

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.232 OF 2008
WITH
CIVIL APPLICATION NO.376 OF 2016

1. Virendra Dhirubhai Shah	]	
45 Age	]	
2. Nilesh Dhirubhai Shah	]	
40 Age	]	
3. Manish Dhirubhai Shah,	]	
All adults, residing at Flat No.3,	]	
Parekh Building, 228 Sion Road,	]	
Sion (East), Mumbai – 400 022.	]	Petitioners
		[Original Deft. Nos. 2A to 2C]

Vs.

Natwar Parekh, adult,	]	
residing at Parekh Building,	]	
228 Sion Road, Sion (East),	]	
Mumbai – 400 022.	]	Respondent
		[Orig. Plaintiff]

.....

Mr. Sanjiv Sawant a/w Sunil Lahawe a/w Abhishek Deshmukh i/b Juris Partners, for Applicants.

Mr. Omar Khaiyam Shaikh a/w Chetan Mendadkar, for Respondent.

.....

CORAM : R.G. KETKAR, J.

DATE : 29TH JUNE, 2018.

JUDGMENT:

Heard Mr. Sawant, learned Counsel for the applicants and Mr. Shaikh, learned Counsel for the respondent at length.

2. By this application under Section 115 of the Code of Civil Procedure Code, 1908 (for short 'C.P.C'), applicants who are legal representatives of defendant No.2, hereinafter referred to as “Defendants No.2A to 2C” have challenged the judgment and decree dated 10th January, 2008 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Appeal No.414 of 2003. By that order, the Appellate Court partly allowed the appeal preferred by the respondent, hereinafter referred to as “plaintiff” and decreed the suit on the ground of arrears of rent (section 12) and unlawful subletting (section 13 (1) (e)) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). The Appellate Court directed the defendants to hand over vacant and peaceful possession of Block No.3, Parekh Building, Plot No. 228, Sion Road, Sion (East), Mumbai – 400 022 (for short 'suit premises') to the plaintiff. The relevant and material facts giving rise to filing of this Civil Revision Application, briefly stated are as under;

The plaintiff instituted suit, inter alia, contending that he is owner of the suit premises situate in Parekh Building at Plot No. 228, Sion Road, Sion (East), Mumbai 400 022. Defendant No.1 was residing in the suit premises as a tenant. She had shifted to Hyderabad and inducted Dhirubai Shah, defendant No.2 in the suit premises without plaintiff's consent. It amounts to unlawful subletting. The plaintiff further contended that the defendants have carried out unauthorized work in the suit premises ((13)(1) (b)). Defendant No.1 failed to pay rent from July, 1989 onwards and hence, demand notice was issued on 15th December, 1990 claiming arrears of rent @ Rs. 123/- per month from July, 1989 to December, 1990 (18 months) amounting to Rs. 2566.14 paise. The plaintiff also claimed difference of property tax, repair cess and water charges amounting to Rs. 3790.59. The plaintiff alleged that the defendants are in arrears of Rs. 6353.73 paise.

3. During pendency of the suit, the plaint was amended. The plaintiff contended that he requires the suit premises for bona fide use and occupation having regard to number of his family members. If eviction decree is not passed, greater hardship will be caused to the plaintiff.

4. Defendant No.1 did not participate in the trial. Defendant No.2 appeared and during pendency of the suit, he died. Defendants No.2A to 2C were brought on record as his heirs and legal representatives. They filed written statement, inter alia, contending that defendant No.1 had shifted to Hyderabad. Defendant No.2 was in use and occupation of the suit premises lawfully since 1965. It was further claimed that rent was paid by him by cheque. Defendant No.2 was accepted as a tenant by the plaintiff. Reference was made to proceedings instituted by defendant No.1 in the City Civil Court against defendant No.2 and his family members. Defendants No.2A to 2C denied contention that they carried on unauthorized work in the suit premises. In so far as default of rent is concerned, it was contended that though rent was tendered by defendant No.2, it was not accepted by the plaintiff. In so far as claim of bona fide requirement is concerned, the same was denied by defendants No.2A to 2C.

5. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. The parties adduced evidence. After considering the evidence on record, the learned trial Judge dismissed the suit on 31st October, 2002. Aggrieved by that decision, the plaintiff preferred appeal before the Appellate Bench of the Court of Small Causes at Mumbai. By the impugned order, the Appellate Bench decreed the suit under section 12 and 13 (1) (e) of the Act. The Appellate Court declined to pass decree under section 13 (1) (b) and 13 (1) (g) of the Act. It is against this decision, defendants No.2A to 2C have instituted the present C.R.A.

6. Initially, Civil Revision Application was allowed on 3rd November, 2009. Aggrieved by that decision, the plaintiff approached the Apex Court. By order dated 30th March, 2016, the Apex Court allowed Civil Appeal No. 3236 of 2016 and remitted the matter to this Court. The Apex Court noted submission of the plaintiff that the original second defendant could have never been construed as a licensee in order to get benefit of Section 15-A of the Act as on 1st February, 1973 and it found force in this contention inasmuch as at no point of time there was any legally acceptable material on record to suggest that status of defendant No.2 was recognized as licensee in order to enable him to claim benefit of Section 15-A of the Act. On behalf of defendants No.2A to 2C, reliance was placed on section 5 (11) (aa) r/w section 15 (2) of the Act to contend that second defendant was a lawful tenant prior to 1st February, 1973 as has been provided in section 15(2) of the Act and consequently, all the rights as a tenant are available to him under the Act.

7. In support of this application, Mr. Sawant submitted that defendant No.1 has permanently shifted to Hyderabad. Defendant No.2 was occupying the suit premises since 1965. Defendant No.2 was in control and in exclusive possession of the suit premises after defendant No.1 shifted permanently to Hyderabad. He submitted that the plaintiff did not serve demand notice dated 15th December, 1990 on defendant No.1. The trial Court dismissed the suit on all grounds. However, the Appellate Court wrongly came to the conclusion that demand notice was duly served as per section 106 of the Transfer of Property Act, 1882 (for short 'T.P. Act'). He submitted that the said finding is contrary to the material on record. In any case, defendants No.2A to 2C cannot be termed as wilful defaulters. He invited my attention to the cross-examination of plaintiff's evidence who was examined as P.W.1. In paragraph 10, P.W.1 Natwar Parekh admitted that he refused to accept rent of the suit premises from defendant No.2 and defendants No.2A to 2C. He refused to

accept rent from defendant No.2 from beginning.

8. Mr. Sawant submitted that defendant No.2A to 2C have produced rent receipts Exhibit 12 colly evidencing payment of rent from 30th December, 1965 to 30th June, 1988. He, therefore, submitted that the Appellate Court was not justified in decreeing the suit on the ground of arrears of rent under section 12 of the Act. In so far as ground of unlawful subletting is concerned, he submitted that in fact, the plaintiff is also aware that defendant No.1 had permanently shifted to Hyderabad. Even in paragraph 3 of the demand notice dated 15th December, 1990, the plaintiff asserted that defendant No.1 has settled at Hyderabad. From 1965 onwards defendant No.2 was in exclusive possession of the suit premises. Defendant No.1 had parted with possession as also created right, title and interest in favour of defendant No.2. As defendant No.2 was in exclusive possession of the suit premises prior to 1st February, 1973, he is a lawful sub tenant and is, therefore, protected under section 15 (2) of the Act. The Appellate Court committed serious error in holding that the plaintiff established that defendant No.1 had unlawfully sublet the suit premises to defendant No.2. He has taken me through the proceedings instituted by defendant No.1 (plaintiff therein) against defendant No.2 and his family members in the City Civil Court being S.C. Suit No.9824 of 1988, written statement and counter claim filed by defendant No.2 and his family members. Order dated 27th October, 1993 passed by the learned trial Judge in Notice of Motion No.7920 of 1988 and Notice of Motion No.7091 of 1989 taken out in the suit as also consent terms dated 10th October, 2001 filed in that suit.

9. On the other hand, Mr. Shaikh has supported the impugned order. He submitted that defendant No.2 is not entitled to claim protection under section 15 (2) of the Act. He invited my attention to definition of the term

'tenant' in Section 5 (11) as also section 15 of the Act. He submitted that defendant No.2 is not claiming through defendant No.1 being a tenant. Defendant No.2 is claiming his independent right, title and interest in the suit premises. He invited my attention to the pleadings in the present suit and submitted that defendant No.2 is not claiming through defendant No.1. Defendant No.2 has not explained his initial entry in the suit premises. In the proceedings before the City Civil Court instituted by defendant No.1 herein against defendant No.2 and his family members, she accepted that defendant No.2 is unlawfully in possession of the suit premises. In fact, suit is instituted by defendant No.1 alleging that defendant No.2 is a trespasser.

10. Mr. Shaikh further submitted that defendant No.2 did not come with the case that he was paying any consideration to defendant No.1 for occupying suit premises. In absence of payment of any consideration by defendant No.2 to defendant No.1 for occupying the suit premises, he cannot claim to be a protected tenant. In support of his submissions, he relied upon following decisions;

- [1] Ram Saran Vs. Pyarelal and another, (1996) 11 Supreme Court Cases 728 and in particular paragraphs 24 and 25 thereof.
- [2] Jostna Laxmidas Pujara & another Vs. Kailasbhai Shukaram Tiwari, 2002 (Supp.) Bom. C.R. 598 and in particular paragraphs 13 to 15 thereof.
- [3] Vinaykishor Punamchand Mundhada and another Vs. Shri Bhumi Kalpataru & Ors., (2010) 9 Supreme Court Cases 129 and in particular paragraphs 15 to 19 thereof.

11. I have considered rival submissions of learned Counsel for the parties. I have also perused the material on record. As noted earlier, the

learned trial Judge had dismissed the suit on all the grounds. As against this, the Appellate Court decreed the suit on the ground of arrears of rent (section 12) and that defendant No.1 had unlawfully sublet the suit premises to defendant No.2 as contemplated under Section 13 (1) (e) of the Act. No contentions were advanced as regards unauthorized work (section 13 (1) (b) and reasonable and bona fide requirement (section 13 (1) (g)).

12. In so far as ground of unlawful subletting is concerned, a perusal of the notice dated 15th December, 1990 Exhibit 27 issued by the plaintiff and in particular paragraph 3 thereof shows that the plaintiff himself asserted that defendant No.1 had settled at Hyderabad. With the assistance of learned Counsel appearing for the parties, I have perused the original record. From perusal of the original record, it transpires that on 4th October, 1969, defendant No.1 having address as 6-3-347/12, Dwarka Puri Colony, Pujagutta, Hyderabad – 4 addressed a letter to the Postmaster Khairatabad Post Office, Khairatabad, Hyderabad -4. In that letter, she had set out that she had received a letter from Bombay that she is not paying tax for the radio licence. She has been asked to produce certificate showing that she is paying tax at Hyderabad. She, therefore, requested to issue a certificate showing that she is paying tax regularly and no dues are payable so that she can produce that certificate. In the concluding portion of that communication, she asserted that she had shifted from “Shalimar” 6-3-903, Panjgutta, Hyderabad” to “6-3-347/12, Dwarka Puri Colony, Pujagutta, Hyderabad – 4”. She, therefore, requested to address all the correspondence on her new address. Apart from that, one ration card was issued in favour of defendant No.2 since 1966. A perusal of this ration card issued in 1967 shows that name of defendant No.1 herein is not included. Apart from that, defendants No. 2A to 2C have produced certificates at Exhibit 21 colly showing that their names are entered into the voters list of the relevant period i.e 20th December, 1967 to 19th December, 1972 and 20th

December, 1972 to 19th December, 1977 in respect of the suit premises. The L.I.C policy dated 22nd December, 1968 shows address of the suit premises.

13. As noted earlier, defendant No.1 had instituted suit against defendant No.2 and his family members in the City Civil Court. During pendency of that suit, Notices of Motion were taken out. By order dated 27th October, 1993, the learned trial Judge dismissed Notice of Motion No.7920 of 1988 and allowed Notice of Motion No.7091 of 1989. A perusal of that order shows that prima facie at interlocutory stage, it was found that defendant No.1 herein was not occupying the suit premises as she along with her husband was all along staying at Hyderabad. After 1965, she along with her husband has abandoned the suit premises. Subsequently, in that suit, on 10th October, 2001, consent terms were arrived at between defendant No.1 and defendants No.2A to 2C and other family members where the plaintiff therein accepted the findings recorded in the order dated 27th October, 1993. The plaintiff therein declared and confirmed that she along with her family members left Mumbai in the year 1965. Defendant No.2 was completely in control of the suit premises. It is no doubt true that the plaintiff herein was not made party in that proceedings. Findings recorded at interlocutory stage as also consent terms will not be binding on the plaintiff. Even if, I exclude from consideration the proceedings of the City Civil Court, none the less, evidence on record in the present case clearly shows that defendant No.1 had permanently shifted to Hyderabad in the year 1965 and defendant No.2 was in occupation of the suit premises from 1965 onwards. Defendant No.2 was in exclusive possession and control of the suit premises from 1965 onwards. Defendant No.1 was not having control over the suit premises after she along with her family members shifted to Hyderabad permanently. Thus, one has to conclude that defendant No.1 had parted with possession of the suit premises and created interest in favour of defendant No.2 in 1965.

14. The moot question is, therefore, whether defendant No.2 can claim protection under section 15 (2) of the Act. Section 5 (11) (a), (aa) and section 15 read thus;

5. Definitions. In this Act unless there is anything repugnant to the subject or context:

(1)...

(2)...

(3)...

(4)...

(5) (11) “tenant” means any person by whom or on whose account rent is payable for any premises and includes_

(a) such sub-tenants and other persons as have derived title under a tenant [before the 1st day of February 1973:]

[(aa)any person to whom interest in premises has been assigned or transferred as permitted or deemed to be permitted, under section 15]

Section 15:

15.[In absence of contract to the contrary tenant not to sub-let or transfer] [or to give on licence] -

[(1)]Notwithstanding anything contained in any law, [but subject to any contract to the contrary], it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein [and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises]:

[Provided that the [State] Government may by notification in the *Official Gazette*, permit in any area the transfer of interest in premises held under such [leases or class of leases [or the giving on licence any premises or class of premises] and to such extent as may be specified in the notification].

[(2)]The prohibition against the sub-letting of the whole or any part of the premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the

provisions of this sub-section, be deemed to have had no effect [before the 1st day of February 1973] in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a Court, any such sub-lease, assignment or transfer of any such purported sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub-section (1), as purported sub-lease, assignee or transferee and has continued in a possession [on the date aforesaid], shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13.

The provisions aforesaid of this sub-section shall not affect in any manner the operation of sub-section (1) after [date aforesaid].”

15. A perusal of definition of expression 'tenant' shows that tenant means any person by whom or on whose account rent is payable for any premises and includes (a) such sub-tenants and other persons as have derived title under a tenant before the 1st day of February 1973. The said expression also includes (aa) any person to whom interest in premises has been assigned or transferred as permitted or deemed to be permitted, under section 15 of the Act.

16. Sub-section (1) of Section 15 lays down that notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 for any tenant to sub-let the whole or any part of such premises. We are not concerned with proviso to sub-section (1). Sub-section (2) lays down that the prohibition against the sub-letting of the whole or any part of the premises which have been let to any

tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the provisions of this sub-section, be deemed to have had no effect [before the 1st day of February 1973] in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a Court, any such sub-lease, assignment or transfer of any such purported sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub-section (1), as purported sub-lease, assignee or transferee and has continued in a possession [on the date aforesaid], shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13. The provisions aforesaid of this sub-section shall not affect in any manner the operation of sub-section (1) after the [date aforesaid].

17. Thus, prohibition in sub-section (1) of Section 15 will be of no effect if any tenant had assigned or transferred his interest in favour of any person who has entered into possession despite prohibition in sub-section (1) prior to 1st February, 1973, said assignment or transfer shall be deemed to be valid and effectual for all purposes and any tenant who has sublet any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13.

18. In the present case, defendants No.2A to 2C have adduced evidence to substantiate that defendant No.1 had voluntarily surrendered possession of the suit premises and permanently shifted to Hyderabad in 1965. Defendant No.2 was occupying suit premises prior to 1st February, 1973. Thus, defendant No.1 had assigned or transferred her interest in favour of defendant

No.2 prior to 1st February, 1973. In view thereof, prohibition contained in sub-section(1) will not be applicable precluding defendant No.1 tenant from subletting the suit premises or assigning or transferring in any other manner her interest therein in favour of defendant No.2. In view thereof, it has to be concluded that defendant No.2 being in exclusive possession of the suit premises prior to 1st February, 1973 has acquired status of a lawful sub tenant.

19. Mr. Shaikh relied on the decision in the case of **Ram Saran** (supra). In that case, the appellant had let out Shop premises to respondent No.1. The appellant alleged that respondent No.2 Mahavir Gram Udyog Samiti was unlawful sub tenant. In paragraph 21, the Apex Court noted that the registered Society is a distinct legal entity. It's assets and liabilities belong to the said society. The memorandum of association shows that any member may be removed and new members may be taken in the society by decision of 2/3 majority of the members. It is, therefore, unlikely that in course of time respondent No.1 or their family members may not be members of the said society and such society may be run by completely different group of persons. In my opinion, facts of the present case are materially different from the facts in this decision.

20. Mr. Shaikh relied on the decision in the case of **Jotsna Laximdas Pujara & another** (supra). In that case, while examining the ground of unlawful subletting, it was observed in paragraph 13 that the landlord has to establish at least two material ingredients namely;

- [a] that the sub-tenant is in exclusive right of possession or interest in the premises to the exclusion of the head tenant; and
- [b] that right is exercised in lieu of some consideration.

In paragraph 3 of the plaint, respondent asserted that petitioner No.1/tenant vacated the demised premises sometime in April, 1981 and shifted to newly acquired premises at Borivali. Petitioner No.1 had illegally inducted petitioner No.2. Thus, in that case, respondent/plaintiff came with specific case of unlawful subletting in 1981. The said decision is also not applicable to the facts of the present case.

21. Lastly, Mr. Shaikh relied on the decision in the case of **Vinaykishore Punamchand Mundhada and another** (supra). In that case, respondent No.4 was inducted as tenant in the year 1974 who constituted a partnership firm under the name and style of “Bhumi Kalpataru” consisting of five partners and carried on business till 1991. The appellants came with the case that respondent No.4 sublet the suit premises to respondent No.2 who deceptively gave similar name to the partnership firm by prefixing the word “Shri” and it was known as “Shri Bhumi Kalpataru”. In paragraph 12, the Apex Court observed that none of the respondents were partners of the previous firm that was constituted by respondent No.4 as 'Bhumi Kalpataru'. In paragraph 18, the Apex Court observed thus;

“It is well settled that sub-tenancy or sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord. In all such cases, invariably the landlord is kept out of the scene rather, such arrangement whereby and whereunder the possession is parted away by the tenant is always clandestine and such arrangements take place behind the back of the landlord. It is the actual physical and exclusive possession of the newly inducted person, instead of the tenant, which is material and it is that factor which reveals to the landlord that the tenant has put some other person into possession of the tenanted property”.

In my opinion, the said decision is also not applicable to the facts of the present case. The Apex Court held that it is well settled that sub-tenancy or

sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord. This finding, in fact, is complete answer to the submission of Mr. Shaikh that defendant No.2 has not explained his initial entry in the suit premises and that defendant No.2 did not come with the case that he was paying any consideration to defendant No.1 for occupying the suit premises.

22. In so far as the ground of arrears of rent under section 12 is concerned, the Appellate Court held that the plaintiff has established service of demand notice on defendant No.1. A perusal of the demand notice dated 15th December, 1990 itself shows that the plaintiff asserted that defendant No.1 had settled at Hyderabad. A perusal of the cross-examination of plaintiff's witness P.W.1 shows that he did not obtain signature on the notice of defendant No.1. The plaintiff has also not produced registered post envelope on record along with acknowledgment to substantiate that the notice was duly served on defendant No.1. That apart, it is the case of the plaintiff that he tried to personally serve demand notice on defendant No.1. However, he admitted that he did not obtain her signature on the notice and, therefore, he pasted copy of that notice on the suit premises.

23. The Appellate Court held that demand notice under section 12 of the Act is required to be served in the manner provided under section 106 of the T.P. Act and section 106 of the T.P. Act and in particular sub section (4). thereof, Sub section (4) reads thus;

“106. Duration of certain leases in absence of written contract or local usage._

(1)....

(2)....

(3)....

(4) Every notice under sub-section (1) must be in writing,

signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

24. A perusal of the above extracted portion shows that every notice under sub section (1) can be sent by post to the party who is intended to be bound by it or by tendering or delivering personally to such party or to one of his family or servant at his residence. In the present case, the plaintiff has not produced any record to indicate that he had sent notice by R.P.A.D. As noted earlier, as plaintiff has not obtained acknowledgment of defendant No.1 about personal service it also cannot be said that the plaintiff has served demand notice personally on defendant No.1. It is only in that event such tender or delivery is not practicable, sender can affix notice to a conspicuous part of the property. In the present case, the plaintiff came with a case that he has personally served notice on defendant No.1 and, therefore, there was no occasion for the plaintiff to affix the notice on the conspicuous part of the property. The only irresistible conclusion, therefore, is no demand notice was served on defendant No.1.

25. Even otherwise, it is not possible for the plaintiff to serve personally defendant No.1 at the address of the suit premises as defendant No.1 had permanently shifted to Hyderabad sometime in the year 1965. Assuming in favour of the plaintiff that the demand notice is served on defendant No.1 that will not necessarily follow that defendant No.2 is in arrears of rent. It has come on record that defendant No.2 had paid rent from December, 1965 to June, 1988. That apart, in paragraph 10 of cross-examination of P.W.1, he admitted that he refused to accept rent of the suit premises from defendant No.2 and defendants No.2A to 2C. He refused to

accept rent from defendant No.2 from beginning. In view of above categorical admission of the plaintiff, defendant No.2 and defendants No.2A to 2C cannot be termed as wilful defaulters. Thus, the Appellate Court has committed serious error in holding that the defendants were in arrears of rent and are wilful defaulters.

26. In the light of the aforesaid discussion, impugned order cannot be sustained and is liable to be set aside, thereby, restoring the order passed by the trial Court. Rule is made absolute in terms of prayer clause (b). R.A.E. Suit No.923/2487 of 1991 stands dismissed. Order accordingly.

27. In view of disposal of the main C.R.A., Civil Application No.376 of 2016 for payment of compensation does not survive and the same is disposed of.

[R.G. KETKAR, J.]