

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.299 OF 2018

WITH

CIVIL APPLICATION NO.400 OF 2018

M/s. Indu Oil & Soap Co. ... Applicant
Vs.
Khurshid Begum Abdul Rahim Attar (decd)
through LRs ... Respondents

ALONG WITH

CIVIL REVISION APPLICATION NO. 296 OF 2018

WITH

CIVIL APPLICATION NO.398 OF 2018

Seth Girdhardas Premji ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH

CIVIL REVISION APPLICATION NO. 307 OF 2018

WITH

CIVIL APPLICATION NO.409 OF 2018

Yunus Kathawala ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH

CIVIL REVISION APPLICATION NO. 298 OF 2018

WITH

CIVIL APPLICATION NO.401 OF 2018

M/s. Karachi Copra Mill and another ... Applicants
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH

CIVIL REVISION APPLICATION NO. 295 OF 2018

WITH
CIVIL APPLICATION NO.397 OF 2018

M/s. Gajanan Oil Mill ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 306 OF 2018
WITH
CIVIL APPLICATION NO.408 OF 2018

A. V. Khokawala ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 301 OF 2018
WITH
CIVIL APPLICATION NO.404 OF 2018

M/s. J. I. Traders ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 297 OF 2018
WITH
CIVIL APPLICATION NO.399 OF 2018

Abdul Karim Yakub Thara ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 302 OF 2018
WITH
CIVIL APPLICATION NO.403 OF 2018

M/s. J. I. Traders ... Applicant

Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 304 OF 2018
WITH
CIVIL APPLICATION NO.406 OF 2018

Seth Govindji Joshi Harshankar Joshi, thr. LRs.
and Representative Chandrika M. Mehta ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 294 OF 2018
WITH
CIVIL APPLICATION NO.396 OF 2018

M/s. J. Ibrahim & Co. ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 290 OF 2018
WITH
CIVIL APPLICATION NO.392 OF 2018

M/s. Gordhandas Hansraj ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 293 OF 2018
WITH
CIVIL APPLICATION NO.395 OF 2018

Seth Harkisandas Ratilal Goradia
thru. CAO Kausar Ansari ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim

Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 292 OF 2018
WITH
CIVIL APPLICATION NO.394 OF 2018

M/s. Taj Barrel Supply & Co. ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 300 OF 2018
WITH
CIVIL APPLICATION NO.402 OF 2018

M/s. Vora Adamji Kadarbhai ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 305 OF 2018
WITH
CIVIL APPLICATION NO.407 OF 2018

Baboo Shetty ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 303 OF 2018
WITH
CIVIL APPLICATION NO.405 OF 2018

M/s. H. Haroon & Co. ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 291 OF 2018

WITH
CIVIL APPLICATION NO.393 OF 2018

Seth Shamji Mawji ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

ALONG WITH
CIVIL REVISION APPLICATION NO. 289 OF 2018
WITH
CIVIL APPLICATION NO.391 OF 2018

M/s. Manilal & Co. ... Applicant
Vs.
Shrimati Khurshid Begum Abdul Rahim
Attar (since deceased) through LRs ... Respondents

Mr. P. S. Dani, Senior Advocate a/w. M/s. Farzana Behramramdin, Ms Shivanni Khanna, Mr. Sahil Bijliwala i/b. FZB & Associates for Applicant.
Mr. P. K. Dhakephalkar, Senior Advocate i/b. Mr. Maroof A. Attar for Respondents No.3 to 8.

CORAM : R. G. KETKAR, J.
Reserved on : AUGUST 02, 2018
Pronounced on : AUGUST 08, 2018

P.C. :

Heard Mr. Dani, learned Senior Counsel for applicant and Mr. Dhakephalkar, learned Senior Counsel for respondents No.3 to 8 in all the Applications at length.

2. By these Applications take exception to the judgments and decrees dated 11.09.2002 passed by the learned Judge, Court Room No.22 of the Court of Small Causes at Mumbai in 18 Suits instituted by respondents No.3 to 8, hereinafter referred to as 'plaintiffs', as also the judgment and decree dated 23.02.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai in Appeals preferred by the applicants, hereinafter referred to as 'defendants'. By these orders, the Courts below decreed the Suits instituted by the plaintiffs under Section

12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). Since these applications involve common questions of law and fact, the same can conveniently be disposed of by this common order. For appreciating the controversy raised in these Applications, facts from C.R.A. No.299 of 2018 are taken into consideration. The relevant and material facts giving rise to filing of this Application, briefly stated, are as under:

3. On 02.01.1945, agreement was executed between (1) Abdul Wahab Abdul Rehman Pathan, (2) Gulam Mohiddin Zahir-Ud-Din Pathan, (3) Mahomed Sayeed Mahomed Jaffer Pathan, (4) Dr. Mahomed Ibrahim Shaikh Mahomed Khatkhatay and (5) Haji Mahomed Hussein Mahomed Sayeed Paloba, trustees of the Sat Tad Kadim Mosque Trust (for short 'Trust') on one part and (1) Samji Mavji, (2) Ratilal Utamram, (3) Amthalal Hiraram, (4) Vrajial Chakoobhai, (5) Manilal Chandoolal, (6) Vora Karimji Ksmailji, (7) Sooleman Mahomed, (8) H. D. Lakhani & Co., (9) Gordhandas Hansraj & Co., and (10) Mohamed Haji Ibrahim & Co. (for short 'the tenants') on the other part. By that agreement, the tenants entered upon the land described in the first schedule written thereunder and shown on the plan annexed thereto on and from 01.01.1945. The first schedule described that all that piece or parcel of land or ground situate lying and being at the Junction of Narsi Natha Street and Syed Mukri Street in the City Island and Sub-Registration District of Bombay containing by admeasurement 253 square yards or thereabouts and registered in the Books of the Collector of Land Revenue under Laughton's Survey No.1/2640 and 2 & 3/2460 Collector's New Nos.6598, 15951 and comprised in and bearing Cadestral S.No.245 of Mandvi Division.

4. The tenants were inducted for the purpose of erecting temporary structure only in accordance with the stipulations contained therein. The temporary structures were to be erected by the tenants according to the

plans and specifications to be prepared and submitted by M/s. Merwanji Bana & Co., the Architects of the Trustees and approved by the Bombay Municipality with all their conditions and objections subject to which the approval was given among other conditions. Clause 5 provided that the tenant shall, from the date of the agreement of the lease, hold the land as tenant at will to the trustees at the monthly rents mentioned against their names in the Second Schedule written thereunder and shall also pay all rates taxes and charges and other outgoings payable in respect thereof. The names of as many as 10 tenants were mentioned in the Second Schedule to that agreement.

5. It appears that trustees made application dated 14.07.1971 being application No.212 of 1971 under Section 36 of the Bombay Public Trusts Act, 1950 and made affidavit dated 27.08.1971 of Shri A. A. Khatkhatay, Chairman of the Trust. By order dated 18.10.1971, Charity Commissioner, Maharashtra State, Bombay gave sanction to lease the land for a period of 50 years with an option to renew the same for the further period of 49 years on terms and conditions stated in the application for sanction subject to Court's direction authorizing the trustees to lease out the property. The sanction was to remain in force for the period of six months from the date of that order.

6. In pursuance thereof, the trustees filed Charity Application No.38 of 1971 dated 17.11.1971 in the City Civil Court at Bombay. By order dated 17.12.1971, the City Civil Court authorized the trustees to lease out the property. In pursuance thereof, on 29.09.1972, indenture of lease was executed between (1) Abdul Azim Khatkhatay, (2) Mohamed Ishaq Shamsuddin Parkar, (3) Mohamed Saeed Mohamed Jaffar Patha, (4) Haji Mohamedali Bhaji and (5) Mahmood Moosa, trustees of the trust (the lessors) on one part and the plaintiff - Khurshed Begum Abdul Rahim Attar (the lessee) on the other part. By that lease deed, the

property described in the First Schedule was leased out to her. In the Second Schedule, names of the occupiers were set out. The lease deed inter alia authorized the lessee to collect the rent after 31.12.1972 and file Suit and take other legal proceedings for recovery of the same, to evict or eject or negotiate with the occupiers who have been occupying the demised premises and the lessee was to bear all necessary costs for evicting them and the lessor was to give all help and cooperation to the lessee in that regard. The lessee was also entitled to enter into suitable compromise as she may be deemed fit with the occupier for the purposes of their eviction and for allotment of any tenement in the proposed new buildings.

7. By a communication dated 24.01.1973 sent by the trustees through Gagrath & Co. to M/s. S. Dayalji & Co., the occupiers were informed that by an indenture of lease dated 29.09.1972, the trustees have demised for a period of 50 years, the land situate, lying and being at the junction of Narsi Natha Street and Syed Mukri Street on which the premises held by M/s. S. Dayalji & Co. are standing. Under the terms and conditions of the lease, the lessee has been empowered to collect the monthly compensation and / or any other payment for the month of January 1973 and onwards in respect of the premises held by them from 01.01.1973 save and except all such arrears, if any, which are due and payable to the Trust upto 31.12.1972. The notice was accordingly given that from 01.01.1973, M/s. S. Dayalji & Co. should pay monthly compensation and /or other payments as and when the same became due to the lessee or her duly authorized agents or representatives and her receipt to M/s. S. Dayalji & Co. will be on good discharge against the Trust.

8. On 23.10.1975, on behalf of the plaintiff, letter was addressed by her Advocates to M/s. Indu Mill & Soap Company - the defendant inter

alia informing them that the plaintiff has taken on lease the suit premises from the trustees of the Trust. By letter dated 24.01.1973 addressed by M/s. Gagrat & Co. on behalf of the landlords, they intimated and requested all occupants to attorn to the lessee. As far back as in March 1972, lessors had terminated the tenancy and without prejudice to the said notice, the attorneys of the lessor has given notice of attornment. The defendant gave reply on 23.12.1975 noting that plaintiff has taken the property in question on lease from the Trust. Defendant admitted that M/s. Gagrat & Co. had correspondence with the defendants and other tenants communicating to them that the Trust had leased out the property in question to the plaintiff. It was further asserted that in the past, defendant as well as other tenants have made several attempts to make the payment of lease but for the reasons best known to the plaintiff, she has not been accepting the same. Defendant along with other tenants are ready and willing to pay arrears but as plaintiff had not demanded the arrears, they are unable to tender the arrears to her for want of instructions to plaintiff's Advocate. If the Advocates for plaintiff are ready and willing to accept the arrears, on behalf of the defendant and other tenants, they are ready and willing to tender the said arrears, which of course plaintiff is at liberty to accept without prejudice to the rights and contentions of the parties. By notice dated 30.12.1975 issued by the plaintiff to the defendant, defendant was informed that it had failed to pay compensation for the period from 01.01.1973 to 31.12.1975 in respect of premises No.335 bearing Municipal B Ward No.B/1157(3). Defendant was called upon to pay Rs.2448/- for the period from 01.01.1973 to 31.12.1975, failing which, plaintiff will be proceeding further for enforcing her rights as defendant's risk as to costs and consequences thereof.

9. On 05.07.1976, defendant addressed a letter to the plaintiff setting out therein that they are tenants in the plaintiff's property bearing No.24

of Mandvi T.P.S.No.I, C.S.No.25 at Narshi Natha Street, Bombay. They remitted cheque for Rs.408/- drawn on Union Bank of India as and by way of rent for the period from 01.01.1976 to 30.06.1976. On 04.11.1978, defendants addressed a letter to the plaintiff setting out therein that the defendants are the tenants in plaintiffs property bearing No.24 of Mandvi T.P.S.No.I C.S.No.245 at Narshi Natha Street, Bombay and that they remitted a cheque of Rs.1,224/- dated 20.10.1978 as and by way of rent for the period from 01.07.1976 to 31.12.1977 in favour of the plaintiff.

10. It is the case of the defendant that by a letter dated 09.04.1979, the trustees forfeited and determined the lease dated 29.09.1972 granted to the plaintiff. The Trustees also instituted Suit bearing R.A.E.& R. Suit No.549/1699 of 1980 against the plaintiff for eviction. After filing of that Suit, the Trust informed the predecessors of the defendants that they should not pay the rent to the Trust as it has terminated the tenancy of the plaintiff and has instituted the Suit for eviction. The Suit was however dismissed in default and the notice taken out for restoration of the Suit was dismissed. The plaintiff issued demand notices to the tenants including the present defendant herein inter alia contending that defendant is in arrears of rent for more than 6 months, and called upon it to pay their rent. As there was no compliance of the demand notice, plaintiff instituted 16 Suits in the year 1979 and 2 other Suits in the year 1980 against the predecessors of the defendants for their eviction on the ground of default in payment of rent, bonafide requirement, for demolition of the suit premises and for reconstruction. In some of the Suits, including the present one, the plaintiff also invoked ground of unlawful subletting.

11. Plaintiff came out with the case that she is a lessee of the Trust and that the landlord Trust has attorned the tenancy in her favour.

Defendant had made payment to the plaintiff till 1977 and thereafter did not pay the rent. Defendant denied that plaintiff is the lessee and contended that lease deed dated 29.09.1972 executed by the Trust in favour of the plaintiff is neither legal nor valid. As there was no attornment of tenancy, in pursuance of letter dated 24.01.1973, defendant paid rent for some time to the plaintiff. The only right given to the plaintiff was to recover the rent. Some of the defendants were tenants of land and some of the tenants were tenants of land together with structure. The Suits instituted by the plaintiffs are not maintainable and as by issuing notice dated 09.04.1979, the lease dated 29.09.1972 was forfeited and determined by the Trust, the plaintiff was not entitled to issue demand notice as also institute Suits.

12. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. After settlement of the issues, the learned Advocates for the parties agreed to lead common evidence in all the Suits including in the present Suit bearing R.A.E.&R.Suit No.1564/5338 of 1979. By common order dated 11.09.2002, the learned trial Judge decreed all the Suits and directed the defendants to handover vacant and peaceful possession of their respective tenanted premises to the plaintiff. Aggrieved by this decision, defendants preferred appeals. By orders dated 23.02.2018, the Appellate Court dismissed all the appeals subject to modification of the trial Court's decree. It is against these orders, defendant has instituted the present Civil Revision Applications.

13. In support of these Applications, Mr. Dani strenuously contended that the Courts below were not justified in decreeing the Suits. The Courts below failed to appreciate that the lease deed executed in favour of the plaintiff on 29.09.1972 was neither a legal nor a valid document. He submitted that on 02.01.1945, the Trust had executed lease deed in

favour of Samji Mavji and 9 others, whose names are mentioned in the Second Schedule to the lease deed dated 02.01.1945. As the said lease is still in existence, the lease deed executed by the Trust in favour of the plaintiff is illegal. He submitted that the tenancy was not attorned but only right to recover rent was given to the plaintiff. As the Trust had forfeited and terminated the lease deed on 09.04.1979, the plaintiffs ceased to be lessee of the Trust. There is no relationship of lessor and lessee between the plaintiff on one hand and the defendant on the other. The Suits instituted by the plaintiff as a rent collector is not maintainable. As a relationship was snapped by virtue of notice dated 09.04.1979, it cannot be held that defendant neglected to pay the rent to the plaintiff justifying the decree under Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). The plaintiff was neither justified in issuing demand notice nor in instituting the Suit against the defendants. He invited my attention to admission of P.W.1 Abdul Rahim Babalal Aktar in cross-examination to the effect that I am aware that all tenants in the suit property paying rent and permitted increases regularly to the Trust. In view of the admission of P.W.1 that defendants are regularly paying rent and permitted increases to the Trust, the Courts below were not justified in passing the eviction decree.

14. Mr. Dani has taken me through the - (i) letter dated 24.01.1973 addressed by Gagrath & Co. on behalf of the Trust to M/s. S. Dayalji & Co. to contend that by that letter, defendants were merely asked to pay rent to the plaintiff from the first day of January 1973, which will be a good discharge against the Trust. However, by this letter, the tenancy was not attorned;

(ii) communication dated 30.01.1979 addressed by the Advocate of the Trust to the plaintiff pointing out the breaches committed by the plaintiff in complying with the lease deed dated 29.09.1972 and

accordingly the lease was forfeited; and

(iii) demand notice dated 01.08.1979 issued to the defendant in R.A.E.& R.Suit No.1564/5338 of 1979.

15. Mr. Dani also invited my attention to the lease deed dated 02.01.1945 executed by the Trust and in particular clauses 1, 3 and 5 thereof as also lease deed dated 29.09.1972 executed by the Trust in favour of the plaintiff and in particular, following recitals:

“AND WHEREAS there are certain structures at present existing on the said land and they are all occupied by persons who are either tenants whose tenancies have been terminated or licencees or unlawful occupiers (who are all hereinafter for the sake of brevity and convenience briefly referred to as “the occupiers”);

AND WHEREAS after the execution of these presents the Lessee intends to pull down and otherwise demolish the present existing structures on the said land after lawfully removing from there all Occupiers and thereafter construct two buildings one on the portion marked 'A' on the said plan and the other on the portion marked 'B' on the said plan – (hereinafter called portion 'A' and portion 'B' respectively) and sell or dispose of tenements in the said two buildings on ownership basis and thereafter transfer the Lease (being these presents) to a Co-operative Housing Society or a Limited Company or an Association of apartment owners (briefly called “Society” which terms shall wherever the context permits which include the said Co-operative Housing Society or a Limited Company or an Association of apartment Owners);

NOW THIS INDENTURE WITNESSETH:

In pursuance of the said agreement, the Charity Commissioner's Order dated 18th October 1971 and the Bombay City Civil Court's Order dated 17th December 1971 and in consideration of the rent hereby reserved and of the terms conditions covenants and agreements herein contained and on the part of the Lessee to be paid observed and performed the Lessors as the present Trustees of the said Trust do hereby demise UNTO the Lessee all that piece or parcel of land or ground excluding all existing structures standing thereon but including the buildings and structures to be erected thereon hereafter by the Lessee ...

3(x) The Lessee hereby agrees and the Lessors hereby authorise the Lessee to evict or eject or negotiate with the Occupiers who have been occupying the said demised premises and the Lessee will bear all the necessary costs for evicting them and the Lessors shall give all possible help and co-operation to the Lessee in this respect;

(xi) The Lessee shall be entitled to enter into any suitable compromise as she may deem fit (but without in any way binding the Lessors) with the Occupiers for the purposes of their eviction and for allotment of any tenement in the proposed new buildings. The Lessee shall ...”

16. In support of these submissions, he relied upon the following decisions:

- a. ***Mohinibai Vs. Khimji*, AIR 1976 BOMBAY 295**, and in particular paragraph 11; and
- b. ***Virjit Raisey Vs. Anand Issardas Motiani*, 1987 Mah.R.C.J. 36**, and in particular paragraph 13.

17. On the other hand, Mr. Dhakephalkar supported the impugned orders. He submitted that the Trust entered into registered lease deed in favour of the plaintiff on 29.09.1972. By letter dated 24.01.1973 addressed by Gagrath & Co. on behalf the Trust to the defendants, the tenancy was attorned and defendants were called upon to make payment. In pursuance thereof, till 1977, defendants were paying rent to the plaintiff and from 1978, they stopped paying the rent. He relied upon the decision in ***Team Consultants Private Limited Vs. Swapna Lahiri*, 2006 (2) CalLT 322** to contend that if the tenant pays rent to the derivative title holder, he cannot dispute the title of such derivative title holder. If through mistake, he made payment, he is not so estopped. It is not the case of the defendants that they paid rent under mistake. In fact, it is their case that only after letter dated 09.04.1979 of the Trust, they stopped paying rent to the plaintiff. He submitted that the defendant has

also not led positive evidence to establish that they have paid rent after service of demand notice. They have also not filed any application for fixing of standard rent. Even in the Court, they did not deposit the rent. In short, he submitted that the defendants are willful defaulters and there was total neglect on their part in paying rent. He invited my attention to the lease deed dated 29.09.1972 and in particular clause 3(x) and (xi) whereby the plaintiff was authorized to evict or eject or negotiate with the occupiers, who have been occupying the demised premises. The plaintiff was also authorized to recover rent from the tenants. As the lease deed is a registered instrument, defendants have constructive notice of the same. Not only that, they have actual notice after the receipt of communication dated 24.01.1973 addressed by Gagrath & Co. on behalf of the Trust. He submitted that the reversionary rights have been transferred to the plaintiff with a right to recover possession of the suit premises. For all these reasons, he submitted that no case is made out for interfering with the impugned orders.

18. 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, the Courts below have decreed the Suit essentially under Section 12 of the Act. The Courts below held that the demand notices issued by the plaintiff were valid and that they were duly served on the defendants. Defendants contended that plaintiff is not a landlady of the defendants and consequently, there is no relationship of landlord and tenant between the parties. They contended that the lease deed dated 29.09.1972 executed by the Trust in favour of the plaintiff is not legal. They contended that plaintiff cannot be termed as a lessee and equally, lessor of the defendant so as to enable her to institute Suit against the defendant. The plaintiff was merely a rent collector and after the notice dated 09.04.1979 by the Trust, the relationship was snapped and plaintiff was not entitled to recover the rent. The learned trial Judge

has considered this aspect while answering issue No.1 in paragraph 6. In paragraph 6, the learned trial Judge referred to Section 109 of the Transfer of Property Act, 1882 (for short 'T.P. Act') and observed that a lessor can validly create the second lease and after the reversionary right of lessor is transferred and subsequent lessee becomes entitled to eject the previous lessee.

19. The learned trial Judge also relied upon the decision of the Rajasthan High Court in ***Tolaram Vs. Fakhruddin***, 1971 ALL India Rent Control Journal 649, wherein the learned Single Judge of Rajasthan High Court considered following decisions:

1. ***Parbhuram Vs. Tekchand***, AIR 1949 Lahore 13;
2. ***Bishen Sarup Vs. Adbul Samad***, AIR 1931 Allahabad 649;
3. ***Fazihz Zaman Vs. Anwar Hussain***, AIR 1932 Allahabad 314;
4. ***Ganpat Vs. Jayasingrao***, AIR 1956 Bombay 749;
5. ***Bogilal Vs. Subramania Iyeer***, AIR 1954 Madras 514;
6. ***Venkayya Vs. Subbarao***, AIR 1959 Andhra Pradesh 619; and
7. ***Bhagatram Vs. Keshar Deo***, AIR 1965 Assam 55.

20. The learned Single Judge referred to ***Ganpat*** (*supra*). In that case, some pieces of land were leased out by A to B and C for a period of four years. A then granted a lease to D for a period of 12 years or the same pieces of land entailing D to recover rent and possession from B and C after the expiry of the lease, and it was held that:

“the right given to recover rent and the right to recover possession from B and C after the expiry of their period constituted a transfer of limited interest of the landlord and by virtue of Section 5 and 109, T.P.Act, such a transfer was legal.”

21. In ***Bhagatram*** (*supra*), the Division Bench of Assam High Court observed thus,

“A lessor can execute a second lease of the same premises during the subsistence of first lease. A lease is a transfer of a part of the interest of the lessor in the property. Under Section

109, even the transfer of a part of a lessor's interest is permissible and on the said transfer, the reversionary rights vests in the transferee. After the creation of the second lease in favour of others, the reversionary right of the lessor is transferred to subsequent lessee who steps into the shoes of the lessor landlord for the purpose of ejecting the previous lessee. Apart from the specific provision in the lease itself allowing subsequent lessee to take necessary steps for the ejectment of that previous lessee the subsequent lessee is entitled to enforce the right of the right of their transferor lessor to enter into possession of the property by ejecting the previous lessee.”

22. In paragraph 14, the learned Single Judge, therefore, held that a lessor can validly create a second lease and after it, the reversionary right of the lessor is transferred and the subsequent lessee becomes entitled to eject the previous lessee.

23. The learned trial Judge also considered that by lease deed dated 29.09.1972 in favour of the plaintiff, land admeasuring 1000 sq. yards equivalent to 850 sq.mtrs. was leased out for a period of 50 years and for a further period of 49 years. The learned trial Judge referred to the notice dated 09.04.1979 and also the fact that the Trust had instituted eviction Suit against the plaintiff, which was dismissed in default and the restoration notice taken out by the Trust was also dismissed. The learned trial Judge also considered the lease deed dated 02.01.1945 executed by the Trust in favour of the tenants and observed that as per Clause 6(a), the period of lease was 3 years from the date of the agreement. The lease was created in respect of 253 sq.yards. The area covered under the lease deed dated 02.01.1945 was also covered under the lease deed dated 29.09.1972 executed by the Trust in favour of the plaintiff. The defendant never objected to execution of the lease in favour of the plaintiff. No material was produced by the defendant to show that after the expiry of the period of 3 years, till date, lease was continued in favour of the defendant. After considering the conduct of the defendant, the learned trial Judge came to

the conclusion that the earlier lease in favour of the defendant validly came to an end. It is also material to note that after communication dated 24.01.1973, defendant in fact were paying rent to the plaintiff till 1977.

24. In paragraph 7, the learned trial Judge referred to the demand notices issued to the tenants and the reply given by them to those notices. It was observed that there was no dispute at all that the demand notices sent by the landlord to the respective tenants were duly received and also replied by the respective tenants. P.W.1 deposed that in spite of receiving the demand notice and giving common reply dated 04.09.1979, tenants did not pay arrears of rent to the plaintiff nor they made any application for fixation of the standard rent within a period of one month from the date of receipt of the demand notices. D.W.1 admitted that defendants have deposited the rent for the first time after passing of the order dated 13.01.1982 but they have not deposited the rent regularly and they have committed default. The learned trial Judge also dealt with admission of P.W.1 that all tenants, except one, are depositing the rent regularly in the Court. D.W.1 admitted that all the tenants, on whose behalf he was depositing, have stopped paying rent from January 1978 and none of them have filed application for fixation of standard rent in the Court. He admitted that none of the tenants had paid arrears of the rent to the landlord during the period of one month from the date of the demand notices. He further deposed that he is not having deposit receipts upto which month and year, rent was deposited in the Court by them. After taking into account the facts and circumstances and evidence on record, the learned trial Judge concluded that none of the tenants after receiving the demand notice had paid the arrears of rent within one month nor they filed application for fixation of standard rent or permitted increases within a period of one month from the date of receipt of the demand notice. Thus, the defendants have not complied the requirements of

Section 12(2) of the Act.

25. In so far as the Appellate Court is concerned, this aspect was considered from paragraphs 13 to 36. The Appellate Court held that plaintiff is a landlady and that the lease deed was executed on 29.09.1972 after obtaining the sanction of the Charity Commissioner under Section 36 of the Bombay Public Trusts Act, 1950 as also after passing of the order on 17.12.1971 by the City Civil Court authorizing the Trust to lease out the suit premises. The Appellate Court also considered whether P.W.1, husband and Constituted Attorney of the plaintiff was competent to depose on behalf of the plaintiff and answered in favour of the plaintiff by observing that P.W.1 was conversant with the facts of the case.

26. In so far as the issue of default under Section 12 is concerned, the Appellate Court has considered this point in paragraphs 38 and 39. It was observed that the defendants did not dispute the rate of the rent claimed in the demand notice. They also did not dispute the rate of rent claimed in those notices nor raised any dispute as to the standard rent. It is an admitted fact that from January, 1978, they did not deposit any rent within the stipulate period after filing of the Suits.

27. Apart from this, a perusal of the lease deed dated 02.01.1945 shows that the same is not a registered instrument. Section 107 of the T.P.Act lays down that a lease of immovable property from year to year, or for any term exceeding one year can be made only by a registered instrument. Though defendant contended that it is a lease deed, a perusal of this document shows that it is an agreement to lease executed between the trustees of the Trust and the defendants and it was for a period of 3 years. Section 109 of the T.P.Act deals with rights of lessor's transferee, which is to the following effect:

“109. Rights of lessor's transferee.- If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.”

28. Mr. Dani relied upon the decision in **Mohinibai** (*supra*), and in particular paragraph 11 and **Virjit Raisey** (*supra*), and in particular paragraph 13 to contend that the defendants have not neglected to pay the rent. The Courts below, after appreciating the evidence on record, have held that the defendants did not comply requirements of Section 12 after service of the demand notice. For the reasons recorded earlier, I do not find that these decisions assist the defendants in any way.

29. After considering the material on record, I do not find that the Courts below committed any error in decreeing the Suit. The defendants are 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. Defendants were also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. 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, Civil Revision Applications fail and the same are dismissed. In view of

the dismissal of the Civil Revision Applications, Civil Applications do not survive and the same are disposed of accordingly.

30. At this stage, Ms Khanna orally applies for stay of eviction decree for a period of 8 weeks from today. She assures that within 2 weeks from today, defendants and all adult members using the suit premises will furnish undertaking 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 clear arrears of rent, if any, within two weeks from today;
- (e) in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

31. In view thereof, notwithstanding dismissal of the Applications, subject to the defendants filing undertaking in the aforesaid terms within 2 weeks from today, eviction decree shall not be executed for the period of 8 weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within 2 weeks from today and/or in case defendants commit breach of any of the conditions of the undertaking, respondents 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 8 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.

32. List the Applications for reporting compliance on 29.08.2018.

(R. G. KETKAR, J.)

Minal Parab