

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 144 OF 2019

Sundeep Singh Kanwaljit Singh Lamba

...Applicant

Versus

Rajesh Sureshchandra Shah

And others

...Respondents

With

Civil Application No.68 OF 2019

IN

Civil Revision Application NO. 144 OF 2019

....

Mr. V.M. Singh i/b. Mohan Bir Singh, Advocate for the applicant

Mr. Yogeshwar S. Bhate, Advocate for Respondents No.1 to 9.

....

CORAM : R. G. KETKAR, J.

RESERVED ON : 27th MARCH, 2019

PRONOUNCED ON: 12th APRIL, 2019

ORDER :

1. Heard Mr. V.M. Singh, learned counsel for the applicant and Mr. Y.S. Bhate, learned counsel for respondents No.1 to 9, at length.
2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant No.3', has challenged the judgment and decree dated 26.11.2018 passed by the Appellate Bench of the Small Causes Court at Bombay in (A-1) Appeal No.117/2013. By that order, the Appellate Court allowed the appeal preferred by respondents No.1 to 9,

hereinafter referred to as the 'plaintiffs', and set aside the judgment and decree dated 7.9.2013 passed by the learned Judge, Court Room No.17 of the Court of Small Causes at Mumbai in R.A.E. & R. Suit No.1096/1753 of 2003. The Appellate Court decreed the suit and directed respondents No.10 and 11, hereinafter referred to as 'defendants No.1 & 2' and defendant No.3 to deliver jointly and severally possession of shop No.4 admeasuring 123 sq. ft. on the ground floor, Panchsheel Building, situate at plot No.264, Sulochana Shetty Marg, Sion (West), Mumbai – 400 022 (for short, 'suit premises') to the plaintiffs within 90 days from the date of the order. Defendants No.1 & 2 were jointly and severally directed to pay arrears of rent and permitted increases amounting to Rs.1326/- with simple interest at 15% p.a. to the plaintiffs from the date of filing of the suit till its realization. Separate enquiry was ordered to be held under Order XX Rule 12 of C.P.C. for future mesne profits / compensation from the date of institution of the suit in respect of the suit premises.

3. The plaintiffs had instituted suit against the defendants *inter alia* contending that Kashinath Vithal Bhosle , since deceased, was the monthly tenant of the suit premises on the ground floor of the Panchsheel Building. Defendants No.1 & 2 are the sons and heirs and legal representatives of Kashinath Vithal Bhosle. The plaintiffs alleged

that defendants No.1 & 2 have unlawfully sub-let the suit premises to defendant No.3. Defendant No.3 is illegally in exclusive possession of the suit premises. Defendant No.3 has no right, title and interest in the suit premises.

4. The plaintiffs further alleged that the defendants No.1 and 2 were irregular in payment of rent and have not paid rent of suit premises from April, 2003 to September, 2003 amounting to Rs.582/- @ Rs.97/- per month and further permitted increases from 1.4.2003 to 30.9.2003 @ Rs.124/- p.m. amounting to Rs.744/- in all amounting to Rs.1,326/-.

5. The plaintiffs further alleged that the suit premises are reasonably and bonafide required by the plaintiffs for their own use and occupation. Plaintiff No.7 Miss. Jagruti Indravadan Shah is a qualified computer expert. Plaintiff No.1 Rajesh Sureshchandra Shah is carrying on business in mobiles as well as doing job in photo copying and computer D.T.P. work in a garage in the suit property, which is objected to by Mumbai Municipal Corporation. For developing business it is necessary to have shop in public on road. The plaintiffs desire to set up their business and for that purpose they themselves require the suit premises for their own use and occupation reasonably and bonafide.

6. The suit summons were issued to the defendants.

Defendants No.1 & 2 did not remain present. The suit was proceeded ex parte against defendants No.1 & 2. Defendant No.3 filed written statement dated 27.2.2013 resisting the suit. Defendant No.3 contended that by a registered deed of assignment dated 10.4.2003, the business of the suit premises as a running and going concern together with paraphenilia of said business, stock-in-trade and goodwill were assigned and delivered to defendant No.3. Incidental to the assignment of the business, the tenancy rights in respect of the suit premises were also assigned to defendant No.3 without any monetary consideration. Defendant No.3, thus, is legally in use, occupation and possession of the suit premises. Defendant No.3 became lawful monthly tenant of the suit premises. Defendant No.3 further contended that at no point of time the plaintiffs have objected the transfer as also the plaintiffs have not challenged said transfer in the competent Court of law. Before execution of the Deed of Assignment, the plaintiffs were approached. The plaintiffs have given their consent for execution of the Deed of Transfer and incidental tenancy rights. Defendant No.3 denied the case of reasonable and bonafide requirement.

7. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. After considering evidence on record, the learned trial Judge dismissed the

suit on 7.9.2013. Aggrieved by this decision, the plaintiffs preferred appeal. By the impugned order, the Appellate Court decreed the suit under Sections 16(1)(g) (reasonable and bonafide requirement) and 16(1)(e) (defendants No.1 & 2 have unlawfully sub let the suit premises to defendant No.3) of the Maharashtra Rent Control Act, 1999 (for short, 'Maharashtra Rent Act'). It is against this order, defendant No.3 has instituted present C.R.A.

8. In support of this C.R.A., Mr. Singh submitted that the Appellate Court committed serious error in decreeing the suit under Section 16(1)(e) of the Maharashtra Rent Act. He relied upon the notification dated 12.5.1948 issued under Section 15(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act'). He submitted that by virtue of Section 58(2)(c) of the Maharashtra Rent Act, said notification is saved whereunder running business and going concern along with assets and goodwill was allowed to be assigned.

9. Mr. Singh also relied upon Section 25 of the Maharashtra General Clauses Act (for short, 'M.G.C. Act') which lays down that where any enactment is, after the commencement of the Act, repealed and re-enacted by a Bombay Act [or Maharashtra Act] with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order,

scheme, rule, by-law or form made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form made or issued under the provisions so re-enacted. In the present case, no notification is issued under the Maharashtra Rent Act superseding the notification dated 12.5.1948 issued under the Bombay Rent Act.

10. Mr. Singh also heavily relied upon following decisions :

- i. **Shireen Dady Adenwalla Vs. Yasmin Dinyar Ilavia**, [C.R.A.No.249/2018 & other companion matters] decided by this Court (Coram:R.G. Ketkar, J.) dated 24.9.2018 and in particular paragraphs-8, 86, 116 thereof;
- ii. **Tangerine Electronics Systems Pvt. Ltd. Vs. Indian Chemicals & others**, 2004 (5) Bom.C.R. 673 (Full Bench) and in particular paragraphs-19, 38 and 40 thereof; and
- iii. **Harkesh Chand Vs. Krishan Gopal Mehta and others**, (2017) 4 SCC 537 and in particular paragraphs-8, 11 and 15 thereof.

Mr. Singh, therefore, submitted that the Appellate Court was not justified in passing eviction decree under Section 16(1)(e) of the Maharashtra Rent Act.

11. Insofar as the decree passed under Section 16(1)(g) of the Maharashtra Rent Act is concerned, Mr. Singh submitted that in paragraph-11 of the plaint, the plaintiffs contended that they reasonably and bonafide require the suit premise for their own use and occupation as plaintiff No.7 Miss. Jagruti Indravadan Shah is a qualified computer expert, Plaintiff No.1 Rajesh Sureshchandra Shah is carrying on business in mobiles as well as doing job in photo copying and computer D.T.P. work in a garage in the suit property, which is objected to by Mumbai Municipal Corporation and for expanding business it is necessary to have shop in public on road. He submitted that PW-1 Rajesh Shah admitted during the course of cross-examination that block No.3, adueasuring 320 sq. ft. carpet area, was given for office purpose to Harshadbhai Dawda since last 11-12 years. He submitted that the evidence of PW-1 was recorded on 4.7.2013. Thus around 2003, the plaintiffs had let out block No.3 to Harshadbhai Dawda. He submitted that the suit is instituted invoking the ground of bonafide requirement on 25.9.2003. Thus, hardly after letting out block No.3 to Harshadbhai Dawda around January, 2003, present suit is instituted in September, 2003. Therefore, the need pleaded by the plaintiffs is neither bonafide nor reasonable and it is tainted with malafides. The present suit is instituted solely with a view to evicting defendant No.3 from the suit

premises.

12. Lastly, Mr. Singh submitted that the learned trial Judge has dismissed the suit. The Appellate Court has allowed the appeal. Since the Courts below have passed differing judgment as also it involves the question of interpretation of Sections 15(1) and 26, 58(2)(c) of the Maharashtra Rent Act, Civil Revision Application requires consideration.

13. On the other hand, Mr. Bhate has supported the impugned order. He submitted that on 1.7.1963 Kashinath Vithal Bhosle, the original tenant, addressed a letter to the plaintiffs agreeing and confirming that the suit premises was let out to him subject to the terms and conditions stipulated therein. Clause-4 thereof provided that Kashinath Vithal Bhosle will not re-let or sub-let or give on leave and licence basis any part or portion of the premises in his occupation nor shall he assign the same to any one else without prior written consent of the plaintiffs.

14. Mr. Bhate invited my attention to the agreement dated 21.3.2003 executed between the plaintiffs on one hand and Smt. Zaverben L. Dawda / Shri Harshad L. Dawda in respect of block No.3. He submitted that said block was given for residential purpose and not for commercial user.

15. Mr. Bhate submitted that defendant No.3 came with the case in paragraph-3-a of the written statement that the plaintiffs were very much in the knowledge of execution of the registered deed of assignment dated 10.4.2003 between L.Rs. of Kashinath Vithal Bhosl. Said deed of assignment was executed with due knowledge of the plaintiffs as also the tenancy in pursuance of deed of assignment was transferred in the name of defendant No.3.

16. In paragraph-3-b, defendant No.3 contended that before execution of the Deed of Assignment, the plaintiffs were approached and the plaintiffs had also given their consent for execution of said deed of transfer and incidental tenancy. However, in the cross-examination DW-1 admitted that except his bare words, he has no document to show that the plaintiffs had given consent to assign and sublet the suit premises by defendants No.1 & 2. DW-1 further was shown deed of assignment dated 10.4.2003 at Exhibit-44. He admitted that there is no reference in deed of assignment at Exhibit-44 that consent was taken from the plaintiffs either by defendants No.1 and 2 or DW-1. He denied that no consent and without knowledge of the landlord (plaintiffs herein) the deed of assignment was executed. Thus, defendant No.3 accepted that without obtaining previous prior written permission, defendants No.1 & 2 have sub-let the suit premises illegally to defendant No.3.

17. Insofar as the ground of eviction under Section 16(1)(g) of the Maharashtra Rent Act is concerned, Mr. Bhate has invited my attention to paragraphs-26 to 30 of the Appellate Court judgment. In these paragraphs, the Appellate Court dealt with the ground of reasonable and bonafide requirement under Section 16(1)(g) of the Maharashtra Rent Act. After considering the evidence on record, the Appellate Court held in paragraph-30 that the plaintiffs have proved bonafide and reasonable requirement. The appellate Court also held that greater hardship will be caused to the plaintiffs in case the eviction decree is not passed. He submitted that after reappreciating the entire evidence on record, the Appellate Court has decreed the suit.

18. In support of his submissions, Mr. Bhate relied upon following decisions ;

- i. **Tangerine Electronics (supra)** and in particular paragraph-37 thereof. In paragraph-37, the Full Bench extracted paragraphs-8, 9 and 10 of **Veetrag Investments and Finance Co. Vs. Premier Brass and Metal Works Pvt. Ltd., Mumbai, 2002(3) Mh.L.J. 455**. In paragraph-10 of **Veetrag Investments (supra)**, the learned Single observed that the State Government has not issued any notification under the proviso to Section 26 of the Maharashtra Rent Act. The learned Single Judge further observed

that in the absence of any contract, the tenant has no right to sublet or transfer held by him whether they are for residential or non-residential purpose.

- ii. **Vasantrao Udhavrao Shivale & Ors. Vs. Wamanrao Genuji Shirole (since deceased) through L.Rs. & Ors., 2005(1) ALL MR 374**
 - iii. **D.C. Bhatia and others Vs. Union of India and another, (1995) 1 SCC 104;**
 - iv. **Parripati Chandrasekharrao & Sons Vs. Alapati Jalaiah, JT 1995 (4) S.C. 187;**
 - v. **Kalyanji Gangadhar Bhagat Vs. Virji Bharmal and another, 1995(4) Bom. C.R. 273;**
 - vi. **Jaisingh Morarji and others Vs. M/s. Sovani Pvt. Ltd. and others, (1973) 1 SCC 197;**
 - vii. **Swastik Rubber Products Ltd. and another Vs. Vasantrao Mahadeo Dhatingan, 2005(2) Mh. L. J. 28.**
 - viii. **Shireen Dady Adenwalla (supra)**
19. In rejoinder, Mr. Singh submitted that in paragraph-38, the Full Bench in **Tangerine Electronics** (supra), after extracting

paragraphs 8, 9 and 10 of **Veetrag Investments** (supra), held that the observations of the learned Single Judge in paragraph 10 are inconsistent with the view taken by the Full Bench and that the view expressed by the learned Single Judge in **Vitarag** (supra) cannot be said to be a good law.

20. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the learned trial Judge has dismissed the suit. The ground of unlawful sub-letting is considered by the learned trial Judge from paragraphs-10 to 22. In paragraph-12, the learned trial Judge noted that admittedly defendant No.3 is in exclusive possession and occupation of the suit premises. There is no dispute that the father of defendants No.1 and 2, Mr. Kashinath Vithal Bhosle was the original tenant.

21. In paragraph-16, the learned trial Judge referred to the arguments advanced on behalf of the plaintiffs based on Section 26 of the Maharashtra Rent Act. The learned trial Judge observed that the transfer of business as on going concern together with stock in trade, goodwill can be made as per the notification dated 12.5.1948 issued by the Bombay Government under proviso to Section 15(1) of the Bombay Rent Act. It is necessary on the part of the assignee to show that the

business was running at the time of assignment and the business was assigned to him by the deed of assignment and incidentally tenancy rights also transferred. In my opinion, the learned trial Judge did not deal with the contention of the plaintiff as to whether the Notification dated 12.5.1948 is inconsistent with the proviso to Section 26 of the Maharashtra Rent Act. In terms of Section 58(2)(c) and Section 25 of the M.G.C. Act, the learned trial Judge also did not consider whether the said notification outlived or continues to be in force after repeal of the Bombay Rent Act and enforcement of the Maharashtra Rent Act.

22. In paragraph-18, the learned trial Judge observed that on perusing the deed of assignment dated 10.4.2003 at Exhibit-44 it is evident that defendants No.1 & 2 assigned their running business to defendant No.3 by accepting some consideration towards goodwill and furniture, stock in trade etc. Defendant No. 3 has established that defendants No.1 & 2 assigned their running business in the name of M/s. Sandeep Tailors and M/s. Sundip Boutique in favour of defendant No.3.

23. In paragraph-19, the learned trial Judge referred to the agreement dated 1.7.1963 at Exhibit-31. The learned trial Judge, however, has not referred to the prohibition contained in clause-4

therein whereby Kashinath V. Bhosale agreed not to re-let or sub-let or give on leave and licence basis any part or portion of the premises in his occupation nor shall he assign the same to any one else without prior written consent of the plaintiffs.

24. In paragraph-22, the learned trial Judge concluded that when defendants No.1 & 2 assigned their running business in the name of M/s. Sandeep Tailors and M/s. Sundip Boutique to defendant No.3, there was valid tenancy between the plaintiffs and defendants No.1 & 2. Defendant No.3 has fulfilled all the conditions as per the notification dated 12.5.1948. The plaintiffs, therefore, failed to prove that defendants No.1 & 2 have illegally sub-let the suit premises to defendant No.3.

25. As against this, the Appellate Court has considered the ground of unlawful sub-letting from paragraphs-12 to 24. In paragraph-14, the Appellate Court noted that there is no dispute that defendant No.3 is in exclusive possession of the suit premises and defendants No.1 & 2 are not using the suit premise for the purpose for which it was let out to them. The only question to be decided was whether the occupation of defendant No.3 in the suit premises is that of lawful tenant. The Appellate Court referred to the registered deed of assignment dated 10.4.2003. The Appellate Court also referred to

clauses-4 and 5 of the agreement of tenancy dated 1.7.1963 at Exhibit-31 which places restriction on unlawful sub-letting.

26. In paragraph-15, the Appellate Court referred to the notification dated 12.5.1948 issued under Section 15(1) of the Bombay Rent Act as also Section 58 of the Maharashtra Rent Act. In paragraph-16, the Appellate Court reproduced Sections 26, 56 and 58 of the Maharashtra Rent Act. In paragraph-17, the Appellate Court held that the tenant cannot sub-let or assign his tenancy rights without the consent or permission of the landlords as per proviso of Section 26. **Even the State Government does not have the power to issue notification in respect of the premises let out for business, storage or trade.** In the present case, the suit premises are let out for business. Section 58(2)(c) of the Maharashtra Rent Act provides that the notification issued or made under the repealed Act (Bombay Rent Act) shall be deemed to have been made or issued under the Maharashtra Rent Act, **if it is not inconsistent with the provisions of the Maharashtra Rent Act.** The notification dated 12.5.1948 under Section 15(1) of the Bombay Rent Act cannot be made applicable to the premises which are let out for the business, storage and trade as there is specific bar under Section 26 of the Maharashtra Rent Act.

27. In paragraph-18, the Appellate Court referred to the Full

Bench decision in **Tangerine Electronics** (supra). In paragraph-23, the Appellate Court concluded that it cannot be said that by virtue of a registered deed of assignment dated 10.4.2003, the business of going concern along with stock in trade and goodwill was transferred with tenancy rights in favour of defendant No.3. In paragraph-24, the Appellate Court held that the plaintiffs succeeded in proving that defendants No.1 & 2 have unlawfully sub-let the suit premises in favour of defendant No.3.

28. Section 15 of the Bombay Rents Act reads thus:

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

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

[Provided that the [State] Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such [leases or class of leases [or the giving on licence any premises or class of premises] and no such extent as may be specified in the notification.]

- (2) The prohibition against the sub-letting of the whole or any part of the premises which have

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

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

29. Sections 26 and 58 of the Maharashtra Rent Act read thus :

“26. In absence of contract tenant not to sub-let or transfer or to give on licence.-- Notwithstanding anything contained in any law for the time being in force, but subject to any contract to the contrary, it shall not be lawful for any tenant to sub-let or give on licence the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

Provided that, the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases any premises or class of premises other than those let for

business, trade or storage to such extent as may be specified in the notification. ”

“58 - Repeal and saving . (1) On the commencement of this Act, the following laws, that is to say,--

- (a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947;
- (b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; and
- (c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954; shall stand repealed.

(2) Notwithstanding such repeal--

- (a) all applications, suits and other proceedings under the said Acts pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;
- (b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;
- (c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or

issued under this Act;

- (d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.”

30. Section 25 of the M.G.C. Act reads thus :

- “25. Where any enactment is, after the commencement of this Act, repealed and re-enacted by a Bombay Act [or Maharashtra Act] with or without modification, then, unless it is otherwise expressly provided, any appointment, **notification**, order, scheme, rule, by-law or form made or issued under the repealed enactment shall, **so far as it is not inconsistent with the provisions re-enacted**, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form made or issued under the provisions so re-enacted.”
[emphasis supplied]

31. In the case of **Tangerine Electronics** (supra), the following question was referred to Larger Bench :

“Whether the interest of the tenant of non-residential premises to which the Maharashtra Rent Control Act, 1999 applies, is attachable and saleable in execution of the decree against the tenant?”

32. In paragraph-4 , the Full Bench observed that the answer to the aforesaid question would depend on the consideration of the

aspects: is the tenant's right to remain in occupation of the non-residential premises is a property; is such property saleable and has the tenant disposing power over the interest of the tenancy for his benefit.

33. In paragraph-19, the Full Bench made comparison of Sections 15(1) of the Bombay Rent Act and Section 26 of the Maharashtra Rent Act and observed thus :

“19. On the comparison of Section 15(1) of the Bombay Rent Act and Section 26 of the Act of 1999, it would be seen that both sections are almost identical save little difference in the proviso appended to both sections which empower the State Government to permit the transfer of interest in premises by publication of notification in the official Gazette. Proviso appended to Section 15(1) of the Bombay Rent Act provided that the State Government may by notification in the Official Gazette permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and to such extent as may be specified in the notification while the proviso appended to Section 26 such notification can be issued by the State Government only for the premises other than those let for the business trade or storage. In our considered view, this difference in proviso by taking out non-residential premises out of the purview of State Government's power to permit the transfer of interest by issuance of notification in official gazette does not make the ratio of the Division Bench in *Mittersain Rupchand* inapplicable under Section 26 of the Act of 1999. Even if we assume that under the proviso to Section 26 of the Act of 1999, the State Government cannot permit the transfer of interest in the premises let out for business, trade or storage, the prohibition contained in Section 26 being subject to the contract to the contrary does not alter the legal

position that the restriction under Section 26 is neither absolute nor total. We find ourselves unable to agree with the submission of Mr. Mahendra Ghelani that Section 26 of the Act of 1999 provides total prohibition for transfer to the tenant and the only exception being the contract to the contrary and, therefore, the tenancy right is not saleable. ”

34. A perusal of the above extracted portion clearly shows that even the Full Bench observed that Section 15(1) of the Bombay Rent Act and Section 26 of the Maharashtra Rent Act are almost identical **save little difference in the proviso appended to both sections** which empower the State Government to permit the transfer of interest in premises by publication of notification in the official Gazette. Proviso appended to Section 15(1) of the Bombay Rent Act provided that the State Government may by notification in the Official Gazette permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and to such extent as may be specified in the notification. **While the proviso appended to Section 26 such notification can be issued by the State Government only for the premises other than those let for the business, trade or storage.**

[emphasis supplied]

35. Mr. Singh, however, submitted that the Full Bench thereafter observed that the prohibition under Section 26 is neither absolute nor total. I do not find any merit in this submission. Admittedly in the present case, the suit premises is let out for business. Proviso to Section 26 permits the State Government to issue notification only for the premises other than to those let out for business, trade or storage. In other words the proviso to Section 26 does not empower the State Government to issue notification for the premises let out for business, trade or storage.

36. Section 58(2)(c) of the Maharashtra Rent Act lays down that notwithstanding repeal of the Bombay Rent Act, any appointment, rule and notification made or issued under any of the repealed Act (in the present case Bombay Rent Act) and in force on the date of commencement of the Act (in the present case Maharashtra Rent Act) shall, **in so far as they are not inconsistent with the provisions of the Act** (Maharashtra Rent Act), be deemed to have been made or issued under the Act (Maharashtra Rent Act) and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under the Act (Maharashtra Rent Act).

(emphasis supplied)

37. A perusal of Section 25 of the M.G.C. Act, extracted earlier, shows that where any enactment, after the commencement of the M.G.C. Act, is repealed and re-enacted by a Bombay Act or Maharashtra Act with or without modification, then, unless it is otherwise expressly provided, any notification issued under the repealed enactment (in the present case, Bombay Rent Act) shall, **so far as it is not inconsistent with the provisions re-enacted** (in the present case, Maharashtra Rent Act), continue in force, and be deemed to have been made or issued under the provisions so re-enacted (in the present case, Maharashtra Rent Act), unless and until it is superseded by any notification issued under the provisions so re-enacted (in the present case, Maharashtra Rent Act). In the present case, after enforcement of the Maharashtra Rent Act, no notification is issued under Section 26. Even otherwise, in view of proviso to Section 26, the Government can issue notification only for the premises other than those let for the business, trade or storage. In other words, in view of proviso to Section 26, the Government can issue notification for the premises let out for business, trade or storage.

38. In the present case, the notification dated 12.5.1948 issued under Section 15(1) of the Bombay Rent Act by the State of Bombay is clearly inconsistent with the proviso to Section 26 of the Maharashtra

Rent Act. Thus said notification is not saved after repeal of the Bombay Rent Act and enforcement of the Maharashtra Rent Act insofar as the controversy raised in the present C.R.A. is concerned. The reliance placed by Mr. Singh on Section 15(1) of the Bombay Rent Act, Section 25 of the M.G.C. Act as also the decisions in **Shireen Dady Adenwalla** (supra), **Tangerine Electronics** (supra) and **Harkesh Chand** (supra) does not advance the case of defendant No.3. In my opinion, the Appellate Court was justified in passing the eviction decree under Section 16(1)(e) of the Act.

39. This brings me to other ground of eviction, namely, reasonable and bonafide requirement of the plaintiffs as contemplated by Section 16(1)(g) of the Act. The suit is instituted on or about 25.9.2003. PW-1 admitted in his cross-examination that on the ground floor there are three flats. One of them is used as office premises and other two are residential premises. Block No.3, admeasuring 320 sq. ft., is given for the office purpose to Harshadbhai Dawda. On 21.3.2003, the agreement was executed between the plaintiffs on one hand and Smt. Zaverben L. Dawda / Shri Harshad L. Dawda on the other in respect of block No.3. PW-1 admitted that said agreement is not registered. If at all the plaintiffs genuinely required the suit premises as contemplated by Section 16(1)(g) of the Act, surely they would not

have let out block No.3 admeasuring 320 sq.ft. on the ground floor to Harshadbhai Dawda. Whereas the agreement of 21.3.2003 records that it is given for residential purpose. In cross-examination, PW-1 admitted that it is given for office purpose. The area of block No.3 is 320 sq. ft. and the area of the suit premises is 123 sq. ft.

40. Mr. Bhate submitted that block No.3 is let out for a temporary period that too for residential purpose. It is not possible to accept this submission. The plaintiffs have not produced sanctioned plan to substantiate their claim that block No.3 is shown for residential user in the said plan. The plaintiffs also not produced any material to substantiate that under the Development Control Regulations for Greater Mumbai, the commercial user is prohibited on ground floor. The very fact that block No.3, admeasuring 320 sq. ft., was let out by the plaintiffs on 21.3.2003 and the present suit is instituted on or about 25.9.2003 demolishes their case of reasonable and bonafide requirement.

41. In view thereof, I find merit in the submission of Mr. Singh that the Appellate Court was not justified in passing eviction decree under Section 16(1)(g) of the Act.

42. In the light of the aforesaid discussion, the judgment and decree passed by the Appellate Court is upheld only under Section

16(1)(e) of the Act and not under Section 16(1)(g) of the Act. C.R.A., therefore, fails and the same is dismissed.

43. At this stage, Mr. Singh orally applies for stay to the eviction decree for a period of twelve weeks from today. Mr. Singh states that the applicant is in possession and nobody else is in possession. He has neither created third party interest nor parted with the possession. He will hereafter neither create third party interest nor part with the possession. He further states that the applicant and all adult family members using the suit premises will give usual undertaking within two weeks from today. Learned Counsel for the respondents opposes said prayer.

44. Having regard to the fact that applicant desires to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying eviction decree for a period of twelve weeks from today subject to the applicant and all adult members using the suit premises giving usual undertaking to this Court within two weeks 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;
- (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 two weeks from today; and
- (v) that in case the applicant is unable to obtain suitable orders from the higher Court within twelve weeks from today, they will deliver vacant and peaceful possession of the suit premises to the respondents.

45. In view thereof, notwithstanding dismissal of Civil Revision Application, eviction decree shall remain stayed for a period of twelve weeks from today, subject to the applicant filing undertaking in the aforesaid terms within two weeks from today, with copy in advance to the other side. It is made clear that in case the applicant does not file undertaking in the above terms and/or commits breach of any of the clauses of the undertaking, the interim order shall stand vacated without further reference to the Court. List the application for reporting compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)