

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR.

WRIT PETITION NO.1797 OF 2022

PETITIONERS : 1. Mirza Sharique Baig S/o. Mirza Azim
(Orig. Defendant.) Baig, Age: 48 years, Occ: Hotel Business,

2. Mirza Arig Baig S/o. Mirza Azim Baig,
Age: 42 years, Occ: Hotel Business.

Both, R/o. Kasabpura, Near Hotel Fareen,
Mominpura, Nagpur – 440018.

//VERSUS//

RESPONDENT : Mohd. Nasim S/o. Abdul Salim,
(Orig. Plaintiff) Age: 62 years, Occ: Printing Works,
R/o. Behind Sapna Guest House,
Hansapuri, Nagpur – 440018.

Mr. R.L. Khapre, Senior Advocate with Mr. A.S. Shukla,
Advocate for the Petitioners.

Mr. Masood Shareef, Advocate with Mr. Adil Mirza, Advocate for
the sole Respondent.

CORAM : **MANISH PITALE, J.**
RESERVED ON : **23rd JUNE, 2022.**
PRONOUNCED ON : **27th JULY, 2022.**

JUDGMENT

Rule. Rule made returnable forthwith. The writ petition
is heard finally with the consent of the learned counsel appearing

for the parties.

02] The question that arises for consideration in this petition is, whether a compromise decree passed by the Court of Small Causes, was an executable decree or a nullity or that it had merely recorded terms of compromise that gave rise to a fresh landlord-tenant relationship with all the protection afforded by the Maharashtra Rent Control Act, 1999 (hereinafter referred to as the “said Rent Control Act”), being available to the tenant, as a consequence of which, the landlord would have to institute fresh proceedings for eviction of the tenant. In order to appreciate the rival contentions raised on behalf of the parties, it would be necessary to refer to the facts leading to filing of the present petition.

03] The respondent i.e. the landlord filed suit against the petitioners i.e. the tenants seeking recovery of possession under Section 16(1)(e)(ii) and (g) of the said Rent Control Act on the grounds of unlawful subletting and *bona fide* requirement. The petitioners filed their written statement opposing the pleadings stated in the plaint. The suit was filed in the year 2011. It is also an

admitted position that the respondent had earlier filed a proceeding bearing M.J.C. No.21/2004, before the Small Causes Court against the petitioners for fixation of fair rent, which was allowed and the petitioners were directed to pay rent at the rate of Rs.10/- per square feet per month towards rent from the date of the initiation of the proceedings. The petitioners filed Misc. Civil Appeal No.14/2016, challenging the said judgment and order fixing fair rent in the aforesaid manner. It is during the pendency of the said appeal that in the aforementioned suit bearing Regular Civil Suit No.01/2011, filed by the respondent seeking eviction of the petitioners, an application was filed jointly by the rival parties before the Small Causes Court under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) for passing a decree on compromise. In terms of the said application, the Small Causes Court passed compromise decree, recording that the parties admitted the contents of the compromise, as a consequence of which, the suit was disposed of and the compromise decree was drawn up. The terms of compromise read as follows:

“The Plaintiff and the Defendants named above most respectfully jointly submits as under: -

1. *That the parties to the present suit i.e. the plaintiff and the defendants are desirous of settling amicably the pending case, which has been pending for almost five years and thereby put to rest this long litigation on the following terms and conditions as under:*
2. *That the defendants have agreed to vacate the suit premises in his possession as specifically mentioned in the schedule of the property attached with the plaint and hand over the peaceful vacant possession to the plaintiff within the period on or dated 30.11.2018.*
3. *That the defendants shall regularly pay the Rent @ Rs.20,000 from the date of 1/1/2016 in respect of aforesaid suit premises on or before 5th of every month positively without fail upto 30/11/2018.*
4. *That the defendants have agreed to hand over the vacant possession of the suit premises as existing today and specifically shall not remove or disturb the fixtures and tin shed laid over the Second Floor of the suit premises by Haji Mirza Azim Baig i.e. the late Father of Defendants, which was affixed in pursuance of second part of Agreement dated 1.11.1996 with the plaintiff.*
5. *The defendants further agrees and covenants that on failure to hand over the possession of the suit premises to the plaintiff on or before the period fixed i.e. dated 30.11.2018, the defendants shall be liable for damaged for the occupation of the suit premises @ Rs.1200/- (Rs. one thousand two hundred only) per day, till they handover the vacant possession of the Suit Premises.*
6. *In view of the compromise in regular civil suit no.1/2011 parties in the case has also compromised the matter pending in Misc. Civil appeal no.14/2016 before District Court, Nagpur between the parties and*

thereby defendant in present case/appellant in appeal is withdrawing appeal by filing application today itself. That parties in the case has agreed that subject matter involved in Misc. Civil Appeal No.14/16 has been settled amicably and finally between the parties and hence defendant in the present case is withdrawing said appeal from the court. That similarly plaintiff will also withdraw execution proceeding bearing case SD no.3/15 from Additional Small Cause Court, Nagpur filed by him for recovery of amount of fair rent as per order passed by Additional Small Cause Court Nagpur in a proceeding between parties and after passing of this compromise order same be treated as withdrawal.

7. It is also submitted that initially suit was filed against Mirza Azim Baig S/o Mirza Nasir Baig before Small Cause Court, Nagpur. That during pendency of suit, said Mirza Azim Baig expired on 18.09.2011 at Nagpur and his legal heirs were brought on record. That defendant 1(b) Mirza Arif Baig and defendant 1(c) Smt. Sarvat Baig W/o Tanveer Ahmed had executed Power of Attorney in favour of defendant No.1 (a) Mirza Sharique Baig S/o Mirza Azim Baig who is managing the affairs of "Babbu Hotel" situated in the suit premises and he has been authorized to compromise, settle the dispute or to do necessary acts for and on behalf of defendants. That copy of Power of Attorney is also filed herewith for perusal.

8. The above compromise took place between the parties after due understanding with each other and hence they are not claiming of proceeding from each other.

Hence this application u/o XXIII Rule 3 of C.P.C."

04] The Small Causes Court passed the following order on

the basis of the said compromise: -

ORDER

“Plaintiff and defendant No.1 (a) for himself and heirs power of attorney of defendant No.1 (b) and 1 (c) are present before the court and they have admitted the contents of compromise (Exh.127) to be true and correct. Hence, in view of compromise (Exh.127), the suit is disposed of in terms of compromise (Exh.127). Compromise decree be drawn up accordingly. No order as to costs. Court fees if any be refunded to plaintiff as per rules. Proceedings closed.

*Sd/-
(N.G. Satpute)
Judge, Small Causes Court, Nagpur,
Date 24/2/2016.”*

05] As is evident from the above quoted terms of compromise, the petitioners agreed to vacate the suit premises and to handover peaceful vacant possession to the respondent on or before 30.11.2018, further agreeing to pay the rent at the rate of Rs.20,000/- per month from 01.01.2016 till 30.11.2018. It was also agreed that if the petitioners failed to handover possession by 30.11.2018, they shall be liable to pay damages for occupation of the suit premises at the rate of Rs.1200/- per day till they handover vacant possession of the suit premises. It was also agreed that the aforesaid pending appeal arising out of the application for

fixation of fair rent would be withdrawn and the respondent would also not pursue the execution proceeding pertaining to the same.

06] When the petitioners, in terms of the aforesaid compromise, failed to handover possession to the respondent on 30.11.2018, on 07.12.2018, the respondent filed execution proceeding bearing SD No.156/2018 before the Small Causes Court. In the said execution proceeding, the petitioners raised objection under Section 47 of the CPC. It was contended by the petitioners that they were ready to pay damages at the rate of Rs.1200/- per day and that the decree was not executable. The respondent filed reply to the said objection and submitted that the objection deserved to be rejected and the decree ought to be executed at the earliest.

07] By order dated 16.11.2019, the Small Causes Court held that so long as the petitioners were paying and were ready to pay amount of Rs.1200/- per day, the execution proceeding was premature and that there was no cause of action to file the execution proceeding. Accordingly, the objection was allowed and

the execution proceeding was dismissed.

08] Aggrieved by the said order dated 16.11.2019, passed by the Small Causes Court, the respondent filed Civil Revision Application No.22/2019, before the District Court under Section 34(4) of the said Rent Control Act. Various grounds of challenge were raised on behalf of the respondent. The petitioners opposed the revision application and sought to defend the order of the Small Causes Court, dismissing the execution proceeding. The parties relied upon the various judgments of the Hon'ble Supreme Court and this Court in support of their respective contentions and the revision application was finally heard before the District Court.

09] By the impugned judgment and order dated 09.12.2021, the District Court, being the Special Court for Differently-Abled Persons, Senior Citizens and Marginalized Section of Society at Nagpur, allowed the revision application filed by the respondent, quashed and set aside the order of the Small Causes Court, rejected the objection raised by the petitioners and restored the execution proceeding before the Small

Causes Court. It was held that the decree was executable and that there was no substance in the objection raised on behalf of the petitioners.

10] Aggrieved by the said judgment and order, the petitioners filed the present writ petition, wherein the respondent appeared through counsel. The writ petition was taken up for final disposal.

11] Mr. R.L. Khapre, learned Senior Counsel appearing for the petitioners submitted that the impugned judgment and order of the District Court was against the settled principles of law laid down by the Hon'ble Supreme Court and this Court as regards the nature of compromise between parties in suit filed for eviction under Rent Control Legislation and that a proper application of the said position of law, would show that the compromise decree in the present case was a nullity and it was not capable of execution. By referring to a series of judgments concerning compromise decrees passed under various Rent Control Legislations, it was submitted that a compromise decree in such

circumstances could be executable only when the terms of compromise included a clause whereby the tenant conceded the ground of eviction raised by the landlord or specifically gave up his defence. By referring to the above quoted terms of compromise in the present case, the learned Senior Counsel appearing for the petitioners submitted that there was no reference to the grounds on which eviction was sought by the respondent; the petitioners did not concede to the grounds of eviction raised by the respondent and the defence was never given up. In such circumstances, the compromise between the parties was reduced to a private arrangement without reference to any of the grounds of eviction specified in the said Rent Control Act and that therefore, the decree was incapable of execution. It was emphasized that when there was no reference to any of the grounds under the said Rent Control Act concerning eviction, the Small Causes Court in the present case had no jurisdiction to grant such a decree, for the reason that jurisdiction arose from provisions of the said Rent Control Act, which the District Court in the present case completely failed to appreciate.

12] It was further submitted that the civil revision application filed before the District Court was itself not maintainable for the reason that execution proceeding was initiated by the respondent under the provisions of the CPC, as no specific procedure for execution of decrees is provided either under the said Rent Control Act or the Provincial Small Cause Courts Act, 1887, under which the said Small Cause Court stood established. On this basis, it was submitted that when powers were exercised as executing court under the CPC, the challenge to such an order allowing objection of the petitioners could have been raised, as per remedies provided under the CPC. On this basis, it was submitted that the impugned judgment and order passed by the District Court, was without jurisdiction.

13] In support of the aforesaid submissions, the learned Senior Counsel appearing for the petitioners relied upon judgments of the Hon'ble Supreme Court in the case of *Konchada Ramamurty Subudhi (dead) by his legal representatives Vs. Gopinath Naik and others* reported in *AIR 1968 SC 919*, *Srimathi Kaushalya Devi & others Vs. Shri K.L. Bansal* reported

in *1969 (1) SCC 59, Ferozi Lal Jain Vs. Man Mal and another* reported in *1970 (3) SCC 181, Bibekananda Bhowal (dead) by LRs. Vs. Satindra Mohan Deb (dead) by LRs.* reported in *(1996) 9 SCC 192* and *Alagu Pharmacy and others Vs. N. Magudeswari* reported in *(2018) 8 SCC 311* and judgments of this Court in the cases of *Gurupadappa Shivlingappa Vs. Akbar Sayad Budan Kadri* reported in *AIR 1950 Bom 252, Ratilal Narbheram Vs. Welji Nagji, trading in the name of Nagji Ghelabhai and another* reported in *AIR 1975 Bombay 218, Kalyandas Manilal Shah Vs. S.M. Kankaria and another* reported in *AIR 1982 Bombay 532, Prithvichand Ramchand Sablok Vs. S.Y. Shinde* reported in *1985 Mh.L.J. 199* and *Abedali Khan s/o Rahematali Khan Vs. Devidas s/o Dhonduji Poghe* reported in *2012 (1) Mh.L.J. 466*.

14] On the other hand, Mr. Masood Shareef, learned counsel appearing for the respondent submitted that no interference was warranted in the impugned judgment and order passed by the District Court, for the reason that it was based on proper interpretation of the terms of compromise and application of settled law in that context. It was submitted that the petitioners

are not justified in contending that there ought to be a clause in the terms of compromise specifically conceding to a stated ground for eviction and that absence thereof would render the compromise decree inexecutable. It was submitted that each case would have to be decided on its own facts and that if the law clarified by the Hon'ble Supreme Court was to be applied to the terms of compromise between the parties in the present case, it would become evident that the District Court arrived at correct conclusions, thereby restoring the execution proceeding initiated by the respondent. By referring to a number of judgments of the Hon'ble Supreme Court, particularly in the cases of *K.K. Chari Vs. R.M. Seshadri* reported in (1973) 1 SCC 761, *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and others* reported in (1974) 1 SCC 242, *Roshan Lal and another Vs. Madan Lal and others* reported in (1975) 2 SCC 785, *Suleman Noormohamed and others Vs. Umarbhai Janubhai* reported in (1978) 2 SCC 179 and *Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (dead) by LRs.* reported in (1993) 2 SCC 458, the learned counsel for the respondent submitted that the terms of compromise were to be read in a holistic manner,

alongwith the pleadings of the parties to examine as to whether by agreeing to the terms of compromise, the tenant had impliedly admitted to his liability and the decree was passed *in invitum*. Applying the said position of law to the terms of compromise in the present case, it was submitted that the decree was clearly executable and not a nullity. In support of the said contentions, the learned counsel relied upon judgments of the Hon'ble Supreme Court in the cases of *Bai Chanchal and others Vs. Syed Jalaluddin and others* reported in 1970 (3) SCC 124, *Konchada Ramamurthy Subudhi (dead) by his legal representatives Vs. Gopinath Naik and others* (supra), *Prakash Chand Khurana, Etc. Vs. Harnam Singh and others* reported in (1973) 2 SCC 484, *Smt. Nai Bahu Vs. Lala Ramnarayan and others* reported in (1978) 1 SCC 58, *Smt. Kalloo and others Vs. Dhakadevi and others* reported in (1982) 1 SCC 633, *Som Dutt (dead) by Lrs. Vs. Govind Ram* reported in (2000) 9 SCC 345 and *Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) Vs. Rajinder Singh and others* reported in (2006) 5 SCC 566, as also judgment of this Court in the case of *Ramjibhai Virpal Shah Vs. Gordhandas Maganlal Bhagat* reported in AIR 1954 Bombay 370.

15] As regards the contentions raised on behalf of the petitioners that the civil revision application before the District Court was not maintainable, it was submitted that since the execution proceeding was initiated before the Small Cause Court and the order accepting the objection and dismissing the execution proceeding, was indeed passed by the Small Cause Court, the respondent was entitled to invoke revisional jurisdiction of the District Court under Section 34(4) of the said Rent Control Act. It was submitted that merely because provisions of the CPC were referred, while seeking execution of the compromise decree, it would not mean that the provisions of the said Rent Control Act, were not available to the respondent. On this basis, it was submitted that the writ petition deserved to be dismissed.

16] Before examining the terms of the compromise in the present case to appreciate the contentions raised by the rival parties, it would be appropriate to refer to the position of law as it has emerged under the judgments of the Hon'ble Supreme Court and this Court, referred to above.

17] Having heard the learned counsel for the rival parties and considering numerous judgments on which reliance has been placed, in order to apply the position of law to the facts of the present case, it would be appropriate to consider the development of law in the context of executability of such decrees of compromise, wherein proceedings were initiated under Rent Control Legislations. The crucial question is, in what manner the terms of compromise in such matters are to be interpreted to examine as to whether the compromise decree can be executed or it would amount to a nullity, rendering it inexecutable.

18] Much emphasis was placed on the judgment of the Hon'ble Supreme Court in the case of *K.K. Chari Vs. R.M. Seshadri* (supra). The learned Senior Counsel appearing for the petitioners submitted that judgments prior thereto ought to be appreciated, in order to properly understand the position of law laid down in the case of *K.K. Chari Vs. R.M. Seshadri* (supra). In the case of *Konchada Ramamurthy Subudhi (dead) by his legal representatives Vs. Gopinath Naik and others* (supra), the question that fell for consideration was as to whether the terms of

the compromise created a fresh tenancy or a decree passed on the basis of the same pertained to termination of tenancy. After appreciating the terms of compromise therein, the Hon'ble Supreme Court found that while interpreting such terms, it has to be kept in mind that when a suit for ejectment is filed by the decree holder, leading to a compromise between the parties, it is difficult to impute an intention in him of creating a fresh tenancy, because the very fact that he brought the suit demonstrated his intention to eject the judgment debtor. On facts, the Hon'ble Supreme Court found that the intention of the parties was not to enter into a relationship of landlord and tenant and that if it was to be held so, it would militate against the construction of the compromise itself.

19] In the case of *Srimathi Kaushalya Devi & others Vs. Shri K.L. Bansal* (supra), it was held that a decree based on compromise was a nullity by applying the ratio of an earlier judgment in the case of *Bahadur Singh and Ors. Vs. Muni Subrat Dass and Ors.* reported in (1969) 2 SCR 432, wherein the Court found that the compromise decree was based on an award, which

did not refer to the grounds of eviction in the concerned Rent Control Legislation and that therefore, such a decree being a nullity, could not be enforced.

20] In the case of *Ferozi Lal Jain Vs. Man Mal and another* (supra), it was held that under the concerned Rent Control Legislation, when a compromise decree was passed without satisfaction of the Court regarding grounds of eviction, the Court itself would be incompetent to pass a decree for possession. On this basis, in the facts of the said case, it was held that the decree was a nullity.

21] In the case of *Bai Chanchal and others Vs. Syed Jalaluddin and others* (supra), on the facts of the said case, the Hon'ble Supreme Court held that the consent decree did not state that a new tenancy was being created, but the terms of the compromise decree neither constituted a tenancy nor a licence.

22] Then came the case of *K.K. Chari Vs. R.M. Seshadri* (supra), wherein the Hon'ble Supreme Court considered the question as regards executability of a compromise decree of

eviction under a Rent Control Legislation, with reference to the aforesaid earlier judgments in the case of *Bahdur Singh Vs. Muni Dubrat Dass* (supra), *Srimathi Kaushalya Devi & others Vs. Shri K.L. Bansal* (supra) and *Ferozi Lal Jain Vs. Man Mal and another* (supra). In the said judgment in the case of *K.K. Chari Vs. R.M. Seshadri* (supra), Vaidialingam, J. for himself and Dua, J. held as follows:

“30. The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact viz., the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based.

31. It is no doubt true that before making an order for possession the court is under a duty to satisfy itself as to the truth of the landlord's claim if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for possession in favour of the landlord without further enquiry. It is no doubt true that each case will have to be decided on its

own facts to find out whether there is any material to justify an inference that an admission, express or implied, has been made by the tenant about the existence of one or other of the statutory grounds. But in the case on hand, we have already referred to the specific claim of the landlord as well as the fact of the tenant withdrawing his defence. According to us, such withdrawal of the defence expressly amounts to the tenant admitting that the landlord had made out his case regarding his requiring the premises for his own occupation being bona fide. In the three decisions of this Court, to which we have already referred, the position was entirely different. In none of those cases was there any material to show that the tenant had expressly or impliedly accepted the plea of the landlord as true. Therefore those decisions do not assist the respondent-tenant.”

23] Alagiriswami, J. in his concurring judgment, fully agreed with the said view, but specifically stated as follows:

“I agree with the order proposed by my learned brother, Vaidialingam, J., but I think it is necessary to add a few words of my own. The law on this subject has got into a labyrinth and I think it is time we took a hard look at it and laid down the correct position.”

24] Thereafter, in the concurring judgment, reference was made to order XXIII Rule 3 of the CPC and it was observed as follows:

“39. ...The fact that the consent to a decree takes the form of a compromise cannot make the consent any

the less a consent. Under Order 23, Rule 3 of the Code of Civil Procedure all matters to be decided in a suit can be settled by means of a compromise. The application of Code of Civil Procedure is not excluded in proceedings before the Rent Controller and in any case there is no reason why the principle underlying Order 23, Rule 3 should not apply to those proceedings. It is not clear why a tenant should be treated as a minor or as an imbecile. In the case of a minor the Order 32, Rule 7 of the Code of Civil Procedure specifically lays down that the court should be satisfied before it sanctions a compromise binding the minor. There is no such provision in the Rent Control Act. I think, therefore, the time has come when a hard look must be taken on this point and it should be held that there is no objection to a compromise consenting to an order of eviction in rent control proceedings.

40. Of course, a compromise can be valid only if it is in accordance with the Act, i.e. only if the landlord has asked for possession of the building on one of the grounds laid down in the Act. For instance, a landlord merely on the ground that he is the owner of the building cannot come to the Rent Controller and ask for possession of the property and the Rent Controller cannot pass a valid order merely because the tenant submits to an order of eviction. Bahadur Singh's case is an instance in point. In that case the landlord did not even apply for eviction. But where the landlord specifically asks for possession on any one of the grounds on the basis of which he is entitled to ask for possession under the provisions of the Act there will be no objection to the tenant either submitting to an order of eviction or entering into a compromise submitting to an order of eviction. There is no magic in the words 'if the Controller is satisfied' in Section 10(3)(e). ...”

25] Thereafter, in the concurring judgment, reference was made to certain English decisions and it was held as follows:

“45. These observations very clearly show that the fact the Court had to satisfy itself did not prevent a consent order. It also shows clearly that a compromise or arrangement as long as it is not inconsistent with the provisions of the Act would not be objectionable.”

26] Thereafter, reference was made to two judgments of the Punjab High Court, wherein it was held that when a tenant entered into a compromise with the landlord and agreed for vacating the suit premises, such a tenant was implicitly admitting the correctness of grounds for eviction raised by the landlord. In the end, in the concurring judgment, it was held as follows:

“48. All these decisions amply support the proposition that I have put forward that an eviction order based on a compromise where the landlord has asked for possession on any one of the grounds on the basis of which he could ask for possession would be valid. This would, however, have to be considered when a proper occasion arises. The present appeal is allowed.”

27] Thereafter, In the case of ***Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and others*** (supra), after referring to the aforementioned earlier judgments on this aspect of

the matter, the Hon'ble Supreme Court held as follows:

“27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself, Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

28] In the case of ***Roshan Lal and another Vs. Madan Lal and others*** (supra), again reference was made to the earlier judgments and specific reliance was placed on the concurring judgment of Alagiriswami, J. in the case of ***K.K. Chari Vs. R.M. Seshadri*** (supra). Thereafter, it was held as follows:

“5. In order to get a decree or order for eviction against a tenant whose tenancy is governed by any Rent Restriction or Eviction Control Act the suitor must make out a case for eviction in accordance with the provisions of the Act. When the suit is contested the issue goes to trial. The Court passes a decree for eviction only if it is satisfied on evidence that a ground for passing such a decree in accordance with the requirement of the statute has been established. Even when the trial proceeds ex parte, this is so. If, however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law.

6. It is too late in the day to contend that the provisions of Order 23, Rule 3 of the Code of Civil Procedure cannot apply to eviction suits governed by the special statutes. Undoubtedly, a compromise of such suit is permissible under the said provision of law. The protection of the tenant is inherent in the language of Order 23, Rule 3 when it says

Where it is proved to the satisfaction of the Court that a suit has been adjusted by any lawful agreement or compromise.... the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

If the agreement or compromise for the eviction of the tenant is found, on the facts of a particular case, to be in violation of a particular Rent Restriction or Control Act, the Court would refuse to record the compromise as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, that the agreement is lawful, as in any other suit, so in an eviction suit the Court is bound to record the compromise and pass a decree in accordance therewith. Passing a decree for eviction on adjudication of the requisite facts on or their admission in a compromise, either express or implied, is not different.”

29] In the case of ***Suleman Noormohamed and others Vs. Umarbhai Janubhai*** (supra), it was found that in the facts of the said case, there was abundant intrinsic material in the compromise itself to indicate that the decree passed upon its basis, was not in violation of the Act, but was in accordance with it. After referring to specific grounds of eviction as specified in the concerned Rent Control Legislation, it was held as follows:

“8. ...The facts clearly show that he had incurred the liability to be evicted under the said provisions of law and the compromise decree was passed on the tenant's impliedly admitting such liability. If a decree for possession would have been passed in invitum the tenant would not have got three years' time to vacate the premises. He, therefore, agreed to suffer a decree

by consent and gained three years' time under it. But the unavoidable uncertainties of litigation and the delay in disposal of cases at all stages have enabled him to gain a period of about 11 years more by now. In our judgment the decree under execution is not a nullity and has got to be executed by the Execution Court without any further loss of time, as quickly as possible."

30] In the cases of ***Smt. Nai Bahu Vs. Lala Ramnarayan and others*** (supra) and ***Smt. Kalloo and others Vs. Dhakadevi and others*** (supra), the Hon'ble Supreme Court held that the Rent Control Legislation being a special Statute would prevail over the general law and that the Court ought to be satisfied that the statutory ground for eviction was pleaded and the tenant admitted the same in the compromise and further that intention of the parties entering into the compromise has to be derived from the terms of the compromise and the surrounding circumstances to ascertain whether a fresh contract could be deciphered or the decree could be executed.

31] In the case of ***Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (dead) by LRs.*** (supra), after referring to the aforementioned judgments of the Hon'ble Supreme Court on

the said point, in the context of nullity of decree, it was held as follows:

“8. It may be noticed that we are dealing with the question of nullity of a decree because the executing court is bound to execute the decree and cannot go behind the same unless the decree passed by it is a nullity. It appears, there is a lot of confusion as to what is meant by “decree being null and void”. In the context which we are dealing, a decree is said to be a nullity if it is passed by a court having no inherent jurisdiction. Merely because a court erroneously passes a decree or there is an error while passing the decree, the decree cannot be called a nullity. The decree to be called a nullity is to be understood in the sense that it is ultra vires the powers of the court passing the decree and not merely voidable decree.”

32] After referring to the facts of the said case, it was held that satisfaction as regards the existence of grounds for eviction can be inferred impliedly also and after referring to Order XXIII Rule 3 of the CPC, it was observed as follows:

“15. It is clear that whenever there is any lawful agreement the court is bound to record the agreement or compromise. There is no provision in the Act which made Rule 3 of Order 23 of the Code of Civil Procedure inapplicable to proceedings contemplated by the Act. Nor there is any provision in the Act which prohibits parties entering into a compromise in the suit for eviction filed under the Act.”

33] In the said judgment, after referring to the earlier judgments in the case of *Roshan Lal and another Vs. Madan Lal and others* (supra) and *Suleman Noormohamed and others Vs. Umarbhai Janubhai* (supra), it was held that an admission by a tenant about existence of a statutory ground for eviction, expressly or impliedly, will be sufficient and there need not be any evidence before the Court on the merits of the grounds before the compromise order is passed. It was held that in such a situation, a compromise decree cannot be called a nullity to enable the executing court to go behind it.

34] In the case of *Bibekananda Bhowal (dead) by LRs. Vs. Satindra Mohan Deb (dead) by LRs.* (supra), the Hon'ble Supreme Court after applying the said position of law, on facts, found that there was nothing to indicate in the compromise decree that the protection of the concerned Rent Control Legislation was meant to be taken away.

35] In the case of *Som Dutt (dead) by Lrs. Vs. Govind Ram* (supra), in a short judgment, the Hon'ble Supreme Court held that when there was an agreed date on which the tenant was to

vacate the premises, he was estopped from objecting to the execution of the eviction decree. In the context of Order XXIII Rule 3 of CPC, it was held that the parties were bound by the terms of the compromise and that the tenant could not be permitted to resile from the undertaking given in terms of the compromise.

36] In the case of *Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) Vs. Rajinder Singh and others* (supra), it was held that when, in terms of compromise, the tenant was to vacate the premises within specified time, the possession could certainly be recovered in execution of such a decree, in the event the tenant failed to vacate within the specified time. A specific point was framed in the context of Order XXIII Rule 3 of the CPC and it was held as follows:

“18. Order 23 deals with withdrawal and adjustment of suits. Rule 3 relates to compromise of suits, relevant portion of which is extracted below

“3. Compromise of suit. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the defendant satisfies the

plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.”

The said Rule consists of two parts. The first part provides that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The second part provides that where a defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such satisfaction to be recorded and shall pass a decree in accordance therewith. The Rule also makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject-matter of the suit and that such compromise or agreement may be entered not only among the parties to the suit, but others also, but the decree to be passed shall be confined to the parties to the suit whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit. We are not, however, concerned with this aspect of the Rule in this appeal.

19. What is the difference between the first part and the second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has

been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so “satisfies” the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any “enforcement” or “execution” of the decree to be passed in terms of it. ...”

37] Having referred to the said two parts of Rule 3 of Order XXIII of the CPC, while applying it to a compromise where the tenant agreed to vacate the premises within specified time, in the said judgment, the Hon’ble Supreme Court held as follows:

“20. In a suit against the tenant for possession, if the settlement is that the tenant will vacate the premises within a specified time, it means that the possession could be recovered in execution of such decree in the event of the defendant failing to vacate the premises within the time agreed. Therefore, such settlement would fall under the first part. On the other hand, if both parties or the plaintiff submit to the court that

the tenant has already vacated the premises and thus the claim for possession has been satisfied or if the plaintiff submits that he will not press the prayer for delivery of possession, the suit will be disposed of recording the same, under the second part. In such an event, there will be disposal of the suit, but no “executable” decree.

21. In this case, under the settlement, the tenant undertook to vacate the suit property on a future date (that is 22-1-2002) and pay the agreed rent till then. The decree in pursuance of such settlement was an “executable” decree. Therefore the settlement did not fall under the second part, but under the first part of Rule 3. The High Court obviously committed an error in holding that the case fell under the second part of Rule 3.”

38] Thus, what emerges from the above referred series of judgments on the said point, upon which learned counsel for the rival parties placed reliance, is that whether a compromise decree in such cases where eviction is sought under Rent Control Legislation, is capable of execution or not, will depend on the facts of each individual case. It was emphasized on behalf of the petitioners that in the above quoted compromise terms, since the petitioners did not concede to the ground of eviction pleaded by the respondent or that they did not give up their defence as in the case of *K.K. Chari Vs. R.M. Seshadri* (supra), the decree was

inexecutable. But, while raising such a contention, the petitioners have ignored the series of judgments of the Hon'ble Supreme Court, referred to above, in the case of *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and others* (supra), *Roshan Lal and another Vs. Madan Lal and others* (supra), *Suleman Noormohamed and others Vs. Umarbhai Janubhai* (supra), *Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhodas (dead) by LRs.* (supra), *Som Dutt (dead) by Lrs. Vs. Govind Ram* (supra) and *Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) Vs. Rajinder Singh and others* (supra), wherein the position of law indicated in the concurring judgment of Alagiriswami, J. in the case of *K.K. Chari Vs. R.M. Seshadri* (supra), was emphasized upon and evolved, to hold that compromise terms need to be appreciated in such cases alongwith pleadings of the parties, to examine whether implied admission or implicit admission of the tenant can be made out. Having signed the compromise terms agreeing to vacate the suit premises by a specific date, the tenant agrees to the decree *in invitum*.

39] This is because, as emphasized in the case of *Pushpa*

Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) Vs. Rajinder Singh and others (supra), under Order XXIII Rule 3 of the CPC, which consists of two parts, where the tenant agrees to vacate the premises within a time frame or by a specified date, such a compromise falls within the first part, which is an executable decree.

40] Much emphasis was sought to be placed on behalf of the petitioners on the judgment of the Hon'ble Supreme Court in the case of *Alagu Pharmacy and others Vs. N. Magudeswari* (supra), to contend that whenever this protection is available under Rent Control Legislation, unless a ground seeking eviction is made out, even if there is a compromise between the parties, eviction cannot be ordered. But, if the said judgment is perused, reference is made to earlier judgments in the cases of *Bahadur Singh and Ors. Vs. Muni Subrat Dass and Ors.* (supra), *Srimathi Kaushalya Devi & others Vs. Shri K.L. Bansal* (supra), *K.K. Chari Vs. R.M. Seshadri* (supra) and *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and others* (supra) and much has turned on the facts of the said individual case. In the said case, on facts,

the Hon'ble Supreme Court found that the compromise was brought about by exerting pressure through police and that the tenants were compelled to enter into compromise. Having found on facts that the compromise itself was not voluntary, the Hon'ble Supreme Court held that decree based on such compromise was not executable.

41] Even otherwise, in the said case, the Hon'ble Supreme Court was not called upon to consider the aspect of implicit/implied admission of ground of eviction on the part of the tenant by signing compromise terms specifying a date by which the tenant agreed to vacate the suit premises, as also the position of law clarified by the Hon'ble Supreme Court in judgments rendered by Bench of three Hon'ble Judges in the case of *Roshan Lal and another Vs. Madan Lal and others* (supra) and Benches of two Hon'ble Judges in the cases of *Suleman Noormohamed and others Vs. Umarbhai Janubhai* (supra), *Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (dead) by LRs.* (supra) and *Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) Vs. Rajinder Singh and others* (supra).

Therefore, reliance placed by the petitioners on the judgment of the Hon'ble Supreme Court in the case of *Alagu Pharmacy and others Vs. N. Magudeswari* (supra), would not be of assistance.

42] Having noted the position of law as elucidated by the Hon'ble Supreme Court from 1968 onwards, this Court can proceed further in the matter, but since judgments of this Court have also been referred to by the learned counsel for the rival parties, this Court deems it fit to consider them also.

43] In the case of *Gurupadappa Shivlingappa Vs. Akbar Sayad Budan Kadri* (supra), it was held that in a given case, despite a compromise between the parties the tenant may be entitled to seek protection of the Rent Control Legislation.

44] In the case of *Ramjibhai Virpal Shah Vs. Gordhandas Maganlal Bhagat* (supra), this Court considered the nature of a decree passed on compromise between landlord and tenant. After referring to a number of precedents, it was held that the compromise decree could not be said to be inconsistent with the concerned Rent Control Legislation and that it could not be said

to be illegal or a nullity.

45] In the case of *Ratilal Narbheram Vs. Welji Nagji, trading in the name of Nagji Ghelabhai and another* (supra), this Court, on facts, and after appreciating the terms of the compromise between the parties, found that a fresh tenancy was created and that a decree of possession could not be passed unless the procedure laid down in the concerned Rent Control order was followed. It was also held similarly in the case of *Kalyandas Manilal Shah Vs. S.M. Kankaria and another* (supra), by emphasizing that the tenant could not be asked to handover possession of the premises without satisfying the conditions mentioned in the concerned Rent Control Legislation.

46] In the case of *Prithvichand Ramchand Sablok Vs. S.Y. Shinde* (supra), this Court summarized the position as regards compromise decrees, to examine as to whether a new tenancy was created or that the consent decree was directly executable for recovering possession from the tenant. It was specifically laid down in the said judgment that when a consent decree provides for continuance of possession of the tenant upto a particular date,

beyond which he has no right to remain in possession, the landlord is entitled to execute the decree for possession, as the time given from the date of the decree till the other date, is only by way of concession.

47] Much emphasis was placed on behalf of the petitioners on the judgment in the case of *Abedali Khan s/o Rahematali Khan Vs. Devidas s/o Dhonduji Poghe*, passed by this Court, to contend that since the petitioners in the present case had not specifically stated in the compromise that they were conceding to the grounds of eviction raised by the respondent, the decree was not executable. In the first place, the said case arose before this Court out of a suit for injunction filed by the tenant to restrain the landlord from evicting the tenant without due process of law. It did not arise out of a suit for eviction filed by the landlord on specific grounds seeking eviction of the tenant. It is in such a suit that terms of compromise were executed between the parties and in such facts, it was held that evicting the tenant on the basis of the compromise, would be violative of the Section 16 of the said Rent Control Act, which is a special Statute. This Court is of the

opinion that the said judgment would also not be of any assistance to the petitioners.

48] Having considered the aforesaid series of judgments referred to and relied upon by the rival parties and having analyzed the same hereinabove, this Court is of the opinion that, applying the position of law to the specific clauses of compromise between the parties, which have been quoted above, it cannot be said that the District Court erred in holding against the petitioners. In the present case, the respondent had filed the suit invoking specific grounds under Section 16 of the said Rent Control Act. The compromise between the parties, as quoted above, records that the parties desire to put to rest the long litigation and thereupon the petitioners agreed to vacate the suit premises on or before 30.11.2018.

49] Applying the aforesaid position of law, this Court is of the opinion that firstly, such compromise terms clearly indicate that the petitioners implicitly or impliedly conceded to the specific grounds of eviction raised by the respondent and for this purpose, the pleadings can certainly be considered. Secondly,

granting such compromise decree has not done any violence to the provisions of Section 16 of the said Rent Control Act and therefore, there is no question of the Small Causes Court having lost jurisdiction to pass such a decree against the petitioners. Thirdly, the terms of the compromise clearly indicate that the petitioners had no right to continue in the tenanted premises beyond the specified date; that the time given from the date of the decree till such specified date was by way of concession; that no new tenancy was created and that the existing tenancy was not continued. In this regard the clause specifying damages to be paid by the petitioners from 30.11.2018, further cements the case of the respondent.

50] Fourthly, none of the clauses of the compromise indicate creation of a new relationship of tenancy in favour of the petitioners. Fifthly, the said compromise term, specifying a date on or before which the petitioners were to vacate the premises clearly falls in the first part of Rule 3 of Order XXIII of the CPC, as laid down by the Hon'ble Supreme Court in the case of ***Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) Vs. Rajinder***

Singh and others (supra), wherein it is held that since such a term falls within the first part, the compromise decree is clearly executable.

51] There is another aspect in such matters. When parties enter into compromise, there is always give and take to settle the dispute finally and it is an endeavour of the parties that each of the party would give something to receive something in return. If the interpretation as sought to be canvassed by the petitioners is to be accepted, the respondent in the present case entered into the compromise, wherein he only gave a new lease of life to the tenancy, to postpone the initiation of process of eviction of the petitioners i.e. the tenants, to a future date, without anything significant or tangible being received in return. In other words, the petitioners as tenants did not have to give anything and they received everything in their favour in return. Such an interpretation is wholly unacceptable and goes against the very grain of the concept of compromise, which is legislatively recognized under Order XXIII Rule 3 of the CPC. This Court cannot accept such an interpretation sought to be foisted by the

petitioners on the above quoted compromise terms. Therefore, the contentions raised on behalf of the petitioners on this aspect, cannot be accepted.

52] Insofar as the contention raised on behalf of the petitioners that the civil revision application filed before the District Court was not maintainable, because the execution proceedings were being pursued under the CPC, it would be relevant to refer to the provisions of the said Rent Control Act and the Provincial Small Cause Courts Act, 1887.

53] A perusal of the said provisions would show that the respondent is seeking execution of decree passed by the Small Causes Court, the source of jurisdiction of which is Section 33 of the said Rent Control Act. The said provision specifically provides that such a court shall have the jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under the said Act and further that no other court shall have jurisdiction to entertain any such suit or proceeding or application, subject to provisions of sub-section (2)

of Section 33 of the said Rent Control Act. For the purpose of the aforesaid contention raised on behalf of the petitioners, sub-section (2) of Section 33 would not be relevant.

54] The thrust of the contentions raised on behalf of the petitioners, is that since the Small Cause Court in the present case passed the order accepting the objection of the petitioners and dismissing the execution proceedings under such objection raised as per CPC, the remedy under Section 34(4) of the said Rent Control Act to file revision before the District Court, was not available. It was submitted that since the said Rent Control Act has not laid down any rule or procedure for execution of decrees and recourse has to be had to the CPC, such orders passed in execution proceedings could not be made subject matter of challenge, as per remedy of revision under the said Rent Control Act.

55] This Court is not in agreement with the aforesaid contention, particularly, in the light of Section 33(1)(c) of the said Rent Control Act, which specifies the jurisdiction of the Small Cause Court. Merely, because procedure under the CPC is

adopted by the aforesaid court, while executing a decree passed by the said court, it cannot be said that it ceases to be a court under the said Rent Control Act. Therefore, there is no substance in the contention raised on behalf of the petitioners.

56] A feeble attempt was made on the part of the petitioners to raise a ground that since the petitioners were paying and that they were ready to continue to pay Rs.1200/- per day beyond the specified date of 30.11.2018, the decree could not be executed. But, the terms of the compromise clearly stipulate that the petitioners have to vacate the suit premises and handover possession on or before 30.11.2018 and failing to do so, leads to the said aspect of paying damages, which is supposed to be a deterrent and it cannot be said to be a situation where the respondent has agreed for continuance of the existing tenancy or creation of a fresh tenancy. Therefore, the said contention is also rejected.

57] Learned Senior Counsel appearing for the petitioners also contended that the revision application filed before the District Court was not maintainable, for the reason that while

three legal heirs of the original tenant i.e. the petitioners herein and their sister, were brought on record before the Small Causes Court in the suit and when the compromise decree was passed, in the revision application, only the petitioners were made parties and the third legal heir was not joined.

58] In this regard, the learned counsel for the respondent contended that the third legal heir was impleaded, being daughter of the original tenant, but she had participated in the suit through her power of attorney, who also represented her in the compromise. The power of attorney holder was the petitioner No.1 himself. It was brought to the notice of this Court in the reply affidavit that the said third legal heir had filed an objection in the executing court, claiming that the decree was obtained by fraud, because the petitioner No.1 had entered into a conspiracy with the respondent and signed the compromise terms as her power of attorney holder. This objection was specifically rejected by order dated 02.01.2019, passed by the executing court and a copy of the same was placed with the reply affidavit. There was no challenge raised to the said order, rejecting the objection and

hence the said order attained finality.

59] In these circumstances, it is clear that the estate of the said legal heir is represented by the petitioners herein and that there is absolutely no substance in the said contention raised on behalf of the petitioners. Reference to some judgments was made by the learned counsel for the rival parties in this context. But, this Court is of the opinion that the said contention is raised only as another desperate attempt on the part of the petitioners to somehow escape the consequence of the said compromise decree, which is found by this Court to be executable.

60] In view of the above, this Court finds that there is no substance in the contentions raised on behalf of the petitioners. The District Court was justified in allowing the revision application and restoring the execution proceedings bearing SD No.156/2018.

61] Accordingly, the writ petition is **dismissed**. Interim order stands vacated.

62] The executing court shall proceed further in accordance with law.

63] Rule is discharged. No order as to costs. Pending applications, if any, stand disposed of.

(MANISH PITALE, J.)

Vijay