Will of the deceased Khurshed in favour of Mrs.Bapsy N. Lawyer, residuary legatee of deceased Khurshed. This writ petition was accordingly filed and was being prosecuted by the said Mrs.Bapsy N. Lawyer. During the pendency of this petition, the suit premises were conveyed in favour of the present petitioner 'Jwel Buildcon Private Limited' by a registered Sale Deed dated 26 March 2002 executed by Mrs.Bapsy Lawyer the said residuary legatee of the deceased Khurshed. By an order dated 19 January 2009 passed in

Civil Application No.808 of 2008, this Court allowed amendment to the petition by permitting to delete the name of the original plaintiff and substitute the same by the present petitioner Jwel Buildcon Private Limited as the petitioner. Further the original defendant Shri Kohiyar T. Satarawala also expired during the pendency of this petition and the legal heirs of the deceased Kohiyar i.e. Mr.Shiraz Kohiyar Satarawala (son), Ms.Zarina Kohiyar Satarawala (daughter) and Ms.Armeta K. Satarawala (daughter) were brought on record by an order dated 8 August 2008 passed in Civil Application No.809 of 2008 and also respondent Nos.2 to 6 who claim to be legal heirs of the residuary legatee Mrs.Bapsy N.Lawyer .

5. For the sake of convenience, the parties are referred as they stand before the trial Court in the suit, namely the petitioners/ landlords as plaintiff and the respondent no.1/tenant as Defendant.

6. In brief the facts are:

The plaintiff/landlord had instituted the suit in question (Regular Civil Suit No.1 of 1971) against the defendant praying for possession of the suit property on the ground of default in payment of rent, for arrears of rent and future mense profit. As noted above,

the suit property is situated at Mahabaleshwar, District Satara, known as 'Ripon Hotel' and more particularly described in Schedule-1 and Schedule-2 of the plaint (for short, 'the suit property').

7. The case of the plaintiff/ landlord as set out in the plaint was that the Ripon Hotel was established by his grandfather who conducted the said hotel for many years. In the year 1948, the suit property was leased out to one Mehersingh Sheti. As the said tenant was in arrears of rent, the plaintiff's father had filed a suit for eviction and succeeded in obtaining possession of the suit property in the year 1954. In the said proceeding, the standard rent of the suit property was fixed at Rs.10,000/- per year. At that time, there was an additional structure known as extension building near the main building. This extension building was pulled down subsequently. Thereafter the plaintiff/landlord had renovated the suit property by incurring substantial expenditure. The defendant cousin brother of the plaintiff, expressed his desire to conduct the Ripon Hotel. After correspondence between the plaintiff and the defendant, the plaintiff consented to the defendant's conducting Ripon Hotel as a licensee. Accordingly, the defendant agreed to take over the suit property from 1st January 1956 from the plaintiff. In the beginning, the defendant agreed to pay Rs.6,000/- per year to the plaintiff as compensation for

use and occupation of the suit property. At that time, the defendant had also agreed to pay all taxes etc. and bear miscellaneous costs of maintaining the suit property during the rainy season described as “Zadis”. The defendant had also agreed to pay further maintenance of the suit property, but subsequently the defendant requested the plaintiff that the taxes of the property and the costs of Zadis to the extent of Rs.300/- per month be paid by the plaintiff. This was consented by the plaintiff since June 1960. In paragraph 4 of the plaint, the plaintiff averred that since the defendant took possession of the suit property, the plaintiff was constantly insisting to put the terms of agreement between the plaintiff and the defendant on paper and register the necessary document, but the defendant avoided it under one pretext or another. However, as the defendant was in possession of the suit property with a liability to pay compensation to the plaintiff at the rate of Rs.6,000/- for 12 months, the defendant had automatically become the plaintiff's monthly tenant with a liability to pay Rs.500/- per month to the plaintiff towards the rent. The month of tenancy started from the first day of each month and ended with the last day according to the Gregorian calendar. The case of the plaintiff was that after the defendant took possession of the suit property, the defendant was never regular in making payments of the rent and there were defaults in payment of rent each

year. The defendant was also recovering rent on behalf of the plaintiff as plaintiff's general power of attorney holder from the plaintiff's other properties at Mahabaleshwar. From the said amount of rent which the defendant was recovering on behalf of the plaintiff, the defendant was paying property taxes as also spent for zadis. The plaintiff also used to give credit to the defendant for the amounts spent by the defendant over and above the amounts recovered by him for the plaintiff. The plaintiff and the defendant were drawing up accounts every year of the amounts spent by the defendant on behalf of the plaintiff. These accounts were drawn up from time to time according to the convenience of both the plaintiff and the defendant. All these accounts were prepared from the period starting from 1st January to 31st December of each year in an informal method as how domestic accounts are made. Such accounts were drawn up between the plaintiff and the defendant upto the end of December 1969.

8. The case of the plaintiff was of the defendant being a persistent defaulter in paying the rent to the plaintiff, the outstanding rent payable by the defendant was increasing to large amounts. Further on account of the defaults and irregular payment of rent by the defendant, the defendant had agreed to pay interest on the amount of arrears of rent at the rate of 6% p.a. since 25 October

1961. In each year, the credit given by the plaintiff to the defendant was always more than the amount recovered by the defendant for the plaintiff's other properties. The amount which was due from the defendant as per the accounts between the plaintiff and the defendant drawn for the period starting from 1st January 1969 upto 31st December 1969 was only the amount of rent and interest. By the end of December 1969, the defendant was in arrears of rent of Rs.55,700/- and interest thereon. This amount of arrears of rent was calculated after giving full credit to the defendant for all the amounts paid by him to the plaintiff and also giving him full credit for all the amounts spent by the defendant on behalf of the plaintiff. It was the case of the plaintiff that the defendant acknowledged the accumulated arrears of rent of Rs.55,700/- on 21 May 1970 by executing a promissory note, in favour of the plaintiff at Mahabaleshwar. Despite the accounts being drawn up by both the plaintiff and the defendant every year, and the amount of arrears of rent due by the end of each year was acknowledged by the defendant and agreed by him, the defendant did not make any payment towards the arrears of the rent and accordingly, became a defaulter in payment of rent. The plaintiff, therefore through his Advocate issued a notice dated 14th August 1970 to the defendant, thereby terminating the defendants tenancy of the suit property from the end

of September 1970. The notice was received by the defendant on 17th August 1970 and was replied by the defendant by his Advocate's letter dated 26th September 1970 thereby refusing to surrender vacant possession of the suit property. On this background, the plaintiff asserted that indisputedly an amount of Rs.55,700/- was due and payable by the defendant towards rent and interest thereon upto the end of year 1969. The plaintiff asserted that further as admitted and acknowledged by the defendant, rent of Rs.4,500/- was due and payable for the months of January to September 1970 both inclusive, at the rate of Rs.500/- per month and further an amount of Rs.1,500/- being the rent for the months of October 1970 to December 1970 at the rate of Rs.500/- per month was in arrears of the rent as defaulted by the defendant. The plaintiff accordingly instituted the suit in question for the following reliefs:-

- “(a) That the defendant be ordered to hand over vacant and peaceful possession of the suit premises mentioned in detail in schedule I attached to the plaint and also of the moveables mentioned in detail in Schedule II attached to the plaint.
- (b) that the defendant be ordered to pay Rs.61,725/- to the plaintiff.
- (c) that the defendant be ordered to pay future interest on the said amount from the date of the filing of the suit until actual realisation of the amount;
- (d) that the defendant be ordered to pay future damages to the plaintiff from the date of the suit until actual possession is awarded to the plaintiff.
- (e) that the defendant be ordered to pay all cost of this suit to the plaintiff;
- (f) that such other orders in the interest of justice and equity be passed.”

9. The defendant resisted the suit by filing his written statement inter-alia contending that the defendant was not a defaulter in payment of rent. The case of the defendant was that he had brought to the notice of the plaintiff in the reply dated 26th September 1970 that the amount of Rs.37,020/- as expended by him was not adjusted. The defendant was entitled to a deduction of this amount. The defendant contended that in the earthquake which has taken place in December 1967, the suit property had suffered damages, and as the defendant was asked to repair the same, the repairs were undertaken by the defendant and on this count and was entitled to get the deduction of the said amount. As regards the plaintiff's case that the amount of Rs.55,700/- was in arrears to be paid to the plaintiff by the defendant for the period from 1st January 1969 to 31st December 1969, it was contended by the defendant that the plaintiff had not furnished details in the plaint as to how the said sum was arrived at and thus, the plaintiff was not entitled to demand the said amount. The defendant contended that unless and until the accounts are settled or proved to be correct, the plaintiff was not entitled to ask for the said amount. The defendant contend that the plaintiff under undue influence got executed from the defendant the promissory note of Rs.55,700/- and it was not a legal and valid

document. The plaintiff was not entitled to demand the said amount unless and until the plaintiff strictly proves that the arrears of rent of Rs.55,700/- was due and payable as on 21st May 1970 i.e. the date of promissory note. The defendant further contended that on the plaintiff's own showing the amount of Rs.55,700/- included the interest on the rent amount and thus, it was clear that the amount of Rs.55,700/- is not the amount of rent and accordingly, the defendant cannot be asked to pay the said amount. The defendant further contended that the rent of Rs.500/- per month was excessive and that the standard rent of the suit property be fixed.

10. The learned trial Judge framed 13 issues which alongwith the findings thereon read thus:-

	<u>Issues</u>	<u>Findings</u>
1.	Whether the suit is maintainable?	Yes
2.	Whether the plaintiff is entitled to get vacant and peaceful possession of the suit premises from the defendant as alleged ?	Yes
3.	Whether the plaintiff is further entitled to receive Rs.61,725/- from the defendant?	Yes
4.	Whether the plaintiff is further entitled to recovery the moveables mentioned in Schedule II of the plaint from the defendant ?	Yes
5.	Whether this Court has got jurisdiction to try this suit ?	Yes

- | | | |
|-----|---|---------------------|
| 6. | Whether the suit property has been properly valued? | Yes |
| 7. | Whether the plaintiff proves that the moveables in Schedule II of the plaint are exclusively owned by him ? | Yes. |
| 8. | What is the standard rent of the suit premises? | Rs.500/- per month |
| 9. | What is the rent agreed between the parties ? | Rs.500/- per month |
| 10. | Whether the Plaintiff proves that the defendant committed default in payment of rent ? | In the affirmative |
| 11. | Whether the defendant proves that he carried out the repairs in the suit property on the say of the plaintiff ? | No |
| 12. | If yes, then at what expenses they are carried out ? | Does not survive |
| 13. | What order ? | As per order below” |

11. Each of the parties led oral evidence and were cross examined. The learned trial judge by his judgment and order dated 10 June 1974 decreed the suit.

12. The learned trial Judge held that the plaintiff was entitled to receive Rs.61,725/- from the defendant being arrears of rent. It was further held that the standard rent of the suit property was Rs.500/- per month as also the same was the agreed rent between the parties. It was held that the plaintiff had proved that the defendant had committed default in payment of rent.

13. In regard to the issue of arrears of rent, in paragraph 19 of the judgment the learned trial Judge has made the following observations:-

“19. On issue nos.2 and 3:- The plaintiff has claimed Rs.55,700/- from the defendant by way of arrears of rent upto the end of year 1969 and further Rs.45000/- as amount of rent for the month of January till September,1970 and Rs.1500/- by way of compensation for lose of rent in all Rs.61,700/-. After the suit was filed ad-interim rent was fixed at Rs.6000/- per year on an application given by the plaintiff dated 3.12.1973 (Exh.170). After the ad-interim rent was fixed the defendant has not paid all the arrears of rent. It was incumbent upon the defendant to pay all the arrears of rent including the costs if he wanted to protect his possession under section 12(3)(b) of the Bombay Rent Act. As he has not done so I have no other alternative but to pass an order for eviction and for payment of arrears of rent as claimed by the plaintiff. Issues nos.2 and 3, therefore, are answered in the affirmation.”

14. As regards the defendant's case that he had carried out repairs in the suit property, it was held that the defendant did not prove the same. The learned trial Judge observed that the plaintiff and the defendant were cousins. The defendant was looking after the other properties of the plaintiff situated at Mahabaleshwar. The defendant used to collect rent from those properties and spend some amounts for carrying out repairs, payment of municipal taxes and for zadis. It was observed that the plaintiff and the defendant were drawing accounts every year and the accounts were signed by both the parties and that last such account was drawn on 20th May 1970

(Exhibit 120) which revealed that till 31st December 1969, amount of Rs.55,700/- was due to the plaintiff from the defendant. It was observed that after these accounts were drawn, the defendant had executed a Promissory Note (Exhibit 125) in favour of the plaintiff dated 21st May 1970 for the sum of Rs.55,700/-. Under the Promissory Note, the amount was to be paid in Bombay by the defendant on demand by the plaintiff. The contentions as urged on behalf of the defendant on the promissory note was firstly that the Court would not have jurisdiction as the amount was payable at Bombay; secondly that by virtue of the promissory note there is a new contract which has come into existence. This was not accepted by the learned trial Judge on the ground that there was no change in the relationship between the parties after the promissory note was executed, nor could it be said that the original agreement between the parties of a lease of the suit property would cease to exist. It was held that there was not an iota of evidence on record to even remotely conclude that the parties intended to alter or change the agreement of lease. It was thus observed that it cannot be held that the parties have entered into a fresh agreement merely because the plaintiff accepted the mode of payment by a promissory note. The learned trial Judge held that it was clear that though the plaintiff demanded arrears of rent from the defendant, it was not paid to him

as agreed between the parties. It was observed that what was done by the defendant by executing a promissory note was that the defendant had given a promise to the plaintiff to pay the amount and nothing beyond that and it was not the actual payment. It was observed that nor such a case was made out or was even suggested by the defendant from the witness-box and hence, the defendant cannot contend that he must be deemed to have paid the rent or that the plaintiff should sue him only on the promissory note. As regards the claim for set off, it is observed that such set off would not be admissible as it had come on record that the plaintiff had categorically informed the defendant by his letter dated 30th December 1958 (Exhibit 75) not to undertake any repairs without getting the estimate sanctioned from him. It was held that the tenant can legitimately recover expenses of repairs from the landlord provided his case falls within the four corners of Section 23(2) of the the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Bombay Rent Act') and any repairs carried out without complying with the requirements of Section 23(2) of the Bombay Rent Act, the defendant would not be entitled to recover the costs of the repairs from the plaintiff. It was held that in the facts of the present case, the defendant had not complied with the requisites mentioned in Section 23(2) of the Bombay Rent Act and hence, was

not entitled to claim costs of the repairs from the plaintiff. It was further held that in any case, the defendant had not paid the Court Fee on the amount which he seeks to claim as a set off and hence, the said prayer could not be considered. It was thus, held that the plaintiff was entitled to get vacant and peaceful possession of the suit property from the defendant. Accordingly, the learned trial Judge decreed the suit in terms of the following order:-

“The suit is decreed with costs. The defendant do handover possession of the suit property to the plaintiff as described in Schedule I and II of the plaint. The defendant do pay to the plaintiff Rs.61,725/- by way of arrears of rent. The amount deposited by the defendant in the Court be given to the plaintiff. Inquiry be made in respect of future mesne profits under Order 20 Rule 12(1)(c) of the Civil Procedure Code. The defendant do pay to the plaintiff interest at the rate of 6 p.c. p.a. on the amount of Rs.60,700/- from the date of the filing of the suit till the whole amount is realised.”

15. Being aggrieved by the judgment and decree passed by the learned trial Judge, the defendant approached the Court of Additional District Judge, Satara, by filing Regular Civil Appeal No.135 of 1974. The plaintiff also filed his cross objections, being aggrieved and dissatisfied by the order of the learned trial Judge fixing standard rent at the rate of Rs.500/- per month and further finding of the learned trial Judge that the plaintiff(respondent) was not entitled to claim interest and rejecting the claim for interest on the amount of Rs.55,700/-.

16. By the impugned judgment and order, the learned appellate Judge set aside the judgment and decree passed by the learned trial Judge and dismissed the suit of the plaintiff and held that the standard rent of the suit property inclusive of movable property be fixed at the rate of Rs.10,000/- per annum from the date of institution of the suit and directed the defendant to deposit the difference in the standard rent and agreed rent on or before 31st December 1991. In dismissing the plaintiff's suit, the appellate court took upon itself the entire calculation of the amounts under the accounts from the year 1956, from the material which had come on record before the trial court and held that the defendant was not a defaulter and was not in arrears of rent. The plaintiff accordingly being aggrieved by the orders passed by the appellate court dismissing the plaintiff's suit, is before this Court.

17. Learned Counsel for the Petitioner/plaintiff submits that it is not in dispute that the tenancy in question was a monthly tenancy. Learned Counsel for the plaintiff submits that the suit notice dated 14 August 1970 clearly shows that the defendant was in arrears of rent and it records termination of tenancy of the defendant. It is submitted that the suit notice was was legal and

valid. It is submitted that the reply of the defendant to the suit notice was issued on 26 September 2017, almost after one month and hence, in this situation it was mandatory for the defendant to adhere to the provisions of Section 12(3)(a) and (b) of the Bombay Rent Act. It is submitted that no immediate application for fixing of standard rent was made as per the provisions of Section 11 of the Bombay Rent Act. It is submitted that from the accounts/documents as placed on record and more particularly Exhibits 111 to 116 clearly demonstrate that the defendant was in arrears of rent. Learned Counsel for the plaintiff would submit that the defendant in fact had admitted that there were arrears of rent. It is submitted that the defendant had also failed to comply with the requirement contemplated under Section 12(3)(a) and (b) of the Bombay Rent Act under which the defendant was under a legal obligation to either make payment of rent or depositing the rent in the Court, within the prescribed time as the said provision would contemplate. It is submitted that also no application for fixing standard rent was filed by the defendant within the statutory period of one month as Explanation I to Section 12 of the Bombay Rent Act would provide. It is pointed out that in fact the standard rent application came to be filed for the first time in the year 1973. It is thus submitted that there was a clear breach of Section 12(3) of the Bombay Rent Act,

and therefore, the learned Trial Judge was correct in decreeing the suit. It is next submitted that even the set off which was pleaded by the defendant was untenable as no court fee was paid. It is submitted that even assuming that the set off was maintainable, there was no evidence led by the defendant to prove the expenditure. Further the set-off amount of Rs.37,020/- as claimed by the defendant, there was no evidence either oral or documentary to prove such a set off. It is submitted that the set off which was not proved on any evidence, has been surprisingly granted by the learned appellate Judge. It is then submitted that there is serious error in the appellate Court taking upon itself the calculation of the amounts and on the basis of the calculations arrived by the Court reached a conclusion that there were no arrears. It is submitted that in fact there is clear admission in the cross examination of the defendant-Kohiyar Satarawala wherein the defendant made the following statement:-

“I cannot give any reason as to why I have not mentioned in the accounts at the time when they were taken, regarding the amount which the plaintiff owed me.”

It is submitted that the learned appellate Judge ought not to have itself undertaken the exercise of calculations, this approach itself was erroneous. It is thus submitted that the findings as recorded by the appellate Court are perverse. In support of the contention, the

learned Counsel for the petitioner has placed reliance on the decision of this Court in “*Babulal s/o.Fakirchand Agrawal vs. Suresh s/o. Kedarnath Malpani & Ors.*”¹.

18. On the other hand the learned Counsel for the respondents/defendants in supporting the impugned judgment of the learned appellate Judge submits that the petition is not maintainable not being pursued by the original plaintiff but by the present petitioner-M/s.Jwel Buildcon Pvt. Ltd. as being the transferee. It is submitted that the demand as made in the suit notice dated 14 August 1970 was unfounded and there were no arrears of rent because of the adjustment which was clear from the reply of the defendant dated 25 September 1970 to the suit notice. It is submitted that the provision of Section 12(3)(a) and (b) was not applicable as the rent was paid yearly despite the tenancy being monthly tenancy. It is submitted that the defendant had deposited the amount of arrears of rent in the court and therefore, a decree on the ground of arrears of rent could not be passed. It is submitted that the suit notice was bad as it did not demand arrears of six months rent. It is submitted that the promissory note which has been relied upon by the plaintiff to contend that the defendant is in arrears of rent, itself

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was a new contract or the promissory note was a collateral security.

19. I have heard the learned Counsel for the parties. With their assistance I have also gone through the judgment of the learned trial Judge as also the impugned judgment and order passed by the learned Appellate Judge. I have also perused the record and proceedings before the Courts below.

20. It is not in dispute that the plaintiff was the owner and landlord of the suit property namely the Ripon Hotel at Mahabaleshwar and the defendant is the tenant of the suit premises. It is also not in dispute that the plaintiff and defendant were related to each other, although now the complexion in which the parties as originally stood before the trial Court has substantially changed in view of the original parties having expired as also the present petitioner-M/s.Jwel Buildcon Pvt. Ltd. having acquired the suit premises.

21. It is also not in dispute that the defendant was entrusted to conduct the Ripon Hotel/suit premises and accordingly took over the suit premises from 1 January 1956 for which the defendant agreed to pay Rs.6000/- per year as compensation for use and

occupation of the suit premises. It also an admitted position that apart from the suit premises, the plaintiff had some other properties at Mahabaleshwar and in managing the said properties for the work to recover the rent etc. the plaintiff had issue a power of attorney in favour of the defendant. The defendant had incurred certain expenditure in respect of the suit premises as also in respect of the other properties and that the parties were preparing accounts of the income and expenditure of the said properties which were mutually finalised between the parties. However, though this was the arrangement between the parties, the case of the plaintiff was that though the defendant had taken possession of the suit premises with effect from 1 January 1956, the defendant was not regular in making payment of rent for the suit premises and there were persistent defaults in payment and every year there was arrears of rent, despite the credit being given to the defendant by the plaintiff for the amount of expenditure he had incurred in respect of the other properties of the plaintiff at Mahabaleshwar. On the basis of the accounts dated 20 May 1970 (Exhibit 125), the plaintiff asserted that the defendant was in arrears of rent of Rs.55,700/- in respect of the suit premises payable to the plaintiff. Accordingly, the plaintiff in his advocate's notice dated 14 August 1970 interalia stated that the defendant had become a defaulter in payment of rent and that the plaintiff did not

desire the defendant to continue as his tenant in respect of the suit premises, and accordingly, terminated the tenancy of the suit premises by the said notice from the end of September,1970. The plaintiff also called upon the defendant to hand over vacant possession of the suit property together with all furniture, fixtures, utensils etc. By the said notice, the plaintiff also called upon the defendant to pay arrears of rent of Rs.55,700/- due and payable by the defendant for the period upto December,1969 plus the amount of further period from January 1970 to September,1970 i.e. Rs.4,500/-, in all Rs.60,200/-. It is also stated that if the defendant failed to hand over vacant possession of the suit property to the plaintiff and failed to pay arrears of rent, the plaintiff would be compelled to take legal action. Plaintiff also recorded that the amount of arrears had accumulated for a long time and the defendant had acknowledged this amount of arrears of Rs.55,700/- by way of promissory note which defendant executed in favour of the plaintiff on 20 May 1970.

22. This notice was replied by the Advocate for the defendant. In paragraph 3 of the reply, the defendant clearly stated that the rent fixed between the plaintiff and defendant in respect of the suit property was Rs.500/- per month. However, it was asserted that the standard rent for the premises is less than Rs.6000/- per year

and the standard rent of the premises is Rs.5000/- per year. It was asserted that rent of Rs.500/- per month was more and excessive. In paragraph 5 of the said reply of the defendant to the plaintiff's notice, the defendant stated that since beginning the defendant was paying rent of Rs.500/- per month and the defendant is a monthly tenant, while denying that he had not defaulted in making payment of rent. What is of relevance is that while agreeing that the parties are drawing accounts every year which includes the rent payable by the defendant to the plaintiff, the defendant asserted that in the accounts the plaintiff had not properly deducted the amount spent for the construction and renovation of the suit property-Ripon Hotel. The defendant asserted that since 1956 the defendant had spent certain amounts with the consent of the plaintiff and that the plaintiff had promised the defendant to deduct the said amounts from the rent. These amounts were set out under seven heads totaling to Rs.37,020/- however without any details of the period etc. The defendant on this assertion denied that there were arrears of rent payable by the defendant to the plaintiff was Rs.55,700/- by end of December,1969 and that amount of arrears was not calculated properly. In regard to the promissory note of Rs.55,700/-, the defendant in paragraph 10 of the reply to the plaintiff's notice stated that the defendant had executed pro-note for Rs.55,700/- in good

faith and that the said document was bogus document and it was never acted upon and that promissory note was obtained by practicing fraud on the defendant. In paragraph 11 of the reply, the defendant stated that after December 1969, the rent for the January to September, 1970 was Rs.4500/- which was payable to the plaintiff, however, the defendant had already paid Rs.5000/- in excess to the plaintiff and hence, the plaintiff was not entitled to the amount of Rs.4500/-.

23. The reply of the defendant to the plaintiff's notice thus indicates a two fold defence, firstly that adjustment of Rs.37,020/- was required to be made which was the alleged amount spent by the defendant on the other properties of the plaintiff since 1956. Although the heads of expenditure were set out there are no details of the date or the period during which the said expenditure was made. Secondly, the promissory note which was executed by the defendant ought not to be considered as acceptance of liability as arrears of rent. In the reply to the suit notice the defendant clearly admits that the defendant is a monthly tenant. He also admits that the rent for the month of January, 1970 to September, 1970 was also not paid but some payment of Rs.5000/- was made in advance.

24. The plaintiff in the suit made a claim of Rs.61,725/- towards arrears of rent, bifurcation of which was set out in paragraph 9 of the plaint namely Rs.55,700/- for arrears of rent and interest upto the end of 1969 and Rs.4,500/- for the amount of rent for the months January to September,1970 both inclusive at the rate of Rs.500/- per month and Rs.1500/- toward the rent for the month of October,1970 too December,1970 at the rate of Rs.500/- per month and Rs.25/- as notice charges, coupled with the prayers for the defendant to be ordered to give vacant and peaceful possession of the suit premises to the plaintiff.

25. The defendant in the written statement in resisting the plaintiff's suit did not dispute the tenancy, however, though having admitted in the reply to the suit notice that the monthly rent was Rs.500/- and that the defendant was a monthly tenant, now asserted that as annual rent of Rs.6000/- was being paid, it was not a monthly tenancy of Rs.500/- per month, which was completely contrary to the earlier assertion. As regards the arrears of rent, the case of the defendant as seen from paragraphs 11 and 12 of the written statement is that adjustment of Rs.37,020/- ought to have been made for expenditure which was incurred by the defendant to manage the other properties. However, in the written statement no details in

regard to the period for which the said amount was due and payable was set out except for bald assertion that amount of Rs.37,020/- was required to be adjusted. Further in paragraph 12 of the written statement, the defendant contended that the plaintiff has nowhere given details as to how the amount of Rs.55,700/- was arrived at, and hence, unless and until the accounts are settled or proved to be correct the plaintiff is not entitled to ask for the said amount. The defendant further asserted that as the plaintiff being related to the defendant, the plaintiff under an undue influence had got the writing executed from the defendant that the said amount of Rs.55,700/- and hence, the said document is not legal and valid and the plaintiff was not entitled to ask for the said amount unless and until the plaintiff strictly proves that the balance of Rs.55,700/- was due on 21 May 1970. The defendant further asserted that the promissory note created a new contract, however, overlooking that in the reply to the notice the pro-note was disowned by saying that it was a fraudulent document. Apart from the documentary evidence, the parties also lead oral evidence and where also cross examined. The evidence of the plaintiff (PW.1) is of some relevance. The plaintiff deposed that the parties used to adjust the accounts for the whole year in any month of the succeeding year. He further deposed that in the year 1963 the accounts were brought up to date and since then the

parties adjusted the accounts each year. He further deposed that the accounts were last adjusted in the month of May,1970 which were written on seven paper-sheets upto the year 1969. Each page was signed by the plaintiff and the defendant. The sheets were produced in evidence, the contents were stated to be correct and it was stated that as per the said document till 31 December 1969 the defendant was in arrears of rent of Rs.55,700/-. It was further deposed that the defendant had agreed to pay the said rent by agreement in writing dated 21 May 1970. The document of agreement was shown to the plaintiff and was stated to be signed by the defendant in presence of the plaintiff and the contents were true. The agreement was in the nature of a promissory note and no money was advanced by the plaintiff to the defendant thereunder. The plaintiff also deposed that no rent was paid by the defendant to the plaintiff since 1 January 1970. There is nothing worth in the cross examination which in any manner would disprove/displace the case of the plaintiff on the accounts being settled upto December,1969 under the said document dated 21 May 1970 (Exhibit 120). In fact the said document has been referred in the cross examination in regard to some heads of expenditure stated to be incurred by the defendant. Thus, the fact that an amount of Rs.55,700/- was due and payable towards arrears of rent as also rent of Rs.4,500/- was due and payable by the

defendant for the period January,1970 to September,1970 also stood proved. Considering the evidence it is clear that Exhibit 120 being accounts dated 21 May 1970, in the accounts between the parties upto 31 December 1969 stood proved. Apart from this, the evidence of the plaintiff is relevant. The relevant extract reads thus:-

“..... The defendant was never regular in payment of rent. For three to four years he did not pay any rent to me. During last 15 years he is in arrears of payment of rent at Rs.3700/- per year on an average.

.....The accounts were last adjusted by us in the month of May 1970. The accounts were written on seven paper sheets, for the year 1969. Each paper was signed by myself and the defendant. I produce these sheets. Their contents are correct. Till 31st of December 1969 the defendant was found to be in arrears of rent at Rs.55,700/-. The defendant agreed to pay me this rent by an agreement in writing dated 21.5.70. The agreement now shown to me is signed by the defendant in my presence and its contents are true. This agreement was drawn in the nature of promissory note. No money was advanced by me to the defendant. The defendant did not pay me rent since 1st of January 1970. He has also not paid any rent to me for the previous years but he only promised me to pay the same.”

In the cross examination the plaintiff made following statements:-

“....The promissory note executed by the defendant includes the amount of the arrears of rent due from him besides other amounts....”

In the cross examination of the defendant, the defendant had made

the following admissions:-

“....After the accounts were settled we used to them in writing and we both used to sign. I agreed to pay interest on the amount due to me since the year 1961. I had executed promissory notes in favour of the plaintiff in respect of the amounts I owed him each year.”

26. The evidence of the defendant also is noteworthy wherein in paragraph 3 of the examination in chief, the defendant has admitted that the parties had taken accounts in respect of the other properties of the plaintiff. The defendant however states that the defendant is a yearly tenant of the plaintiff. There is bald assertion in the examination in chief that the defendant incurred expenses of Rs.70,000/- to Rs.75,000/- on the suit property. In the cross examination in paragraph 6, the defendant has made the following admissions:-

“6. At the time when I signed the reply to the notice I did not apply my mind. I did not tell my advocate that my tenancy was a monthly tenancy at the time when the reply tot he notice was given. I signed the notice reading it without applying my mind. I demanded my dues from the plaintiff before replying to his notice. It is not true to suggest that I did not demand any amount from the plaintiff till the reply was given to his notice. I often demanded my dues to the plaintiff but he did not pay me. It is not true to suggest that in order not to pay his dues to the plaintiff, I have made a false claim. I cannot give any reason as to why I have not mentioned in the accounts at the time when they were taken, regarding the amount which the plaintiff owned me. I have incurred loans from M'war Urban Co-op. Bank and Karad Bank and some friends. I have taken hand loan from the plaintiff no.1 or 2 occasions.”

(emphasis supplied)

27. Thus the evidence on record would indicate that that the parties had finalised the yearly accounts, the last account as finalised between the parties was the account dated 20 May 1970 (Exhibit 120). This is the most crucial document so as to ascertain whether the defendant was in arrears of rent. The document is titled under three heads: "*Accounts for Bazar houses upto 31 December 1969*". Under this head an amount of Rs.2650/- is agreed to be due and payable by the defendant to the plaintiff. This amount would have relevance only in regard to the adjustment. The second head is "*Accounts for Ripon Hotel upto 1969*". The calculation under this head shows that the amount which is due and payable by the defendant to the plaintiff upto 31 December 1969 is Rs.62,753/-. The third head namely "*Accounts of K.T.Satarawala*" it is shown that the amount of Rs.7053/- has been spent by the defendants and after making an adjustment of Rs.7053/- from the amount due and payable under the second head by the defendant to the plaintiff, an amount of Rs.55,700/- has been arrived as payable by the defendant to the plaintiff. This document is proved. Thus, as rightly considered by the trial Court, it is not in dispute that the defendant was in arrears of rent of Rs.55,700/- upto December,1969 as agreed in the calculation

arrived between the parties and further for the period from January to September,1970 of Rs.4500/- and for the month of October,1970 to December,1970 Rs.1500/-. As noted above the evidence which has come on record in no manner proves the claim of the defendant that an amount of Rs.37,020/- was due and payable by the plaintiff to the defendant. In fact the evidence shows, the said last accounts as finalised between the parties on 20 May 1970 (Exhibit 120) clearly show that there is not even a reference of this amount of Rs.37,020/- as asserted by the defendant to be due and payable by the plaintiff to the defendant. Further this last account takes into account all the previous dues and expenses etc. Even the defendant has not furnished any details whatsoever towards the claim of Rs.37,020/- to be of a particular period or in any manner has proved the said expenditure incurred by him. Most importantly the defendant was unable to bring on record any evidence to support his contention that he had no outstanding rent for a period of six months prior to the institution of the suit.

28. It is also noteworthy that the defendant could not displace the accounts as finalised between the parties below Exhibit 120, not to be conclusive and/or these accounts making any allowance for any expenditure for a prior period from the year 1956.

Thus a clear position had emerged on evidence that the basic requirements for the plaintiff to succeed on the ground of arrears of rent were present. These were firstly that the defendant was the tenant of the plaintiff, the rent of the suit property was Rs.500/- per month to be paid by the defendant to the plaintiff, as clearly admitted by the defendant in the reply to the suit notice dated 14 August 1970, that there was a default in payment of the rent and that there were arrears of rent upto December,1969 to the tune of Rs.55,700/-. The arrears of rent payable by the defendant to the plaintiff stood proved from the accounts dated 20 May 1970 (Exhibit 120) as arrived under signature of both parties. There was no other evidence on record to show that the defendant had made payment of rent for the period in question and in fact the promissory note which though initially denied by the defendant, subsequently was relied by the defendant to say that the promissory note of Rs.55,700/- was issued by the defendant and was a fresh contract. This definitely brought about a connection between the arrears of rent and the admission of liability by the defendant to make such payment, though the defendant initially disowned the promissory note. Be that as it may, even if we leave aside the promissory note on the clear proof of the account dated 20 May 1970 (Exhibit 120) and as noted above it stood establish that the defendant was in arrears of rent.

29. For the suit to succeed and as appropriately examined by the learned trial Judge, it is necessary to consider the provisions of Section 12 of the Bombay Rent Act as it stood at the time of institution of suit (in the year 1971). Section 12 of the Bombay Rent Act provides that no ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

Section 12 reads thus:-

“12.No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and perform the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to

pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.

Explanation (I): In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

Explanation II: For the purposes of sub-section (2), reference to “standard rent” and to “permitted increase” shall include reference to “interim standard rent” and “interim permitted increase” specified under sub-section (3) or (4) of section 11.”

A plain reading of the above provision indicates that by virtue of sub-section (1) a landlord shall not be entitled to recover possession of any premises so long as the tenant pays or is ready and willing to pay standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy. Sub-section (2) would prohibit a landlord to institute a suit for recovery of possession against a tenant for non payment of standard rent or permitted increases due, only on expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section

106 of the Transfer of Property Act, 1882. Sub-section 3(a) and (b) are of relevance. Sub-section 3(a) provides that when rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession. Sub-section 3(b) provides that in any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court. 'Explanation I' below Section 12 also is of relevance which provides that when there is a dispute on standard rent, the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of Section 11 namely for fixing of standard

rent and thereafter pays or tenders amount of rent or permitted increases specified in the order of the Court.

30. The above statutory provision with all its essential ingredients as noted is of significance in its application in the present case. This for the reason that on all counts and as observed by the learned trial Judge, the defendant had failed to make payment of rent and was in arrears of rent on receipt of the suit notice dated 14 August 1970 which was admittedly received by the defendant on 17 August 1970. Further as sub-section 3(b) of Section 12 would provide, the defendant could have tendered in the Court the arrears of rent on the first day of hearing of the suit and could have continued to pay or tender regularly. It is well settled that the term "*first day of hearing of the suit*" would be the day when the defendant appears in the Court in answer to the suit summons and the Court takes up the case under Order 9 Rule 1 of the Code of Civil Procedure. Admittedly, the defendant did not deposit the arrears of rent on the first day and thus, lost the protection which Section 12(1) and 12(3)(b) would provide to the defendant and more particularly, considering the clear requirement of sub-section 3(b) of Section 12. It also cannot be overlooked that "Explanation I" to Section 12 provides that the defendant cannot be said to be ready

and willing to pay arrears of rent if the defendant before the expiry of period of one month after notice as referred in sub-section (2) did not make an application to the Court under sub-section (3) of Section 11 for fixing standard rent. The defendant therefore was clearly not ready and willing to pay rent.

31. Apart from the above position as the law would contemplate, the conduct of the defendant itself was quite evident of his unwillingness to pay the rent inasmuch as the defendant asserted a position that there were no arrears of rent in view of certain adjustments which are required to be made in the defendant managing the other properties of the plaintiff. Secondly, in view of this assertion the defendant failed to make an application for fixing standard rent within the permissible statutory period as prescribed under Explanation I under Section 12. Further the defendant failed to prove the assertion that the plaintiff was liable to pay some amount to the defendant and thus, there were no arrears of rent. This appears to be the unimpeachable position on record.

32. On the above clear evidentiary background, one would wonder as to how the appellate Court could set aside the decree passed by the trial Court. It is quite astonishing and unbelievable.

The learned appellate Judge has acted as super accountant and contrary to the clear and final accounts which were arrived between the parties dated 20 May 1970 (Exhibit 120), the learned appellate Judge has himself undertook an exercise of scrutinizing the accounts retrospectively right from the inception of the tenancy which commenced in the year 1956 which are the accounts between the parties being Exhibit 111 to Exhibit 119 (Exhibit 113). The reading of the judgment of the appellate Court really shocks the judicial conscience in making me wonder whether the appellate Court, could at all have indulged in such exercise and reach to findings which are contrary to the evidence on record on mere calculations undertaken by him. There are number of observations which can be recorded from the impugned order of the appellate Judge which are highly perverse and completely contrary to the evidence on record as also the position in law. The learned appellate Judge has grossly and certainly erred, in himself undertaking the calculation or the scrutiny of the accounts right from the year 1956 and on his own scrutiny disbelieved a proved document where the defendant had agreed that there are arrears of Rs.55,700/- when the learned Appellate Judge makes an observations in paragraph 47 of the impugned order that an amount of Rs.55,700/- is not relatable to the arrears of rent, however, without specifying as to what would be the said amount, if

it is not arrears of rent. Further, the learned appellate Judge considered the deposits made between 10 January 1972 (which is more than one year after filing of the suit) till 11 July 1974, which is a period subsequent to the suit being decided (as suit was decided on 10 July 1974) as acceptable deposits so as to comply with the requirement of Section 12 of the Bombay Rent Act, and on the basis of these observations, the learned appellate Judge holds that it cannot be said that the defendant was not depositing the rent regularly in the trial Court. These observations to say the least are patently perverse and conjectural. Further perversity can be seen in the observations as made in paragraph 56, where the learned appellate Judge observed that *"It is pertinent to note that no details, particulars are furnished either in the pleadings or in the notice Exh.126 regarding this amount of Rs.55,700/-. Hence, when the details are not supporting the amounts, claims, it is difficult to meet out the claim of the respondent."* One would be at a loss to understand this particular reasoning which is wholly contrary to the evidence on record and when admittedly the defendant could not prove that there was 'any payment of rent', for the said period to the plaintiff. The further observations which really would raise doubt about the obtuseness of the learned appellate Judge in appreciating the position of law, also needs to be noted. Also the confusion and

contradiction in the findings is also evident. In paragraph 61, the learned appellate Judge has made the following observations:-

“..... .. Therefore, in the instant case,when mode of payment was from year to year, though the tenancy was month to month, Sec.12(3)(a) cannot be attracted. Now in the present case, therefore, would fall under Sec.12(3)(b) of the Act, since the tenant/appellant, had deposited the rent, regularly, as per the orders passed by the learned trial Judge, below Exh.130. Reliance can be kept on the ruling of Ratilal Balabhai Nazar Vs. Ranchodas (cited above). Since the tenant/appellant has admitted in the notice reply (Exh.128), itself, that he is a monthly tenant and therefore, it is not necessary to discuss the point, urged by Mr.Modi, the learned Advocate for the respondent, on the point, that burden lies on the tenant to prove that tenancy is from year to year and not monthly tenancy and that monthly tenancy can be created orally.” (emphasis supplied)

33. The learned trial Judge has correctly observed that it was incumbent upon the defendant to pay all the arrears of rent including the costs if he wanted to protect his possession under section 12(3)(b) of the Bombay Rent Act. As noted above the observations of the learned Trial Judge in this regard in paragraph 19 of the judgment on the issue nos.2 and 3 which concern the entitlement of the plaintiff to receive vacant possession of the suit premises and entitlement to receive Rs.61,700/- from the defendant, could not have been disturbed.

34. Learned Counsel for the petitioner/plaintiff would be correct in relying on the decision of the Full Bench of this Court in

“Babulal s/o.Fakirchand Agrawal vs. Suresh s/o. Kedarnath Malpani & Ors.(supra) though the said judgment revolves around the interpretation of Section 15(1) of the Maharashtra Rent Control Act, however, the Full Bench considering the provisions of Section 12(3)(b) of the Bombay Rent Act namely complying with the conditions as stipulated under Section 12(3)(b) of the Bombay Rent Act by the tenant to seek protection under the said provision, has recognized that the obligation is on the tenant to comply/satisfy with all the conditions apart from the obligation of tendering in Court all the arrears due on the first day of hearing of the suit or on or before the such date as the Court may fix and pay regularly such rental liability till the suit is finally decided.

35. It is clear that the observations of the learned Appellate Judge in paragraph 50 in regard to the deposit of Rs.31,000/-being made by the defendant clearly would not comply with the requirement of Section 12(3)(b) of the Bombay Rent Act which requires that even if there is an order which is passed by the Court subsequent to the first day of hearing of the suit, nonetheless the obligation of the tenant is to tender in the court *“the standard rent and permitted increases then due”* and, thereafter continue to pay or tender in court regularly such rent and permitted increases, till the

suit is finally decided and also to pay costs of the suit as directed by the court. The amount of Rs.31,000/- which is considered as an acceptable deposit by the learned Appellate Judge in paragraph 50, is in no manner compliance under Section 12(3)(b) of the Bombay Rent Act being not the total amount of rent then due and thus the observation in that regard is completely perverse.

36. Thus none of the contentions as urged on behalf of the defendant can be sustained as can be seen from the above discussion.

37. It is clear that the plaintiff had rightly succeeded before the learned trial Judge when the suit came to be decreed by the learned trial Judge on 10 June 1974, however, in the above circumstances, the fruits of the decree for last forty three years were deprived to the plaintiff and that too of commercial premises. Resultantly and unhesitantly, the petition deserves to succeed. The impugned judgment and order dated 26 September 1991 passed by the learned appellate Court in Regular Civil Appeal No.135 of 1974 is quashed and set aside and the judgment and decree dated 10 June 1974 passed by the Civil Judge, Junior Division, Wai in Civil Suit No.1 of 1971 stands confirmed.

38. The respondents/legal heirs of defendant no.1 are directed to hand over the possession of the suit premises to the petitioners within a period of six weeks from today.

[G.S. KULKARNI, J.]