

CORAM : R. G. KETKAR, J.
DATE : APRIL 9, 2018

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants collectively', have challenged the judgment and decree dated 17.11.2006 passed by the Appellate Bench of the Small Causes Court at Bombay in Appeal No.462 of 2002. By that order, the Appellate Court allowed the Appeal preferred by the respondents, hereinafter referred to as 'plaintiffs collectively', and quashed and set aside the judgment and decree dated 03.05.2002 passed by the learned Judge, Court Room No.22 of the Court of Small Causes at Bombay in R.A.E. Suit No.98/263 of 1981. The Appellate Court decreed the Suit in favour of the respondents and directed the defendants to handover vacant and peaceful possession of flat No.B/5, Karnataka Co-op. Hsg. Society Limited, Mogul Lane, Mahim, Bombay 400 016 (for short 'suit property'). The facts giving rise to filing of present C.R.A., briefly stated, are as follows:

3. R.A.E. Suit was instituted by one G. N. K. Satyanarayana Iyer and G. K. Balasunder Iyer (original plaintiffs) against M. Kalyanaraman Pillay (original defendant) inter alia contending that father of original plaintiffs No.1 and 2 late G. N. K. Iyer was the tenant / member of Karnataka Co-op. Hsg. Society Limited (for short 'Society'). The suit property is situate within the Society. During the lifetime of G. N. K. Iyer, he allowed original defendant to occupy the suit property on leave and licence basis or on tenancy basis. G .N. K. Iyer died on 10.09.1967. After the death of G. N. K. Iyer, his sons, original plaintiffs became owner and landlord of the original defendant in respect of the suit property. The original defendant had paid rent upto December 1963 and thereafter, failed and neglected to pay the rent to G. N. K. Iyer and original plaintiffs. Original plaintiffs issued demand notice dated 21.01.1980 calling upon the original defendant to pay arrears of rent amounting to Rs.23,520/- at the rate of Rs.120/- per month for the period from January 1964 to 31.12.1979. The notice was duly served on the original defendant on 24.01.1980. Despite service, original defendant did not either send reply or tender amount of arrears of rent. The original plaintiffs are, therefore, entitled to possession of the suit property under Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

4. Original plaintiffs further contended that original plaintiff No.1 requires the suit premises for his personal and his bonafide use and occupation. Son of original plaintiff No.1, requires the suit property for his family members. Original plaintiff No.2 requires the suit property for personal use and occupation of his family members and his son Hari G. S. K. Iyer. Original plaintiffs, therefore, sought possession of the suit premises under Sections 12 and 13(1)(g) of the Act.

5. After service of the suit summons, original defendant filed his

first written statement dated 28.07.1983 inter alia contending that the suit premises situate in a society, and therefore, Small Causes Court has no jurisdiction to entertain and try the Suit. It was further contended that there is no privity of contract between the parties. After admitting the receipt of the demand notice, it was contended that defendant had deposited more than the rent of the suit premises in the proceedings before the Special Officer on Duty under the Maharashtra Co-operative Societies Act, 1960. Defendant, thereafter filed additional written statement on 28.08.1997. Defendant further contended that up-to-date outstanding amount is paid by Payee's Account Cheque since 1967 till date to the Society and he has retained the receipts towards rent upto date. Defendant also denied that the original plaintiffs require the suit premises reasonably and bona fide. Defendant further contended that he will suffer greater hardship if the eviction decree is passed.

6. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. Parties adduced the evidence. By order dated 03.05.2002, the learned trial Judge dismissed the Suit. Aggrieved by that decision, original plaintiffs instituted appeal before the Appellate Bench of the Small Causes Court. By the impugned order, the Appellate Court allowed the appeal. The Appellate Court decreed the Suit only under Section 12 of the Act and declined to pass decree under Section 13(1)(g). It is against these orders, defendants collectively have preferred this C.R.A.

7. In support of this Application, Mr. Patil has invited my attention to the - (i) demand notice dated 21.01.1980, (ii) receipts issued by the Society at exhibits-5 collectively & 6 collectively, and (iii) opening paragraph of the written statement where defendant contended that there was no privity of contract between the plaintiffs and the defendant as the Society was directly accepting and defendant was paying directly to the

Society, charges inclusive of the rent. In paragraph 2, defendant contended that he had paid rent and / or compensation upto 1967 till the death of G. N. K. Iyer. Defendant also contended that termination of his tenancy by the plaintiffs is bad in law and not operative on the defendant. Defendant further contended that he had paid upto date outstanding amount in respect of the suit premises by payee's account cheque since 1967 till date to the Society and has retained the receipts for payment up-to-date issued by the Society, (iv) evidence of P.W.1-G. K. Satyanarayana Iyer and in particular paragraphs 2, 9, 10 and 11. In paragraph 2 of the examination-in-chief, P.W.1 deposed that suit flat was let out to the defendant on monthly rent of Rs.120/- and that he had paid rent of the suit flat till 1966 and thereafter he neglected to pay the rent. In paragraph 9 of the cross-examination, he denied the suggestion there were no arrears of rent amounting to Rs.23,520/- and he further stated that he was not aware that defendant had paid all the dues of the Society in proceedings No.1595/2175/77 before the Registrar of Co-operative Societies. In paragraph 11, P.W.1 admitted 29 receipts which were marked as exhibit-5 collectively and 82 receipts which were marked as exhibit-6 collectively. In paragraph 12, P.W.1 admitted that according to him, out of Rs.120 per month, Rs.30/- was payable to the landlord and Rs.90/- was payable to the Society by the defendant.

8. Mr. Patil invited my attention to the findings recorded by the learned trial Judge. After appreciating the evidence on record, the learned trial Judge held that plaintiffs failed to prove that defendant is not ready and willing to pay the rent and is in arrears of rent from January 1964. The learned trial Judge further held that plaintiffs failed to prove that by notice dated 21.01.1980, they have duly terminated the tenancy of the defendant. The learned trial judge turned down the ground of eviction under Section 13(1)(g) of the Act and further held

that greater hardship will be caused to the defendant by passing the decree than refusing to pass it. After considering the evidence on record, the learned trial Judge dismissed the Suit.

9. Mr. Patil invited my attention to the impugned order of the Appellate Court. In paragraph 13, the Appellate Court considered the - (i) statement of payments made by the defendant prior to filing of the Suit for ejectment, (ii) compensation deposited during the pendency of proceedings before the Registrar, Co-operative Societies and after considering the material on record, in paragraph 16, held that there was shortfall of Rs.5315/-, which was due and payable by the defendant to the plaintiff. Mr. Patil submitted that by demand notice dated 21.01.1980, plaintiffs have claimed Rs.23,520/-. As against this, the Appellate Court, after considering the various payments made by the defendant, held in paragraph 16 that there was shortfall of Rs.5315/-. He submitted that basically demand notice itself was defective as the plaintiffs have claimed exorbitant rent in that notice. If the notice claiming exorbitant rent is defective, the Appellate Court was not justified in passing the decree under Section 12 of the Act. In support of these submissions, he relied upon the following decisions:

- a. ***Chimanlal Vs. Mishrilal*, AIR 1985 SC 136;**
- b. ***Shantilal M. Chhajed Vs. Sadashiv M. Ratnaparkhi*, 1989 Bombay Rent Cases 407;**
- c. ***Ramchandra Appaji Hanjage Vs. Mahavir Gajanan Mug*, 1992 (1) Mh.L.J.436; and**
- d. paragraph 9 of the decision dated 13.12.1995 of this Court (Coram: K. G. Shah and N. D. Vyas, JJ.) in Writ Petition No.3658 of 1981 (***Purshottam Bhanudas Palse Vs. Shakuntalabai Vishwanath Ayyaswami***) along with other companion Petitions and submitted that the demand made by the plaintiffs was patently mala fide and dishonest

and consequently, the Appellate Court was not justified in decreeing the Suit under Section 12 of the Act;

11. On the other hand, Ms Gada supported the impugned order. She invited my attention to the written statement dated 28.07.1983 filed by the defendant. Defendant contended that there was no privity of contract between him and the plaintiffs and defendant was paying the rent and other charges directly to the society. In paragraph 3 of the written statement, defendant admitted receipt of notice dated 21.01.1980 from the plaintiff's Advocate demanding a sum of Rs.23,520/- being arrears of rent from January 1964 to December 1979 @ Rs.120/- per month. She submitted that defendant did not dispute that the monthly rent was Rs.120/-. She has relied upon the decision of this Court in **Purshottam Bhanudas Palse** (*supra*) decided on 13.12.1995 to contend that the Court has to make an attempt to find out whether the inaccuracy in the demand of arrears of rent and permitted increases in the notice under Section 12(2) of the Act is traceable to any malafide or dishonesty on the part of the landlord. If a positive finding of malafides or dishonesty is recorded then the notice could be faulted as bad on that ground alone. Otherwise on the mere inaccuracy, the notice could not be faulted. Even if the inaccuracy is of large measure, that also would be no ground to fault the notice unless of course the magnitude of inaccuracy coupled with other facts and circumstances appearing on record is capable of leading to a finding of malafides or dishonesty on the part of the landlord.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, plaintiffs had issued demand notice dated 21.01.1980 to the defendant calling upon the defendant to pay

Rs.23,520/- being arrears of rent from January 1964 to December 1979. It is not in dispute that the plaintiffs demanded arrears of rent @ Rs.120/- per month. It is also not in dispute that the notice was duly served on the defendant. Despite service of demand notice, defendant did not give reply. Defendant also did not file any application for fixation of standard rent. It is the case of the defendant that he was paying rent and other charges directly to the Society. At the same time, it is material to note that till the death of G. N. K. Iyer, defendant was paying rent to him. In other words, during the lifetime of G. N. K. Iyer, defendant was not paying rent and other charges to the Society. It is also relevant to note that in the written statement, defendant contended that there was no privity of contract between the plaintiffs and the defendant and that he was paying directly to the Society. The defendant however, did not disclose in the written statement, the amounts paid by him from time to time to the Society. It is also material to note that in the cross-examination of P.W.1, G. K. Satyanarayana Iyer, in paragraph 9, he stated that he is not aware that defendant paid all dues to the Society in that proceeding bearing No.1595/2175/77. He admitted that there were receipts in possession of the defendant for payment of dues of Society in the name of the original defendant in respect of the suit premises. He did not agree that there is no payable dues from the defendant in respect of the suit premises.

13. The Appellate Court has considered the statements furnished by the Advocate for the plaintiffs recording particulars of payment made by the defendant to - (i) G. N. K. Iyer during his lifetime and (ii) payment deposited in proceedings before Registrar, Co-operative Societies and (iii) payment made to the Society as also statement furnished by the Advocate for the defendant. After considering the statement, in paragraphs 14 and 16, the Appellate Court ultimately came to the

conclusion that as against the demand of Rs.23,520/-, defendant had paid Rs.13,405/- and there is shortfall of Rs.5315/- as on the date of the demand notice. The Appellate Court thereafter considered the fact that defendant did not file application for fixation of standard rent, and thus, there was no compliance of Section 12(3) of the Act. The Appellate Court decreed the Suit under Section 12(3)(a) of the Act.

14. Mr. Patil relied upon the decisions of **Chimanlal** (*supra*), **Shantilal M. Chhajed** (*supra*), **Ramchandra Appaji Hanjage** (*supra*) and **Purshottam Bhanudas Palse** (*supra*). In the case of **Purshottam Bhanudas Pase** (*supra*), three Petitions were referred to the Division Bench on the basis of orders passed by the learned Single Judge (Bhimrao N. Naik, J.). The point involved in those petitions centered round the question of the validity of the demand notice contemplated by Section 12(2) of the Act. On behalf of the tenants, it was contended before Naik, J. that if the landlord in his notice under Section 12(2) of the Act makes a demand of the amount which is in excess of what is legally due and payable by the tenant to the landlord on the date of the notice, such a notice would not be a valid notice and the suit for possession filed on the basis of such a notice should fail. In support of that contention, the tenants relied upon the decision of this Court in **Ramchandra Appaji Hanjage** (*supra*). Naik, J. found it difficult to agree with the proposition of law contained in the case of Ramchandra Appaji Hanjage (*supra*) for in his view the case was covered by the Division Bench of this Court in the case of **Chhaganlal Mulchand Jain Vs. Narayan Jagannath Bangh - 1983 Mah.L.J. 254**. Accordingly the matter was referred to the Division Bench. The Division bench (Coram : K. G. Shah & N. D. Vyas, JJ.) considered following decisions:

a. **Raghunath Ravji Dandekar Vs. Anant Narayan Apte**, Civil Appeal No.387 of 1964 decided by the Apex Court on 05.04.1966;

- b. ***Lalshankar Mulji Joshi Vs. Kantilal Mohanlal Parikh, 1971 Bom. L.R.241*** decided by the learned Single Judge of this Court (Coram : Bhole, J.);
- c. ***Chhaganlal Mulchand Jain (supra)***;
- d. ***Ganpat Vs. Motilal Champalal Lunavat, AIR 1977 Bombay 344***;
- e. ***Dnyaneshwar (decd) by LRs Vs. Pandharinath Damodar Khade, AIR 1983 Bombay 217***;
- f. ***Bhagabandas Agarwalla Vs. Bhagwandas Kanu, AIR 1977 SC 1120***;
- g. ***Shantilal M. Chhajed (supra)***; and
- h. ***Chimanlal (supra)***.

15. In paragraph 4, the Division Bench reproduced observations of the Apex Court in ***Raghunath Ravji Dandekar (supra)***, which is to the following effect:

“We have not been able to understand as to how the notice to quit under the Transfer of Property Act would be bad because by mistake or oversight more rent was demanded in the notice under S.12(2) of the Act than was due. All that S.12(2) requires is notice by the lessor for payment of arrears of rent. It is true that such a notice generally contains the amount due as arrears of rent. But if there is a mistake in the amount specified in the notice that does not in our opinion make the notice under s.12(2) bad or because of that make the notice to quit under the Transfer of Property Act bad. We may add that the mistake might have arisen because three years according to the British Calendar would have 37 months according to the Hindu calendar because there is an intercalary month in the Hindu calendar once in there years of the British calendar. The argument that the notice to quit in this case was bad on this ground must therefore fail.”

16. The Division Bench thereafter observed that what is important from the Supreme Court judgment is that even if there is a mistake in the amount specified in the notice, that does not make the notice under

Section 12(2) of the Act bad. The Division Bench emphasized that merely because there is a mistake in the amount specified in the notice by which the arrears of rent or the permitted increases are demanded, the notice would not be rendered bad in law.

17. The Division Bench thereafter extracted observations made by the learned Single Judge (Bhole, J.) in **Lalshankar Mulji Joshi's case** (*supra*), which is to the following effect:

“It is now well settled that a liberal construction is put upon a notice to quit in order that it should not be defeated by inaccuracies either in the description of the premises or the name of the tenant or the date of the expiry of the notice; and that the test of its sufficiency is not what its contents would mean to a stranger ignorant of all the facts and circumstances touching the premises to which the notice purports to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances and the mistakes, if any, should not be construed with desire to find faults, but they should be construed liberally. In the instant case it appears that the petitioner - landlord was under a mistaken belief while asking for rent for the period from August 15, 1965 to September 15, 1965. It is not that he meant that the rent would not be due to him on September 15, 1965. It may be that he remained under a wrong impression and thought that he could demand such rent since he was terminating the tenancy on and from September 15, 1965. In my view, therefore, this appears to be a mistake on the part of the petitioner committed while giving the notice.”

The learned Single Judge referred to the decision of the Apex Court in the case of **Raghunath Ravji Dandekar** (*supra*).

18. The Division Bench thereafter considered decision of **Chhaganlal Mulchand Jain** (*supra*) and extracted paragraph 10 of the Division Bench judgment, which is to the following effect:

“In our opinion, it will not be possible to accept this contention of a strict construction of the notice in favour of the tenant. The notice is a communication between the landlord and the tenant and both the parties know their right and liabilities about the payment of rent. The notice is a

communication between the landlord and the tenant and both the parties know their rights and liabilities about the payment or rent. Hence any mistake in making a demand for the larger amount would not render the notice invalid. This has been so held by the Supreme Court in an unreported decision of the case of Raghunath Ravji Dandekar v. Anant Narayan Apte. Similarly this Court in the case of Lalshankar Mulji v. Kantilal has held that a notice is not invalid simply because by mistake or oversight the landlord has demanded the rent more than it was due. It was further held that a liberal construction should be put upon the notice to quit in order that it should not be defeated by inaccuracies.”

19. The Division Bench has referred to the judgment of the learned Single Judge in **Ganpat** (*supra*) and observed that in paragraph 11 of the judgment in the case of **Chhaganlal** (*supra*), the Division Bench has considered decision of **Ganpat** (*supra*) and found that in the case of Ganpat, a grossly untenable claim of permitted increases and municipal taxes amounting to over Rs.500/- was made in the notice and the question had arisen as to whether such a notice was bad. In the case of **Ganpat** (*supra*), certain observations made by the learned Single Judge which showed that notice must not be construed liberally. The Division bench observed that that would not be correct position. The Division Bench posited that the normal rule is that the notice exchanged between the landlord and the tenant should be construed liberally and not for the purpose of finding any fault as held by the Supreme Court in the case of **Bhagabandas Agarwalla** (*supra*). The Division Bench proceeded further to say that it is possible that in a particular case the landlord may make a false and untenable demand of certain amount along with the claim about which there will not be any dispute. In such a case the tenant will have an option to pay the undisputed amount of rent and to give a reply that the rest of the claim was a false one. If in due course of time at the stage of the suit the claim is proved to be false, the tenant obviously would be protected as he has made the payment of the amount that was actually due. But he will not be able to resist the same if within one

month from the notice he has not paid even the arrears to which the landlord was entitled. The Division Bench observed that the view expressed in the case of **Ganpat** (*supra*) that the notice would be bad if the notice includes untenable claim is too general a statement and disagreed with it. Even in such a case the tenant is under an obligation to remit within the prescribed time the permissible amount payable by him. Of course, he will have to take the risk if ultimately the Court finds that such payment would not cover all the arrears. In case of such a finding the landlord would be entitled to a decree for possession. But there would not be such a decree if the payment was sufficient to clear off all the arrears which were payable to the landlord. Thus everything will depend upon the fact of each case, but primarily one has to proceed on the basis that the notice should be construed liberally and not with a view to finding fault in it.

20. In paragraph 8, the Division Bench reproduced observations of the Apex Court in **Bhagabandas Agarwalla** (*supra*), which are to the following effect:

“Now it is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed ut res magis valeat quam pereat. The validity of a notice to quit, as pointed out by Lord Justice Lindley, L.J. in *Sidebotham v. Holland*(1), ought not to turn on the splitting of a straw. It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or overrefined subtlety, but it must be construed in a common sense way. See *Harihar Banerji v. Ramsashi Roy*, 45 Ind. App. 222 = (AIR 1918 PC 102). The notice to quit in the present case must be judged for its validity in the light of this well recognised principle of interpretation.”

21. Mr. Patil heavily relied upon paragraph 9 of this report. A perusal of paragraph 9 shows that in **Ganpat's case**, landlord issued demand notice under Section 12(2) claiming Rs.592.09 ps., being the aggregate amount of permitted increases and municipal taxes on the ground that

municipal taxes had been enhanced. The Trial Court held that the landlord had failed to produce any receipt of payment of the municipal taxes, therefore, the landlord was not entitled to claim those municipal taxes. The lower Appellate Court pointed out that on the basis of the landlord's admission that instead of the municipal taxes being enhanced they had been reduced on the landlord's own application. Those facts were within the special knowledge of the landlord and even so the landlord chose to make a demand of Rs.592.09 ps., which he could not sustain not because he failed to prove the same but he had no case for the same. The demand was, therefore, patently malafide and dishonest. Secondly, the demand was also inflated with regard to the arrears of rent because the actual dues ought to have been Rs.1240/- as found by the Appellate Court and not Rs.1288/0 as demanded by the landlord. The demand was patently a malafide and dishonest demand. The Division Bench in the case of **Chhaganlal** (*supra*) observed in paragraph 16 that in the case of **Ganpat**, the learned Single Judge referred to the decisions in Raghunath (*supra*) and **Lalshankar** (*supra*) and held that the Court should look out for substantial accuracy and discourage technical objections. A landlord should not be penalised for innocent or harmless mistakes. In paragraph 16, the learned Single Judge in **Ganpat's** case (*supra*) observed that a demand which is fictitious or untenable cannot be excused on the ground of mistake or oversight. Such serious infirmities will invalidate the notice. In paragraph 17, the learned Single Judge observed that a notice of demand of arrears of rent and permitted increases issued under Section 12(2) of the Act must not be liberal. It is vital that a landlord should make a correct demand unless he chooses not to specify the amount. Ultimately, the Division Bench observed that even the Ganpat's case falls in line with the Division Bench Judgment in Chhaganlal's case In the sense explained in the earlier part of the order. Paragraph 18 of Ganpat's case made the position very clear. The

Division Bench further observed that the judgment in Ganpat's case therefore has to be understood in the light of the facts of that case and it does not lay down any hard and fast rule that if there is any inaccuracy in the demand notice of arrears of rent and permitted increases, that by itself, would prove fatal to a Suit for possession under Section 12(2) of the Act. In view thereof, I do not find any merit in the submission of Mr. Patil relying upon decision of **Ganpat's case** in view of paragraph 9 of the Division Bench judgment.

22. The Division Bench thereafter considered decision in **Shantilal M. Chhajed** (*supra*). In that case, as against the amount of Rs.195/- which was due from the tenant, the landlord in the notice under Section 12(2) of the Act demanded Rs.1180/-. The learned Single Judge held that it was not a marginal error which could be condoned. The error was colossal and on that account also the demand notice was bad. In paragraph 12, Division Bench referred to the decision of the Apex Court in **Chimanlal's case** (*supra*). In the plaint therein it was recited that tenant had taken a portion of a shop and a Varandah on the ground floor on rent at Rs.150/- per month for the purpose of his cloth business and that the tenant had not paid the arrears of rent totalling Rs.2550/- for the period 26.06.1968 to 11.10.1969 and that the tenant was therefore, liable to eviction on the ground set forth in Section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961. In the written statement, the tenant pleaded that the landlord had described the tenanted premises incorrectly. In fact the premises consisted of an entire shop, a kotha behind the shop and a varandah in front of the shop. The trial Court dismissed the Suit for possession on the ground that landlord had not correctly described the extent of the premises in the notice terminating the tenancy and therefore, the tenancy had not been validly terminated. The landlord's appeal also failed. In the second appeal filed by the

landlord, the High Court permitted the landlord to amend the plaint so that reference to the tenanted premises then included the entire accommodation claimed by the tenant and after the amendment the suit related to the accommodation which, according to the tenant was the subject matter of the demise. After allowing the amendment, the High Court allowed the second appeal and held that no notice under Section 106 of the Transfer of Property Act, 1882 terminating the tenancy was required in view of the decision of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, **AIR 1979 SC 1745**. The matter was carried to the Supreme Court. In paragraph 8, the Supreme Court observed thus,

“To our mind, that is not sufficient. The notice referred to in S.12(1)(a) must be a notice demanding the rental arrears in respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of the accommodation let to the tenant and (b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. A valid notice demanding arrears of rent relatable to the accommodation let to the tenant from which he is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit, for unless a valid demand is made no complaint can be laid of non-compliance with it. and consequently no Suit for ejectment of the tenant in respect of the accommodation will lie on that ground.”

23. In paragraph 13, the Division Bench noted that heavy reliance was placed by the learned Counsel for the tenants on the portion extracted hereinbelow:

“(b) the arrears of rent must be legally recoverable from the tenant.”

24. The Division Bench thereafter considered the observations made by the Apex Court in **Chimanlal's case** (*supra*) and observed thus,

“If we read all these these propositions together, it would become clear that what Their Lordships of the Supreme Court meant was that the arrears of rent, which must be legally recoverable from the tenant, must be the arrears of rent in respect of the accommodation let to the tenant. In other words, if something is claimed by way of arrears of rent for the premises which is not let to the tenant, then the demand certainly cannot be said to be a demand for arrears of rent legally recoverable from the tenant in respect of the accommodation let to the tenant. In that case, the quantum of demand was not in dispute. What was in dispute was the extent of demised premises. In the notice, the landlord stated that the tenant had been given a portion of the shop and a varandah on the ground floor by way of a lease. The tenant contended that it was not correct and according to the tenant, as a matter of fact of the entire premises consisting of the entire shop, a kotha behind the shop and a varandah in front of the shop formed part of the demise. The courts below on facts found the Court tenant's contention to be correct. The Supreme Court found that the two versions, one given by the landlord and the other by the tenant, were incongruent with each other. The difference between the two was not marginal or insubstantial. It was not the case of misdescription of the accommodation. It was in that context of the facts of the case that while dealing with the contention of the landlord that there was no dispute that the rent was Rs.150/- per month that Their Lordships of the Supreme Court said that the notice must be a notice demanding the arrears of rent in respect of the accommodation let to the tenant and that the arrears of rent in respect of the accommodation let to the tenant must be legally recoverable from the tenant. This is the only way in which, in our opinion, the judgment of the Supreme Court in the case of *Chimanlal* has to be understood. As said above, in that case, the quantum of rent demanded in the notice was not in dispute. The mistake in the notice was in relation to the description of the demised premises. The mistake was substantial. In our opinion, this judgment of the Supreme Court in *Chimanlal's* case cannot be pressed into service while deciding the question whether a notice under Section 12(2) of the Rent Act would be bad if there is some mistake in the amount of rent demanded by the landlord from the tenant.”

25. In paragraph 14, the Division Bench considered the decision of the learned Single Judge in **Ramchandra's** case (*supra*) and observed that **Chimanlal's** case was the one in which in the notice terminating the

tenancy, the landlord had described only the part of the premises as the demised premises and had demanded rent in respect thereof at the rate of Rs.150/- per month. The tenant's contention that the demised premises were much more in extent than what the landlord contended was found correct. The decision of the Supreme Court in **Chaimanlal's** case has no application to the facts of the present case where the Division Bench was required to consider whether a notice under Section 12(2) of the Act would ipso facto be bad in law merely on the ground of inaccuracy in the amount demanded by the landlord from the tenant.

26. The Division Bench ultimately held as under:

“The court shall have to make an attempt to find out whether the inaccuracy in the demand of arrears of rent and permitted increases in the notice under Section 12(2) of the Act is traceable to any malafide or dishonesty on the part of the landlord. If a positive finding of malafides or dishonesty is recorded, then, in our opinion, the notice could be faulted as bad on that ground alone. Otherwise on the mere inaccuracy, the notice could not be faulted. Even if the inaccuracy is of large measure, that also would be no ground to fault the notice unless of course the magnitude of inaccuracy coupled with other facts and circumstances appearing on record is capable of leading to a finding of malafides or dishonesty on the part of the landlord.”

27. In the present case, defendant did not come with the case that the demand notice issued under Section 12(2) of the Act is traceable to any malafide or dishonesty on the part of the landlord. Applying the test laid down by the Division Bench in **Purushottam Bhanudas Palse's case** (*supra*), the notice dated 21.01.1980 issued by the landlord cannot be held as a faulty notice.

28. In view thereof, for the reasons recorded in paragraphs 14 and 16,

I do not find that the Appellate Court has committed any error in decreeing the Suit under Section 12(3)(a) of the Act. Defendant was not in a position to demonstrate that the findings recorded by the Appellate Court are perverse being based on no evidence or that they are contrary to the evidence on record. The defendant is not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the Appellate Court. Merely because on the basis of evidence on record, another view is possible that by itself is no ground for exercising powers under Section 115 of the C.P.C. In the result, the Civil Revision Application fails and the same is dismissed. Rule is discharged with no order as to costs.

29. At this stage, Mr. Patil orally prays for stay of this order for a period of 12 weeks from today. He assures that the defendants and all the adult family members residing with them will file usual undertaking in this Court within two weeks from today, after giving advance copy to the other side incorporating therein that;

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) they will deposit the entire arrears, if any, within three weeks from today in this Court under due intimation to the Advocate for the respondents;
- (e) in case they are unable to obtain suitable orders from the higher Court within twelve weeks from today, they will hand over vacant and peaceful possession of the suit premises to the

respondents;

30. In view thereof, notwithstanding dismissal of the Application, subject to the defendants filing the undertaking in the aforesaid terms within two weeks from today, this order shall remain stayed for the period of twelve weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case defendants commit breach of any of the conditions of the undertaking, respondent will be at liberty to proceed with the matter in accordance with law. In case, defendants are unable to obtain suitable orders from higher Court within a period of twelve weeks and do not hand over possession of the suit premises to the plaintiffs, the respondents will be at liberty to proceed with the matter in accordance with law. Order accordingly.

31. List the Application for reporting compliance after 4 weeks.

(R. G. KETKAR, J.)

Minal Parab