IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.183 OF 2017

M/s. East India Paper Co. … Applicant
Vs.
M/s. C. Chainani & Company … Respondent

Mr. S.M. Gorwadkar, Senior Advocate i/b. Ramesh Makhija & Co. for Applicant.
Mr. Neerav Merchant i/b. Thakordas and Madgavkar for Respondent No.1.
Mr. N. V. Walawalkar, Senior Advocate i/b. Mr. G. H. Keluskar for Respondent No.2.

WITH
CIVIL REVISION APPLICATION NO.184 OF 2017

M/s. East India Paper Co. … Applicant
Vs.
Barun Investment Co.(Pvt.) Ltd. & others … Respondents

Mr. S.M. Gorwadkar, Senior Advocate i/b. Ramesh Makhija & Co. for Applicant.
Mr. N. V. Walawalkar, Senior Advocate i/b. Mr. G. H. Keluskar for Respondent No.1.
Mr. Neerav Merchant i/b. Thakordas and Madgavkar for Respondent No.9.

WITH
CIVIL REVISION APPLICATION NO.434 OF 2017

M/s. S.K.M. Financial Consultancy and another … Applicants
Vs.
Barun Investment Co.(Pvt.) Ltd. & others … Respondents

Mr. Neerav Merchant i/b. Thakordas and Madgavkar for Applicants.
Mr. N. V. Walawalkar, Senior Advocate i/b. Mr. G. H. Keluskar for Respondent No.1.
Mr. S.M. Gorwadkar, Senior Advocate i/b. Ramesh Makhija & Co. for Respondent No.7.

CORAM : R. G. KETKAR, J.
Reserved on : AUGUST 8, 2018
Pronounced on : AUGUST 21, 2018

P.C. :

Heard Mr. Gorwadkar, learned Senior Counsel for the applicant, Mr.Merchant, learned Counsel for the respondent No.1 and Mr.Walawalkar, learned Senior Counsel for respondent No.2 in C.R.A.No.183 of 2017 at length.

2. Heard Mr. Gorwadkar, learned Senior Counsel for the applicant, Mr.Walawalkar, learned Senior Counsel for the respondent No.1 and Mr.Merchant, learned Counsel for the respondent No.9 in C.R.A.No.184 of 2017 at length.

3. Heard Mr. Merchant, learned Counsel for the applicant, Mr.Walawalkar, learned Senior Counsel for the respondent No.1 and Mr.Gorwadkar, learned Senior Counsel for the respondent No.7 in C.R.A.No.434 of 2017 at length.

4. These Civil Revision Applications instituted under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') arise out of the common judgment and decree dated 21.04.2011 in R.A.E.Suit No.936/ 1590 of 2000 and R.A.D.Suit No.99 of 2008 passed by the learned trial Judge, Court Room No.7, Court of Small Causes, Mumbai. The learned trial Judge decreed the eviction Suit instituted by Barun Investment Company Private Limited (for short 'Barun Investment') and dismissed the Declaratory Suit instituted by M/s. East India Paper Company (for short 'East India'). The applicants have also challenged the common judgment and decree dated 24.01.2017 passed by the Appellate Bench of the Small Causes Court in - (i) (2a) Appeal No.43 of 2011 instituted by East India, defendant No.6 in the eviction Suit; (ii) (2-a) Appeal No.38 of 2011 instituted by M/s. S. K. M. Financial Consultancy and M/s. C. Chainani and Company, defendants No.8 and 9 respectively in the eviction Suit, hereinafter referred to as 'defendants No.8 and 9; and (iii) (2b)(ii) R.A.D.Appeal No.36 of 2011 instituted by East India, who was the plaintiff in that Suit. By this order, the Appellate Court dismissed the Appeal No.43 of 2011 filed by East India as also Appeal No.38 of 2011 filed by

defendants No.8 and 9 challenging the eviction decree. The Appellate Court dismissed the Appeal No.36 of 2011 preferred by East India challenging the dismissal of declaratory Suit. The learned trial Judge had decreed the Suit under Sections 16(1)(e) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The Appellate Court decreed the Suit under Section 16(1)(n) and upheld the eviction decree. The Appellate Court declined to pass decree of eviction on the ground of unlawful subletting and profiteering as contemplated by Section 16(1)(e) on the ground that the same is barred by limitation.

5. As the common questions of law and fact arise in these Applications and between the same parties, these Applications can conveniently be disposed of by passing common order. The parties shall hereinafter be referred to as per their status in the eviction Suit.

6. Barun Investment had instituted R.A.E.Suit No.936/1590 of 2000 against - (i) Gul Chainani (deleted), defendant No.1, (ii) Raju Gul Chainani (deleted), defendant No.2, (iii) Gita Gul Chainani, defendant No.3, (iv) Sunil Gul Chainani, defendant No.4, (v) Lavita Gul Chainani, defendant No.5, legal representatives of Mrs. Chandra Gul Chainani, who according to the Barun Investment was a Proprietress of M/s. C. Chainani and Company, (vi) East India, defendant No.6, (vii) M/s. Interface Computer Education, defendant No.7, (viii) M/s. S.K.M. Financial Consultancy, defendant No.8 and (ix) M/s. Chainani & Co., defendant No.9 invoking grounds under Sections 16(1)(e) and 16(1)(n) of the Act. Barun Investment instituted R.A.E.Suit inter alia contending they are landlords of building known as 'Onlooker'. Mrs. Chandra Gul Chainani, Proprietress of M/s. C. Chainani and Company was the tenant of the plaintiff's predecessor in title in respect of the suit premises, more particularly described in the Schedule annexed to the plaint. Mrs. Chandra Gul Chainani died leaving behind defendants No.1 to 5 as her heirs and legal representatives. Defendants No.1 to 5 are not in use and occupation of the suit premises. Defendants

No.1 to 5 have parted with possession of the suit premises or any part thereof in favour of defendants No.6-East India and defendants No.8 and 9, namely M/s. S.K.M. Financial Consultancy and M/s. C. Chainani & Company, respectively, without the consent and / or permission obtained either from plaintiffs or from their predecessor in title. Barun Investment further contended that Mrs. Chandra Gul Chainani, Proprietress of M/s. C. Chainani & Co. was a tenant and after hear death, defendants No.1 to 5 succeeded her tenancy rights. It was further contended that defendants No.1 to 5 are not in use and occupation of the suit premises and defendants No.1 to 5 are not using the suit premises for the purpose for which the same was let out to them. Defendants No.1 to 5 have no business activities. Thus, the suit premises has not been used without reasonable cause for the purpose for which it was let out to the tenant for a continuous period of 6 months immediately preceding the date of filing of the Suit [Section 16(1)(n) of the Act].

7. Barun Investment further contended that defendants No.1 to 5 have inducted defendants No.6 to 9. Defendant No.9 has started new business in the suit premises or any part thereof in the name and style of M/s. C. Chainani & Co. (a new concerned altogether). A partnership firm which has nothing to do with the old M/s. C. Chainani & Co. of which Mrs. Chandra Gul Chainani was the Proprietress. Defendants No.6 to 9 were inducted by defendants No.1 to 5 without the consent and knowledge of the plaintiffs. Thus, defendants No.1 to 5 have unlawfully sublet and / or created licence and / or assigned, transferred their interest in the suit premises or any part thereof in favour of defendants No.6 to 9. Defendants No.1 to 5 are not in possession and occupation of the suit premises and they are profiteering therefrom by charging the amount from defendants No.6 to 9 [Section 16(1)(e) of the Act].

8. East India (defendant No.6) and M/s. Interface Computer Education (defendant No.7) filed written statement in or around May 2001. It was contended that defendant No.7 is not a separate entity and the computer division of East India is run in the part of the suit premises in the name of the defendant No.7. Defendant No.7 is a subsidiary or associate of defendant No.6-East India. East India further contended that it is a lawful subtenant in respect of major portion of the suit premises for last 50 years paying rent to defendant No.9, who has sublet the major portion of the suit premises to the defendant No.6. The major portion of the suit premises was sublet to East India by defendant No.9 long before May 1959 when the Bombay Rent Act was amended legalizing sub-tenancy created by the tenants and giving protection of the sub-tenant. East India therefore, contended that the allegation of the Barun Investment that defendants No.1 to 5 have parted with possession in its favour without the consent of the landlord is not correct. All other adverse allegations were denied.

9. Defendants No.8 and 9 filed written statement dated 30.11.2001 inter alia contending that the Suit is barred by principles of res judicata and also barred by law of limitation. It was contended that Barun Investment's predecessor in title, namely, The Publicity Society of India Limited (for short 'Publicity Society') had instituted R.A.E.Suit No.1120/3972 of 1980 against defendants No.9 and others. In that Suit, interim application was made for bringing on record defendants No.1 to 5. That application was allowed on 25.03.1992. Barun Investment did not carry out amendment in the plaint. In view thereof, second application was taken out for substituting them as plaintiffs in place of original plaintiff i.e. Publicity Society on the ground that they have purchased a building under the Deed of Conveyance dated 10.10.1990. Second application was allowed on 06.03.1996 and Barun Investment

was directed to carry out the amendment. However, amendment was not carried out and resultantly, Suit was dismissed in default on 20.07.1996. The application for restoration was also rejected on 10.03.1997. As the present Suit is based on the same ground, it is, therefore, barred by the principle of res judicata and is also time barred.

10. Defendants No.8 and 9 denied that it is a proprietary firm of Mrs.Chandra Gul Chainani, who was a tenant of the plaintiff's predecessor in title in respect of the suit premises. Defendant No.9 is a partnership firm, duly registered under the Indian Partnership Act, 1932 and the said firm is a tenant of the suit premises. The partners of defendants No.8 and 9 are in use and occupation of the suit premises and as such there is no question of parting with possession by defendants No.1 to 5 in favour of defendants No.6 to 9 without the consent and / or its permission either of the plaintiffs or the predecessor in title of the plaintiff. Defendants No.8 and 9 further contended that with full knowledge, plaintiffs have been accepting the rent of the suit premises from defendant No.9 and at no point of time, they have raised any objections. Defendants No.8 and 9 denied that Mrs. Chandra Gul Chainani, proprietress of M/s. C. Chainani & Co., who was the tenant, and thereafter, defendants No.1 to 5 being the heirs and legal representatives of Mrs. Chandra Gul Chainani, have succeeded tenancy rights. Defendants No.8 and 9 further denied that defendant No.9 is totally a new concern and has nothing to do with defendants No.1 to 5. Defendant No.6 is a lawful subtenant in respect of major portion of the suit premises for last 50 years and is regularly paying rent to the defendant No.9.

11. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. Parties adduced the evidence. Barun

Investment examined Shibnath Nanigopal Mazumdar as P.W.1 and one Girdharilal Kanayalal Lakhotia as P.W.2. East India examined one of its partner Kishor Kishinchand Shahani as D.W.1. Defendants No.8 and 9 examined Sanjiv Chainani as D.W.2 on their behalf in the eviction Suit. In declaratory Suit, East India examined Kishor Kishinchand Shahani as P.W.1. Defendant No.1 examined Sanjiv Chainani as D.W.1. Barun Investment examined Shibnath Nanigopal Mazumdar as D.W.2. After considering the evidence on record, the learned trial Judge decreed the eviction Suit by a common judgment and decree dated 21.04.2011 under Sections 16(1)(e) and 16(1)(n) of the Act and dismissed the declaratory Suit of East India.

12. Aggrieved by these decisions, East India preferred Appeal No.43 of 2011 against the decree in eviction Suit and Appeal No.36 of 2011 against dismissal of its declaratory suit. Defendants No.8 and 9 preferred Appeal No.38 of 2011 challenging the eviction decree. By a common judgment and order dated 24.01.2017, the Appellate Court dismissed the appeals, as indicated hereinabove. It is against these orders, defendant No.6 and defendants No.8 and 9 have preferred the above Civil Revision Applications.

13. In support of the Applications filed by East India, Mr. Gorwadkar strenuously contended that the Courts below committed serious errors in decreeing the eviction Suit and dismissing the declaratory Suit. Barun Investment has mischievously filed Suit inter alia contending that M/s. C. Chainani & Co. is a proprietary concern of Mrs.Chandra Gul Chainani and that after her death in 1988, defendants No.1 to 5 have succeeded tenancy rights in respect of the suit premises. In fact, defendant No.9 which is a partnership firm is a tenant of the suit premises. East India is inducted in the suit premises some time in the

year 1955 by defendants No.5 and is thus, a lawful subtenant of the suit premises. The Courts below, after misreading the evidence, held that defendant No.9 is not the tenant and that M/s. C. Chainani & Co. of which Mrs. Chandra Gul Chainani is a proprietress is the tenant of the suit premises. He submitted that plaintiffs are taking undue advantage of similarity in the name of M/s. C. Chainani & Co.

14. Mr. Gorwadkar has taken me through the assertions made in the eviction Suit, written statement filed by the East India and defendants No.8 and 9, indenture dated 10.11.1990 between Publicity Society being the vendor and Barun Investment. In that conveyance, reference was made to indenture of conveyance dated 12.02.1960 made between Jupiter General Insurance Co. Ltd. of the First part, Peoples Insurance Co. Ltd. (in Liquidation) of the Second part. K. P. Shankar, the Liquidator of the said Peoples Insurance Co. of the Third Part, and Pilus (Pirojshaw) Pestonji Cawasji Shroff and Mithamal Pestonji Cawasji Shroff, being the purchasers of the First Group of the Forth Part, Kety Behramgore Vakil and Behramgore Ratansha Vakil, purchasers of the Second Part. He submitted that Shroff and Vakil sold the property to Publicity Society. Publicity Society, in turn, sold the property to Barun Investment on 10.11.1990.

15. He submitted that Publicity Society had instituted R.A.E.Suit No.1120/3972 of 1980 against M/s. C. Chainani & Co. as defendant No.1 and East India as defendant No.2. In that Suit, Publicity Society asserted that M/s. C. Chainani & Co. (defendant No.1 in that Suit) was, prior to the termination of the tenancy, a tenant of the plaintiff's predecessor in title in respect of the suit premises. It was further alleged that defendant No.1 therein had parted with possession of the suit premises in favour of defendants No.2 to 9 therein without the consent

of the plaintiff's predecessor in title and that defendant No.1 therein had unlawfully sublet, assigned or transferred its interest in the suit premises or part thereof in favour of the defendants No.2 to 9 and thus, defendant No.1 therein is profiteering therefrom. He submitted that during the cross-examination of P.W.1 - Shibnath Nanigopal Mazumdar, P.W.1 was confronted with the proceedings of that Suit. He admitted that the previous Suit which was filed for ejectment of defendants was dismissed for default. He was shown rent receipts at exhibit-C collectively standing in the name of M/s. C. Chainani & Co. and he admitted that the name of the tenant mentioned therein is M/s. C. Chainani & Co. He deposed that he has document to show that M/s. C. Chainani and Co. is the proprietary firm. When he was called upon to produce the document, he referred to the letter dated 08.06.1984 (exhibit No.40).

16. Mr. Gorwadkar invited my attention to the extract of Register of Firms showing that the name of M/s. C. Chainani & Co. was entered on 22.01.1979 and the Deed of Partnership dated 01.08.1992. He submitted that the evidence on record will clearly establish that defendant No.9, a partnership firm, was a tenant and not M/s. C. Chainani & Co., a proprietary firm of Mrs. Chandra Gul Chainani. He, therefore, submitted that as defendant No.9 inducted East India prior to 1955, it is a protected sub-tenant and the Courts below committed serious error in decreeing the eviction Suits and dismissing the declaratory Suit. He submitted that the Applications filed by East India deserve to be admitted.

17. Mr. Merchant, learned Counsel for defendants No.8 and 9 in support of C.R.A.No.434 of 2017 adopted the submissions of Mr.Gorwadkar. He submitted that defendant No.9, a partnership firm, is a tenant, who had inducted East India some time in the year 1955. The Courts below were, therefore, not justified in passing eviction decree.

He submitted that the Civil Revision Application filed by the defendant No.9 deserves consideration.

18. On the other hand, Mr. Walawalkar supported the impugned orders. He submitted that, after appreciating the evidence on record, the Courts below have concurrently held that M/s. C. Chainani & Co., a proprietary firm of which Mrs. Chandra Gul Chainani is a proprietress, was a tenant and not M/s. C. Chainani & Co., a partnership firm, defendant No.9 herein. The said finding is based upon the evidence on record. He submitted that Ms Chandra Gul Chainani, proprietress of M/s. C. Chainani & Co. died in the year 1988. After her death, her daughter Ms Lavita requested on 07.07.1989 to transfer tenancy rights in her name. He submitted that neither Ms Chandra Gul Chainani nor her heirs were were partners of defendant No.9, a partnership firm. It has come on record that during her lifetime, Mrs. Chandra Gul Chainai had addressed a letter dated 14.07.1986 at exhibit-43 enclosing therewith a cheque for Rs.2311.15, towards compensation for the months of March and July 1986. As East India was not inducted by M/s. C. Chainani & Co., a proprietary firm, it cannot claim to be a protected sub-tenant. He invited my attention to the admission of D.W.2 Sanjiv Chainani in the eviction Suit admitting that defendant No.9 is the tenant of the suit premises since 08.08.1992 as per his record. Record prior to 1992 was not available to show that defendant No.9 was the tenant. Thus, the Courts below rightly held that East India is not a protected sub-tenant and it is claiming sub-tenancy through defendant No.9, who is not a tenant. Mr. Walawalkar relied upon the following decisions:

a. ***Balkrishna Maruti Vs. Saidanna Sayanna***, **1963, Mh.L.J. 372**; and

b. ***Shantibai Vs. Dinkar Balkrishna Vaidya***, **(1994) 4 SCC 85**.

He, therefore, submitted that no case is made out for interfering with the impugned orders.

19. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. By order dated 20.03.2018, R &P was called for. In pursuance thereof, R & P was received by this Court. I have also perused the original record.

20. The controversy between the parties essentially revolves around whether M/s. C. Chainani & Co., a proprietary concern, of which Mrs. Chandra Gul Chainani is a Proprietress, was a tenant as claimed by Barun Investment or M/s. C. Chainani & Co., a partnership firm, defendant No.9 herein is the tenant in respect of the suit premises as claimed by East India and defendant No.9. If it is held that defendant No.9, a partnership firm, is the tenant of the suit premises, the eviction Suit filed by Barun Investment must fail and declaratory Suit filed by East India deserves to be decreed. If however, it is held that M/s. C. Chainani & Co., a proprietary firm of which Mrs. Chandra Gul Chainani, a proprietress was the tenant, and after the death of Chandra Gul Chainani in the year 1988, defendants No.1 to 5 succeeded to tenancy rights, in that event, the eviction Suit deserves to be decreed and the declaratory Suit instituted by East India deserves to be dismissed.

21. In order to appreciate the controversy between the parties, it is necessary to go through the material on record as also the original record. Girdharilal Kanayalal Lakhotia was examined as P.W.2 in the eviction Suit filed by Barun Investments. He was serving as an administrative officer in Publicity Society. He has produced correspondence at exhibits-36 to 48. A perusal of exhibit-36 shows that Publicity India addressed a letter dated 16.04.1980 to M/s. C. Chainani & Co. informing the latter that by the Deed of Conveyance dated

26.03.1980, M/s. Shroff & Vakil have conveyed property known as 'Khorshed Building' and that name of the building was changed to 'Onlooker Building'. A request was made to pay the rent / statutory rent and / or compensation to them from the month of April 1980 and also the arrears. This letter does not clarify whether M/s. C. Chainani & Co. is a proprietary concern or a partnership firm.

22. East India through its Advocate V. K. Punwani gave reply dated 15.09.1980 (exhibit-37) to the letter dated 21.08.1980 addressed by Mr.J. J. Jadeja, Advocate for the Publicity Society. It is contended that East India are in possession of the suit premises for more than 25 years as lawful sub-tenants of C. Chainani, the tenant. This also does not through light on the controversy as to whether M/s. C. Chainani is a proprietary concern or a partnership firm. On 27.01.1981, letter (exhibit-38) was addressed by Publicity Society to M/s. Chainani & Co. calling upon the latter to pay all arrears of statutory rent from April 1980. Even this letter does not throw light on the controversy. The same is in respect of letter dated 22.11.1982 addressed by Publicity Society to M/s. C. Chainani & Co.

23. On 08.06.1984 (exhibit-40), on behalf of C. Chainani & Co., letter is addressed to the Publicity Society. The said letter is signed by Chandra Gul Chainani for M/s. C. Chainani & Co. I will deal with this letter at an appropriate stage. Suffice it to bear in mind at this stage is that it has come on record that Mrs. Chandra Gul Chainani or her heirs and legal representatives were not partners of defendant No.9. On 22.09.1984, Advocate J. J. Jadeja for Publicity Society addressed a letter at exhibit-41 to M/s. C. Chainani & Co. This letter also does not throw any light on the controversy between the parties. Then comes letter dated 14.07.1986 at exhibit-43 addressed by Mrs. Chandra Gul Chainani

to Publicity Society. Along with that letter, cheque towards compensation in respect of the suit premises for March to July 1986 was enclosed. A perusal of this letter shows that this letter is not addressed on behalf of M/s. C. Chainani & Co. and was addressed by Mrs. Chandra Gul Chainani in her individual capacity.

24. It has come on record that in the year 1988, Mrs. Chandra Gul Chainani died. On 07.07.1989, Ms Lavita Gul Chainani, the daughter of Chandra Gul Chainani addressed a letter which is at exhibit-44 to Publicity Society stating therein that the certified copy of the Will of her late mother was given to one of the officers of Publicity Society. As per that Will, she has inherited tenancy of the suit premises. She requested to transfer the tenancy to her name. She also enclosed cheque No.I29639 for Rs.1211.04/- and cheque No.I29638 for Rs.4784.76/- towards the rent covering the period from October 1998 to June 1999 (9 months). This was replied by Publicity Society on 17.07.1989 which is at exhibit-45 collectively. Reference was made to various ejectment Suits pending in the Court, where Publicity Society prayed for eviction decree and other reliefs. In the circumstances, it was stated that the repeated requests made by Ms Lavita Chainani for transfer of tenancy could not be considered. The cheques sent by Ms Lavita were encashed without prejudice to the rights and contentions of the Publicity Society in pending Suits. On 12.09.1989, 15.01.1990 and 30.08.1991 at exhibits-46, 47 and 48 respectively, Lavita Chainani addressed letters to Publicity Society enclosing therewith three cheques. Publicity Society did not turn down the repeated requests made by Lavita Gul Chainani for transferring tenancy in her favour on the ground that M/s. C. Chainani & Co., a partnership firm is the tenant. In fact, cheques sent by Lavita Chainani were encashed, albeit without prejudice to their rights and interest.

25. As noted earlier, the Courts below have concurrently held that defendant No.9 M/s. C. Chainani & Co., a partnership firm is not the tenant in respect of the suit premises. In paragraph 22, the Appellate Court observed that the controversy revolves around the question as to whether M/s. C. Chainani & Co., who is the tenant of the suit premises is a proprietary concern or a partnership firm. In paragraph 23, the Appellate Court referred to rent receipts vide exhibits-B & C collectively and correspondence exchanged between Mrs. Chandra Gul Chainani, proprietress of M/s. Chainani & Co. and the predecessor in title of Barun Investment vide exhibits 36 to 48. Reference was also made to letter dated 08.06.1984, exhibit-40, which as noted earlier, was signed by Chandra Gul Chainani for M/s. C. Chainani & Co. P.W.1-Shibnath Nanigopal Mazumdar deposed that they were accepting rent from Mrs. Chandra Gul Chainani, being the proprietress of M/s. C. Chainani & Co., and after her death, rents were accepted from defendants No.1 to 5. In paragraph 24, the Appellate Court considered evidence of P.W.2-Girdharilal Kanayalal Lakhotia, who was serving as Administrative Officer of Publicity Society. In paragraph 25, the Appellate Court considered letter dated 14.07.1986 at exhibit-43 addressed by Mrs. Chandra Gul Chainani in her individual capacity. The remaining letters at exhibits 44 to 48 were written by Lavita Chainani, defendant No.5, the daughter of Mrs. Chandra Gula Chainani. The Appellate Court noted that legal representatives of Chandra G. Chainani requested the landlord for transfer of rent receipts in her name, which correspondence sufficiently shows that M/s. C. Chainani & Co. was a proprietary concern of Mrs. Chandra Gul Chainani. After her death, her heirs applied for transfer of tenancy in their name.

26. In paragraph 26, the Appellate Court noted that if at all M/s. C. Chainani & Co., a partnership firm, was a tenant, there was no reason for Lavita Chainani, defendant No.5 to request Publicity Society to

transfer tenancy in her name. It also noted that East India or defendant No.9 did not produce any document to show that Mrs. Chandra Gul Chainani was a partner of the defendant No.9 at any time. Even defendant No.4, Sunil Gul Chainani, one of the heirs was not a partner of any partnership firm nor any of the heirs of Mrs. Chandra Gul Chainani were the partners. The Appellate Court observed that there was no challenge to the correspondence from defendants No.6 to 9. From the documentary evidence placed on record, the only conclusion that could be drawn was that M/s. C. Chainani & Co., a proprietary firm of Mrs. Chandra C. Chainani was a tenant and not M/s. Chainani & Co., a partnership firm.

27. In paragraph 28, the Appellate Court dealt with evidence of D.W.2 - Sanjiv Chainani and referred to extract issued by Registrar of Firms at exhibit-64 and Deed of Partnership dated 01.08.1992 at exhibit-65. In cross-examination, he admitted that defendant No.9 is a tenant of the suit premises since 01.08.1992 as per his record. He further deposed that record prior to 1992 was not available to show that defendant No.9 was the tenant. The Appellate Court held that this admission itself is sufficient to discard the entire theory of the defendant No.9 that since beginning, it was the tenant of the suit premises. He deposed that defendants No.1 to 5 are the legal representatives of M/s. C. Chainani & Co. and the said partnership firm was in existence since 22.01.1979. He however admitted that he has no document to prove the said fact. He further admitted that he has no knowledge whether defendant No.9 as a partnership firm was running any business in the suit premises. The Appellate Court observed that if M/s. C. Chainani & Co. was the partnership firm and not a proprietary concern of Mrs. Chandra Gul Chainani since last 50 years and also the tenant of the suit premises then certainly it must have the deed of partnership, Income Tax returns, Sales Tax receipts, other business records of their partnership firm. However,

to the surprise, D.W.2 admitted that they did not have any document to show that any such partnership existed prior to 1992. The rent receipts at exhibit-62 collectively relied by the defendant No.9 are also not helpful since they do not show that the same are issued to a partnership firm.

28. In paragraph 29, the Appellate Court noted that the extract issued by the Registrar of Firm at exhibit-64 and the Deed of Partnership dated 01.08.1992 at exhibit-65 shows that M/s. C. Chainani & Co. is a partnership firm, which came into existence on 22.01.1979 but its place of business is not that of the suit premises. The said firm shifted its business in the suit premises on 05.10.1992. From both the documents produced by the defendant No.9, it is crystal clear that prior to 05.10.1992, defendant No.9 was not in existence in the suit premises. In paragraph 30, the Appellate Court considered the glaring aspect from exhibits-64 and 65 and observed that neither Mrs. Chandra Gul Chainani nor any of the defendants No.1 to 5 were partners in M/s. C. Chainani & Co., a partnership firm. If at all, it is the case of the defendant No.9 that on rent receipt, name of M/s. C. Chainani and Co. appears, who is defendant No.9 then name of Mrs. Chandra Gul Chainani ought to have been shown in its extract as its partner. No reason was given by the defendant No.9 as to why her name is not reflected in the said extract or in the deed of partnership produced by them on record. Both these documents falsify the claim of the defendant No.9 that they were occupying the suit premises as tenant since last more than 50 years. On the contrary, the said documents support the theory of the plaintiffs that M/s. C. Chainani & Co. was a proprietary concern and in the same name a partnership firm also existed but from 22.01.1979 and at a place other than the suit premises. The Appellate court observed that defendants are trying to take undue advantage of the similarity in the name. After considering the evidence on record, in paragraph 33, the Appellate Court concluded that Mrs. Chandra Gul Chainani, the proprietress of M/s. C.

Chainani & Co. was the tenant and the said concern was a proprietary concern. Defendant No.9 has failed to prove that M/s. C. Chainani & Co. is a partnership firm and the same was the tenant of the suit premises.

29. Mr. Walawalkar relied upon the decision of **Balkrishna Maruti** (*supra*). In that case, after considering the Ordinance No.3 of 1959, which was passed on 21.05.1959 and conditions laid down in sub-section (2) of Section 15, it was held that protection conferred by the Ordinance can be availed of only by the persons who can be described as sub-lessees, assignees or transferees from the tenants and that too if they satisfy the two conditions in sub-section (2) of Section 15. It was further held that person deriving title from sub-tenant's sub-tenant has no legal status and cannot claim rights under Section 15. In the case of **Shantibai** (*supra*), it was held that a sub-tenant cannot create further sub-tenancy. Nobody can dispute with the proposition of law laid down in **Balkrishna Maruti** and **Shantibai's case** (*supra*). However, in the present case, the Appellate Court has declined to pass decree under Section 16(1)(e) on the ground that the claim based on the ground of subletting and profiteering is barred by limitation. The decisions, therefore, do not advance the case of Barun Investment.

30. The learned trial Judge had decreed the Suit, both, under Sections 16(1)(e) and 16(1)(n) of the Act. In so far as the Appellate Court is considered, the Appellate Court decreed the Suit only under Section 16(1)(n) of the Act and declined to pass decree under Section 16(1)(e) on the ground that the claim based on the ground of subletting and profiteering is barred by limitation. The learned trial Judge has considered the ground of non-user under Section 16(1)(n) of the Act in paragraph 30. It was observed that defendants No.1 to 5 did not appear

in the Suit. They did not deny the claim of the plaintiff that the suit premises is not being used by them. Admittedly, defendants No.6 and 7 are in possession of the suit premises. It is settled that even if person other than the tenant is in possession of the suit premises without the permission of the landlord, it amounts to non-user of the suit premises by the tenant.

31. In so far as the Appellate Court is concerned, the Appellate Court has considered this ground in paragraphs 72 to 74. In paragraph 73, the Appellate Court referred to the evidence of Shibnath Mazumdar, P.W.1 to the effect that defendants No.1 to 5 are the tenants of the suit premises and they are not in possession. Defendants No.6 to 9 are in use, occupation and possession of the suit premises. Defendants No.1 to 5 have not shown any reasonable cause for non-user of the suit premises. The Appellate Court referred to the decision of this Court in ***Radheshyam G. Garg Vs. Safiyabai Ibrahim Lightwalla***, **AIR 1988 BOM 365**. In paragraph 74, the Appellate Court concluded that Barun Investment have proved that there is non-user of the suit premises by defendants No.1 to 7. East India and defendants No.8 and 9 have advanced the arguments attacking findings recorded by the Courts below under Section 16(1)(e) of the Act. It is their contention that defendant No.9, which is the partnership firm, is the tenant in respect of the suit premises and not M/s. C. Chainani & Co. of which Ms Chandra Gul Chainani was the proprietress. The parties have not advanced arguments on the ground of non-user under Section 16(1)(n) of the Act.

32. After considering the material on record as also the oral evidence, I do not find that the Courts below committed any error in decreeing the Suit under Section 16(1)(n) of the Act. East India and defendant No.9 were not in a position to demonstrate that the findings recorded by the

Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. East India and defendant No.9 were also not in a position to demonstrate that the findings are supported by no evidence. In short, they are not in a position to demonstrate that the findings recorded by the Courts below are perverse. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Section 115 of the C.P.C. Hence, Applications fail and the same are dismissed.

33. At this stage, Mr.Gorwadkar, learned Senior Counsel appearing for the applicant in C.R.A. No.183 of 2017 and C.R.A. No.184 of 2017 and Mr. Neerav Merchant, learned Counsel appearing for the applicants in C.RA. No.434 of 2017 orally applies for stay of the eviction decree for a period of twelve weeks from today. They state that the applicants are in possession of the suit premises and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. They further state that the applicants and all adult members using the suit premises are ready and willing to give usual undertaking within one week from today, with advance copy to other side. Learned Counsel for the respondents opposes said prayer.

34. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying operation of the eviction decree for a period of twelve weeks from today subject to the applicants and all adult members using the suit premises giving usual undertaking to this Court within one week from today with advance copy to other side incorporating therein:

(i) that they are in actual possession of the suit premises and nobody else is in possession of the suit premises;

(ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;

(iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;

(iv) that they will pay the arrears of rent, if any, to the respondents within one week from today; and

(v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents.

35. In view thereof, notwithstanding dismissal of Civil Revision Applications, the eviction decree shall remain stayed for a period of twelve weeks from today, subject to the applicants filing undertaking in the aforesaid terms within one week from today, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms and/or arrears of rent are not paid within one week from today or commit breach of any of the clauses of the undertaking, the interim order shall stand vacated without further reference to the Court. List the applications for reporting compliance on 04.9.2018. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab