

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO 483 OF 2011
IN APPEAL NO 117 OF 2007
IN
T.E. & R. SUIT NO 164/177 OF 2001

FRICK INDIA LTD

having office at Tiecicon House, 3rd Floor,
Dr. E. Moses Road, Mahalaxmi, Mumbai
400 011

... APPLICANT

~ VERSUS ~

**ION EXCHANGE ENVIRO FARMS
LTD,**

having their registered office at
"Tiecicon House", Dr. E. Moses Road,
Mahalaxmi, Mumbai 400 011.

BAKELITE HYLAN LTD

having address at Tiecicon House, 3rd
Floor, Dr. E. Moses Road, Mahalaxmi,
Mumbai 400 011

**PROCTER & GAMBLE HYGIENE
& HEALTH CARE LTD**

having address at Tiecicon House, 3rd
Floor, Dr. E. Moses Road, Mahalaxmi,
Mumbai 400 011

... RESPONDENTS

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MORMARE

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APPEARANCES

FOR THE APPLICANT	Mr Haresh Jagtiani, Senior Advocate <i>With Yashpal Jain, Rushabh Thacker, Rayden Fernandes and Sonali Mishra, i/b Haresh Jagtiani & Associates</i>
FOR RESPONDENT NO 1	Mr YS Jahagirdar, Senior Advocate <i>With SN Vaishnav and Nupur Mukherjee, i/b NN Vaishnawa & Co</i>

CORAM : G.S. PATEL, J.

JUDGMENT RESERVED ON : 16th April 2024

JUDGMENT PRONOUNCED ON : 18th April 2024

JUDGMENT:

CONTENTS

A.	OVERVIEW.....	3
B.	FACTUAL BACKGROUND.....	3
C.	THE TRIAL COURT JUDGMENT.....	6
D.	THE APPELLATE COURT JUDGMENT.....	7
E.	RELEVANT STATUTORY PROVISIONS.....	7
F.	RIVAL SUBMISSIONS & ANALYSIS.....	13
G.	CONCLUSIONS & ORDER.....	27

(These sections are bookmarked in the soft copy/PDF).

A. OVERVIEW

1. The matter raises an interesting question of law: if a tenant is excluded from the protection and application of the Maharashtra Rent Control Act, 1999 (“**the Rent Act**”), is the sub-tenant also automatically so excluded? More specifically: if a corporate tenant is excluded from the Rent Act’s application under Section 3(1)(b) because the corporate tenant has a paid up capital of more than Rs 1 crore, is a corporate sub-tenant automatically excluded from the application of the Rent Act, even if the corporate sub-tenant’s paid up capital is *less* than Rs 1 crore?

B. FACTUAL BACKGROUND

2. On Dr E Moses Road at Mahalaxmi, Mumbai stands a building called Tiecicon House. The third floor of Tiecicon House, about 15,000 sq ft, is owned by the 1st Respondent, Ion Exchange Enviro Farms Ltd (“**Ion Exchange**”). It came to acquire these premises in the circumstances set out below. The 2nd Respondent is Bakelite Hylan Ltd, formerly Bakelite (India) Pvt Ltd (“**Bakelite**”). We are not concerned in this matter with the 3rd Respondent, Procter & Gamble Hygiene & Health Care Ltd (“**P&G**”).

3. It seems the whole property had come to the hands of one SN Desai. He constructed the building. Ultimately, through a series of transactions that are immaterial for our purposes, the property (the land and building) came into the hands of the Mewar royal family through a family trust. It seems that prior to 1966, Bakelite occupied

some portion of the third floor as tenants of the original owners. The present Applicant (“**Frick**”) claims to have been in possession since 1966. On 2nd February 1966, Bakelite gave 1,750 sq ft to Frick on leave and license.¹ On 23rd May 1971, the Mewar family trust leased 9500 sq ft on the third floor of Tiecicon House to Bakelite with effect from 1st April 1971 for a 10-year term.² On 19th July 1996, Ion Exchange took from this Mewar family trust 20% of the reversionary rights of Tiecicon House, including the third floor. On 28th July 2000, Ion Exchange terminated Bakelite’s lease inter alia claiming that it had unauthorisedly — but prior to February 1973, a date of some significance — granted a sub-lease to Frick, which had, in turn, allegedly created a sub-sub-lease to one Gupta. It was alleged that Gupta had then surrendered the premises in his possession to Bakelite (not to Frick). Ion Exchange said in its termination letter that Bakelite was now only a statutory tenant. It also alleged another sub-lease by Bakelite to P&G. Ion Exchange said Bakelite was not entitled to protection under the Rent Act. Ion Exchange claimed it needed the premises for itself. Ion Exchange therefore demanded possession from Bakelite.

4. Frick’s license of 1966 was not terminated.

5. In 4th December 1984, Frick brought suit in the Small Causes Court against Bakelite for a declaration of tenancy of 1,750 sq ft and sought an injunction. The suit remained pending.

¹ The Leave & License Agreement mentions that Bakelite was the tenant.

² Ion Exchange says SN Desai was the lessor, but that appears not to be correct.

6. On 7th March 2001, Ion Exchange filed an eviction suit in the Small Causes Court under the Rent act against Bakelite, Frick and P&G. Bakelite, Frick and P&G filed their written statements. Issues were struck on 17th May 2001. An additional issue was framed later.

7. Ion Exchange and Bakelite entered into Consent Terms dated 29th June 2005. These said that Bakelite was a tenant of the entire third floor (10,000 sq ft) under the 23rd May 1971 lease from the Mewar family trust. Bakelite agreed that it had given a leave and license to Frick of 1,750 sq ft on 2nd February 1966. It said that Frick in turn had sublet 686 sq ft to one MR&DP Consultants, which had returned this area to Bakelite.³ Then Bakelite said that the leave and license to Frick had expired and had not been renewed. Bakelite also said it had sublet some portion to P&G, which had returned it, and that Bakelite was occupying some 3600 sq ft on the third floor. Bakelite submitted to a decree and surrendered this 3600 sq ft area to Ion Exchange, which allowed Bakelite to continue occupying about 840 sq ft under a separate leave and license agreement. Frick objected to the so-called return by MR&DP directly to Bakelite.

8. Ion Exchange and Frick went to trial in Ion Exchange's eviction suit. Frick showed that its paid up capital was Rs 60 lakhs. It referenced its own prior declaratory suit (against Bakelite).

9. On 3rd October 2006, the trial court decreed Ion Exchange's suit and directed Frick to deliver possession. The trial court also

³ Apparently a reference to 'Gupta', mentioned earlier.

accepted the Consent Terms between Ion Exchange and Bakelite. Frick appealed. On 22nd March 2011, the appellate bench of the Court of Small Causes dismissed Frick's appeal.

10. Copies of the judgments of the trial court and the appellate court are at Exhibits "B" and "D" to the Civil Revision Application.

C. THE TRIAL COURT JUDGMENT

11. On the first issue, whether Ion Exchange's suit was maintainable, Bakelite said its paid up capital was more than Rs 1 crore but this was 'wiped out'. No evidence was led in this regard. Frick argued that its paid up capital was Rs 60 lakhs, and the paid up capital of Bakelite was immaterial. It also said that its own tenancy had never been terminated. The court held that the suit was maintainable. On the second and third issues, regarding the termination of Bakelite's tenancy and recovery of possession from Frick and P&G, the court found that Bakelite had submitted to a decree by the Consent Terms with Ion Exchange, and, separately, so had P&G (for an area of 4436 sq ft). That left Frick as the only contesting defendant. The trial court held that Bakelite was not protected in view of Section 3(1)(b) of the Rent Act and could not continue in possession. Ion Exchange cited law that a sub-lessee need not be served a separate notice. The court held that if Bakelite went — whether on merits or in view of the Consent Terms — so did Frick.

12. But, more importantly, the trial court in paragraphs 19 and 21 invoked Section 3(1)(b) against Frick as well, on the basis that if Bakelite did not have Rent Act protection in view of that section, neither did Frick.

D. THE APPELLATE COURT JUDGMENT

13. In paragraph 15 of its order, the appellate court held that since Frick was admittedly a sub-lessee of Bakelite, which had a paid up capital of over Rs 1 crore, Frick could not be protected.

14. It also held in paragraph 17(a) that since Bakelite's leave and license to Frick had expired *before* the lease to Bakelite on 23rd May 1971, therefore Frick was in unlawful occupation.

15. Frick's case that it had become a direct tenant of Ion Exchange and was therefore protected was negated.

E. RELEVANT STATUTORY PROVISIONS

16. Section 3 of the Rent Act reads:

Exemption.

3. (1) **This Act shall not apply—**

(a) to **any premises** belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the

Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;

(b) **to any premises let or sub-let** to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, **and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.**

Explanation.—For the purpose of this clause the expression “bank” means,—

- (i) the State Bank of India constituted under the State Bank of India Act, 1955;
- (ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;
- (iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or
- (iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.

(2) **The State Government may direct that all or any of the provisions of this Act shall, subject to such conditions and terms as it may specify, not apply—**

- (i) to **premises** used for public purpose of a charitable nature or to any class of **premises** used for such purpose;
- (ii) to **premises** held by a public trust for a religious or charitable purpose and let at a nominal or concessional rent;
- (iii) to **premises** held by a public trust for a religious or charitable purpose and administered by a local authority; or
- (iv) to **premises** belonging to or vested in an university established by any law for the time being in force:

Provided that, before issuing any direction under this sub-section, the State Government shall ensure that the tenancy rights of the existing tenants are not adversely affected.

(3) The expression “**premises belonging to the Government or a local authority**” in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgement, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant, the building so erected may belong or continue to belong to the Government or the local authority, as the case may be, and such person shall be entitled to create a tenancy in respect of such building or a part thereof.

(Emphasis added)

17. Section 25 says:

Certain sub-tenants to become tenants on determination of tenancy.

25. When the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let and such sub-tenancy is subsisting on the date of commencement of this Act or where sub-tenancy is permitted by a contract between the landlord and the tenant, such sub-tenant shall, subject to the provisions of this Act, be deemed to become the tenant of his landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

(Emphasis added)

18. Though the entire case is under the Rent Act of 1999, the corresponding provisions of the 1947 Act, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 must be noted, in view of the law that has been cited before me. Section 4 of that 1947 Act, as amended reads:

4. Exemption.—

(1) This Act shall not apply to any premises belonging to the Government *or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken or lease or on licence by the Government*, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the

Government on such basis by, or in the name of, such officer.

(1A) On and from such date as the State Government may, by notification in the Official Gazette, appoint, in the areas to which provisions of Part II apply under section 6 **to premises let** or given on licence for any of the purposes referred to in that section, the provisions relating to standard rent and permitted increases shall, notwithstanding anything contained in this Act, not apply for a period of five years to any premises the construction or reconstruction of which is completed on or after such date:

Provided that, nothing in this sub-section shall apply:-

(a) to **premises** referred to in sections 17B and 17C;

(b) to **premises** which are constructed or reconstructed in any housing scheme undertaken by Government or the Maharashtra Housing and Area Development Authority or of any of its Boards established under section 18 of the Maharashtra Housing and Area Development Act, 1976 or in any housing scheme undertaken by any person in pursuance of any exemption or sanction granted by the State Government under the provisions of section 20 or 21 of the Urban Land (Ceiling and Regulation) Act, 1976, for sale thereof to persons belonging to economically weaker sections of the people and to whom such premises are sold.

Explanation.—For the purposes of this sub-section

—
(a) the period of five years shall be computed from the date on which the completion certificate in respect of such premises is issued or if the premises

are occupied without obtaining completion certificate, then the date from which such premises are assessed for the first time, whichever is earlier;

(b) the expression “person belonging to economically weaker sections of the people” means a person whose total monthly household income from all sources is less than rupees seven hundred per month.

(2) The State Government may direct that all or any of the provisions of this Act shall not be subject to such conditions and terms as it may specify, apply generally,

- (i) **to premises** used for a public purpose of a charitable nature or to any class of premises used for such purpose;
- (ii) **to premises** held by a public trust for a religious or charitable purpose and (let or given on licence, at a nominal or concessional rent or licence fee or charge; or
- (iii) **to premises** held by a public trust for a religious or charitable purpose and administered by a local authority.

(3) The State Government may also by order direct that all or any of the provisions of Part III shall not apply to such hostel or institutions or such class of hostels or institutions subject to such terms and conditions, if any, as may be specified in the order.

(4) (a) The expression “**premises belonging to the Government or a local authority**” in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgement, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the

provisions of such agreement, cause, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) notwithstanding anything contained in section 15 such person shall be entitled to create a tenancy in respect of such building or a part thereof whether before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959.

(Emphasis added)

F. RIVAL SUBMISSIONS & ANALYSIS

19. On behalf of Frick, Mr Jagtiani's submission is that the exemption in Section 3(1)(b) cannot possibly be applied to Frick — its paid up capital was admittedly and proved to be under Rs 1 crore; nobody had terminated its license; Frick was a protected licensee being in possession prior to February 1973. Correctly read, he submits, Section 3(1)(b) identifies a *class of tenants* who or which are exempted, i.e., who or which fall outside the protection of the Rent Act (of 1999). There are many classes defined. For our purpose, only one is relevant: those corporates whose paid up capital is over Rs 1 crore. These are deemed or presumed to be ones who can afford market rent and are in no need of rent protection. But if the paid up capital is less than Rs 1 crore, the full protection of the Rent Act must apply.

20. Mr Jahagirdar for Ion Exchange disagrees. The question is, he submits, whether the exclusion/exemption attaches to tenanted

premises or to the landlord-tenant relationship. If it attaches to the premises, then one inevitable consequence must follow: if the head tenant goes, then the sub-tenant goes with it.

21. This very question has been the subject of several judgments of this Court and of the Supreme Court. I will take them sequentially.

22. I begin with the earliest of these, the 1953 Supreme Court decision under the 1947 Act in *Bhatia CHSL v DC Patel*.⁴ This was precisely the question, as the Supreme Court noted:⁵

10. **The main controversy between the parties is as to whether the Act applies to the demised premises. The solution of that controversy depends upon a true construction of Section 4(1) of Bombay Act 57 of 1947, which runs as follows:**

“4. Exemptions.—(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority.”

11. It is clear that the above sub-section has three parts, namely:

(1) This Act shall not apply to premises belonging to the Government or a local authority;

⁴ (1952) 2 SCC 355 : 1953 SCR 185 : AIR 1953 SC 16.

⁵ Paragraph numbers follow the SCC report.

(2) This Act shall not apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government;

(3) This Act shall apply in respect of premises let out to the Government or a local authority.

(Emphasis added)

23. The next paragraphs are crucial.

12. The contention of the appellant Society is that the demised premises belonged to the trustees for the improvement of the city of Bombay and now belongs to the Bombay Municipality both of which bodies are local authorities and, therefore, the Act does not apply to the demised premises. The learned counsel for the respondent, however, urges that the object of the Act, as recited in the preamble, is inter alia, to control rent. It follows, therefore, that the object of the legislation was that the provisions of the Act would be applicable only as between the landlord and tenant. Section 4(1) provides for an exemption from or exception to that general object. The purpose of the first two parts of Section 4(1) is to exempt two cases of relationship of landlord and tenant from the operation of the Act, namely, (1) where the Government or a local authority lets out premises belonging to it, and (2) where the Government lets out premises taken on lease or requisitioned by it. It will be observed that the second part of Section 4(1) quite clearly exempts “any tenancy or other like relationship” created by the Government but the first part makes no reference to any tenancy or other like relationship at all but exempts the premises belonging to the Government or a local authority. If the intention of the first part were as formulated in Item (1),

then the first part of Section 4(1), like the second part, would have run thus:

This Act shall not apply to any tenancy or other like relationship created by the Government or local authority in respect of premises belonging to it.

13. The legislature was familiar with this form of expression, for it adopted it in the second part and yet it did not use that form in the first. The conclusion is, therefore, irresistible that the legislature did not by the first part intend to exempt the relationship of landlord and tenant but intended to confer on the premises belonging to the Government an immunity from the operation of the Act.

14. The learned counsel for the respondent next contends that the immunity given by the first part should be held to be available only to the Government or a local authority to which the premises belong. If that were the intention then the legislature would have used a phraseology similar to what it did in the second part, namely, it would have expressly made the Act inapplicable “as against the Government or a local authority”. This it did not do and the only inference that can be drawn from this circumstance is that this departure was made deliberately with a view to exempt the premises itself.

15. It is said that if the first part of the section is so construed as to exempt the premises from the operation of the Act, not only as between the Government or a local authority on the one hand and its lessee on the other, but also as between that lessee and his sub-tenant, then the whole purpose of the Act will be frustrated, for it is well known that most of the lands in Greater Bombay belong to the Government or one or the other local authority e.g. Bombay Port Trust and Bombay Municipality

and the greater number of tenants will not be able to avail themselves of the benefit and protection of the Act. In the first place, the preamble to the Act clearly shows that the object of the Act was to consolidate the law relating to the control of rents and repairs of certain premises and not of all premises. The legislature may well have thought that an immunity given to premises belonging to the Government or a local authority will facilitate the speedy development of its lands by inducing lessees to take up building leases on terms advantageous to the Government or a local authority. Further, as pointed out by Romer, L.J. in *Clark v. Downes* [(1931) 145 LT 20 (DC)], which case was approved by Lord Goddard, C.J. in *Rudler v. Franks* [1947 KB 530 (DC)] such immunity will increase the value of the right of reversion belonging to the Government or a local authority. The fact that the Government or a local authority may be trusted to act fairly and reasonably may have induced the legislature all the more readily to give such immunity to premises belonging to the Government or a local authority but it cannot be overlooked that the primary object of giving this immunity was to protect the interests of the Government or a local authority. **This protection requires that the immunity should be held to attach to the premises itself and the benefit of it should be available not only to the Government or a local authority but also to the lessee deriving title from it.** If the benefit of the immunity was given only to the Government or a local authority and not to its lessee as suggested by the learned counsel for the respondent and the Act applied to the premises as against the lessee, then it must follow that under Section 15 of the Act it will not be lawful for the lessee to sub-let the premises or any part of it. If such were the consequences, nobody will take a building lease from the Government or a local authority and the immunity given to the Government or a local authority will, for all practical purposes and

insofar at any rate as the building leases are concerned, be wholly illusory and worthless and the underlying purpose for bestowing such immunity will be rendered wholly ineffective. In our opinion, therefore, the consideration of the protection of the interests of the sub-tenants in premises belonging to the Government or a local authority cannot override the plain meaning of the preamble or the first part of Section 4(1) and frustrate the real purpose of protecting and furthering the interests of the Government or a local authority by conferring on its property an immunity from the operation of the Act.

(Emphasis added)

24. Logically, there is no reason why this finding should not be applied to the class introduced now, of corporates with a paid up capital in excess of Rs 1 crore. The motivation may be different; the result is the same.

25. In *Nagji Vallabhji and Co v Meghji Vijpar and Co*,⁶ the Supreme Court had before it a dispute relating to premises owned by the Bombay Port Trust (now the Mumbai Port Trust). The same question — premises versus relationship — was addressed by the Supreme Court but in relation to a sub-lessee of a building put up by a lessee on land leased from a government or local authority. The question presented was whether the sub-lessee would be entitled to Rent Act protection (under the 1947 Act). The Supreme Court said that on a plain reading of Section 4(1), the provisions of the Bombay Rent Act were not applicable to *premises* belonging to the government or a local authority. The exemption granted in the first

⁶ (1988) 3 SCC 68.

part of Section 4(1) attached to the premises and not to the relationship. To hold otherwise, the Supreme Court said, would involve a rewriting of Section 4.

26. Then came the Rent Act (of 1999). Inevitably, a challenge was mounted to Section 3(1)(b). In *Saraswat Cooperative Bank Ltd & Anr v State of Maharashtra & Ors*,⁷ the Supreme Court upheld the constitutional validity of Section 3(1)(b) of the 1999 Rent Act.

27. The next important decision from our perspective is of the Supreme Court in *Leelabai Gajanan Pansare & Ors v Oriental Insurance Co Ltd & Ors*.⁸ The Supreme Court considered the statutory purpose and intent of Section 3(1)(b). It held that this was to exclude cash-rich entities from the protection of the Rent Act.⁹

28. This was the background to the Civil Revision Application from a Small Causes Court appellate order that came before a learned single Judge of this Court in *Da'Cunha Associates Pvt Ltd v Dilip Jhangiani & Ors*.¹⁰ Now this was under the 1999 Rent Act, which had by then come into force, and was directly concerned with Section 3(1)(b). The Court contrasted the earlier Section 4 with the current Section 3. The plaintiffs before the Small Causes Court (respondents nos 1 to 4 to the CRA) were the owners of a property at Colaba. An office on the fourth floor was let out to Sterling

⁷ (2006) 8 SCC 520.

⁸ (2008) 9 SCC 720.

⁹ Paragraphs 9, 61, 70 and 74.

¹⁰ 2010 SCC OnLine Bom 1323 : (2011) 2 Bom CR 157 : (2010) 6 Mah LJ 132.

General Insurance Co Ltd. In turn, Sterling General gave the premises on leave and license to Da'Cunha Associates, the applicant; which also said that it had separately acquired additional and adjacent premises as well from another sub-tenant of Sterling General, Indian Cotton Mills Federation (meaning that Da'Cunha Associates got part of its premises from Sterling General and another portion from Indian Cotton Mills Federation, both tenants of the original plaintiffs, Jhangiani *et al*). The Oriental Insurance Co Ltd was the successor of Sterling General Insurance. Oriental Insurance was a public sector corporation. Its paid up capital was over Rs 1 crore. It therefore did not have Rent Act protection. The plaintiffs in the Small Causes Court sought the ejectment of both Oriental Insurance and Da'Cunha Associates. Holding that Da'Cunha Associates could not be excluded from the Rent Act (because its paid up capital was under Rs 1 crore), dismissed the eviction suit. The appellate bench reversed, and ordered ejectment. Da'Cunha Associates came up to the High Court in the CRA.

29. Evidently, *Da'Cunha Associates* is a case virtually in pari materia with the present one. The very question presented to me was before the learned single Judge then in *Da'Cunha Associates*:¹¹

17. This takes me to the question of availability of protection of the Rent Act to the applicant. **It may be recalled that the argument on behalf of the applicant is that protection of Rent Act is available to the applicant as lawful subtenant and that he does not have to go with the tenant as the protection is withdrawn, not for the premises but to a class of entities occupying the premises.** On the other hand, the **learned Senior Counsel**

¹¹ Paragraph numbers follow the SCC OnLine Report.

for the landlord submitted that the exemption from operation of Rent Act applies to premises tenanted by entities specified in section 3(1)(b) of the Maharashtra Rent Act and not to entities alone and in any case, the applicant cannot have any protection, if the tenant is liable to be evicted.

(Emphasis added)

30. The learned single Judge noted Section 4 of the 1947 Act. I will immediately reject Mr Jagtiani's submission that I should hold *Da'Cunha Associates* to be a judgment render per incuriam because Section 4(4)(a) was not noticed.¹² That will make no difference, for obvious reasons. Section 4(4)(a) of the 1947 Act has no bearing at all on the present case, and it was never argued in either the trial court or the appellate court. Then, having noted this jurisprudential background, the learned single Judge noted that the question that fell for determination was whether Section 3(1)(b) applies to *premises* or *a class of tenants*. Following the decisions in *Bhatia*, *Leelabai* and other cases, the learned single Judge noted that *Leelabai* did not say that Section 3(1)(b) only applied to a landlord-tenant relationship and *not* to premises. The learned single Judge held:

33. As rightly pointed out by the learned Senior Counsel for Respondent No. 1, the landlord, if the line of reasoning proposed by learned Counsel for applicant were to be accepted, cash rich corporations would be able to defeat the exclusion from protection by simply inducting as sub-tenants its employees or even entities created by itself having a paid up capital of less than Rs.

¹² The reliance on *Sundeep Kumar Bafna vs State of Maharashtra & Anr*, (2014) 16 SCC 623 is inapposite.

1 crore. It cannot be the business of a Corporation covered by section 3(1)(b) of the Rent Act to sublet premises taken on rent, when it does not need them.

34. Secondly, need of going to object of legislation for the purpose of interpretation of a clause would arise only if there is any ambiguity. In *Bhatia Co-Operative Housing Society Ltd.*, the Supreme Court has clearly demonstrated that had the legislature so desired, it could have phrased the clause differently. While enacting section 3(1)(b) of the Maharashtra Rent Control Act, 1999, the law makers had the benefit of Judgment in *Bhatia Co-Operative Housing Society Ltd.* rendered years ago. It will have to be presumed that the legislature still chose the same expression for carving out an exclusion because it intended to exclude 'premises' and not relationship-or an entity. It is settled canon of interpretation that same expression used at different places in the same piece of legislation must be given the same meaning wherever it is used. Accepting the argument of the learned Senior Counsel for the Applicant would lead to an anomalous situation of the same expression being interpreted differently in two clause of one subsection. Therefore, howsoever inconvenient the interpretation might be for the applicant, it has to be held that the exclusion from protection applies to the premises tenanted by Respondent No. 5 and not just to the relationship of Respondent No. 1 with respondent No. 5.

(Emphasis added)

31. Then, before the learned single Judge in *Da'Cunha Associates*, it was argued that the *sub*-tenancy was protected even if the head tenancy was not. On this, the learned single Judge held:

35. As a corollary if Respondent No. 5 has to be evicted, claim of applicant for protection would be questionable. **The learned Senior Counsel for applicant however submitted that it is not always necessary that a sub-tenant too would be liable to be evicted if a decree of ejectment of tenant is passed and in such a case, sub-tenant may become direct tenant of the landlord. He relied on a number of Judgments in support of his contention.**

...

42. **There can be no doubt that in view of provision of section 14 of the Bombay Rent Act, (corresponding to section 25 of the Maharashtra Rent Control Act, 1999) upon determination of interest of a tenant in the premises, a subtenant would become direct tenant of the landlord *but only in certain circumstances and not always*. As held in *Anandram's case (supra)* by the Supreme Court, (approving a paragraph from Judgment of this Court), if ejectment is sought on grounds which are not personal to the tenant, but which concern the premises themselves, a landlord can sue for ejectment of tenant and sub-tenant together, as the landlord has done in the present case. Since *protection of Rent Act does not apply to the premises*, the relationship will be governed by provisions of Transfer of Property Act and under section 111(c), termination of tenancy brings about termination of sub-tenancy as well and therefore the decree for applicant's ejectment cannot be faulted.**

(Emphasis added)

32. Finally, there is the decision of the Supreme Court in *Kersi Commissariat & Ors v Ministry of Food and & Civil Supplies*,

*Government of Maharashtra, Mumbai & Anr.*¹³ This considered *Bhatia CHSL, Leelabai, Nagji Vallabhji* and other decisions. The Bombay High Court had reversed the appellate court of the Small Causes Court. The appellant before the Supreme Court, Commissariat, and others sued two defendants for recovery of possession of a property at New Marine Lines. The plaintiffs said they were trustees of a public trust. The 1st defendant was the New India Assurance Co Ltd. It occupied the 4th and 5th floors of the building. In 1959, without the landlords' consent, New India Assurance inducted the Ministry of Food and Civil Supplies, Government of Maharashtra as a sub-tenant. The Ministry was the 2nd defendant in the suit. Apart from the question of bona fide requirement, the plaintiffs' case was that *neither* of the defendants were protected in view of Section 3(1)(b).

33. The trial court decreed the suit in part against New India Assurance and dismissed it against the Ministry. The trial court held that the Ministry was a 'deemed tenant' directly of the landlords (having been in possession since 1959), and was therefore entitled to continued protection of the Rent Act. The appellate bench held that Section 3(1)(b) applied to both defendants, not just the 1st defendant. The Ministry filed a writ petition before this Court, which concluded that the trial court was correct and that the Ministry had indeed become a tenant entitled to protection, though New India Assurance was not.

34. The relevant paragraphs of *Kersi Commissariat* are:

¹³ (2012) 5 SCC 187.

15. The singular seminal issue that has emanated for consideration is whether Defendant 2, which is Respondent 2 herein, would be a protected tenant under the provisions of the 1999 Act. The learned Single Judge has treated Defendant 2 as a deemed tenant and thereby opined that he is entitled to protection under the 1999 Act. He has placed reliance on the amended definition of “tenant” and the language employed in Section 15 of the 1947 Act to come to the conclusion that Defendant 2 is a protected tenant under the 1999 Act.

17. At this juncture, it is apt to state that Section 4(1) of the 1947 Act in its original frame had come up for consideration before this Court in *Bhatia Coop. Housing Society Ltd. v. D.C. Patel* [AIR 1953 SC 16 : 1953 SCR 185]. This Court was considering the applicability of the 1947 Act to a local authority, regard being had to the provisions contained in Section 4 of the Act. The crucial point that arose before the Court was to determine the question of jurisdiction of the City Civil Court to entertain the suit keeping in view the language in which Section 4 of the 1947 Act was couched. The applicability of the provision was the core issue. It was observed, if it applied, the City Civil Court had no jurisdiction but if it did not, then it had such jurisdiction.

18. After so observing, the four-Judge Bench in *Bhatia Coop. Housing Society Ltd. case* proceeded to deal with the fact whether the Act applied to the demised premises and, accordingly, proceeded as to what would be the true construction of Section 4(1) of the 1947 Act. This Court scanned the anatomy of the provisions of Section 4(1) into three parts, namely,

(i) the Act shall not apply to premises belonging to the Government or a local authority,

(ii) the Act shall not apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government, and

(iii) the Act shall apply in respect of premises let out to the Government or a local authority.

...

22. We have referred to the aforesaid dictum in extenso to highlight that the provision exempted the premises let out and a sub-tenant cannot claim protection in the premises belonging to the Government or a local authority as that would frustrate the real purpose of affording an immunity from the operation of the Act.

...

28. From the aforesaid pronouncements,¹⁴ **it is luminescent that the provision applies to premises and not to parties or persons.** The learned Single Judge has referred to the definition of “tenant” which means “any person or by whom or in whose account rent is payable and includes a tenant or sub-tenant as derived under a tenant before the first day of February, 1973” and has held that the Government becomes a protected tenant.

34. From the aforesaid¹⁵ it is graphically clear that an insurance company is not protected under the 1999 Act. **Once it is held that Defendant 1 New India Assurance Co., the original tenant, is not protected, the question would be whether a sub-tenant can be protected under the Act.** In *Bhatia Coop. Housing Society Ltd.*, it has been clearly laid down that Section 4(1) of the 1947 Act applies to

¹⁴ The Court referred to *Nagji Vallabhji* and *Parwati Bai v Radhika*, (2003) 12 SCC 51, from Madhya Pradesh, also considered in *Da’Cunha Associates*.

¹⁵ The Court referred to *Leelabai Pansare*, *supra*.

premises and not to parties or their relationship. Section 3 uses the term “premises”. The provision commences with the non obstante clause that the Act does not apply to any premises belonging to the Government or a local authority. Section 3(1)(b) makes it clear that the Act does not apply (sic to any premises let or sub-let) to any bank, public sector undertaking or certain other categories of tenants. **The insurance company is covered under Section 3(1)(b). Thus, as a logical corollary, the Act does not apply to the premises held by the insurance company who is a tenant.**

35. The learned Single Judge has allowed protection to the government department on the foundation that it has become a tenant. We are disposed to think that the analysis is fundamentally erroneous. When the Act does not cover the tenant, namely, the Insurance Company as basically the exemption applies only to premises and not to any relationship, the sub-tenant who becomes a deemed tenant cannot enjoy a better protection or privilege by ostracising the concept of premises which is the spine of the provision.

(Emphasis added)

35. There is no question of ‘preferring’ the dictum in *Nagji Vallabhji* to that in *Kersi Commissariat*. The latter considers the former and does not hold it not to be good law.

G. CONCLUSIONS & ORDER

36. In my view, there is simply no other way of looking at it. Once Bakelite — Consent Terms apart — was found on facts to be excluded from the protection of the Rent Act, its sub-tenant Frick

had to go with it. There is simply no other way of viewing it; and the judgments in *Kersi Commissariat* and *Da'Cunha Associates* are exactly on point. I am bound by both.

37. I must take it that the question of Section 3(1)(b) applying or not applying to premises and not to a landlord-tenant relationship is no longer *res integra*. It does apply to premises and not to the relationship; Mr Jahagirdar is right and Mr Jagtiani is not. But let me consider this from another perspective with a perhaps more graphic illustration. There is landlord, *L*. There is a head tenant, *T*; and there is a sub-tenant *S*. Now let us frame the possibilities:

- (a) T has a paid up capital of less than Rs 1 crore and S also has a paid up capital of less than Rs 1 crore — the exemption in Section 3(1)(b) does not apply; the Rent Act will apply to both.
- (b) T has a paid up capital of more than Rs 1 crore and S also has a paid up capital of more than Rs 1 crore — the exemption operates, and the Rent Act is inapplicable to both.
- (c) T has a paid up capital of less than Rs 1 crore but S has a paid up capital of more than Rs 1 crore — T is entitled to Rent Act protection, but S is not.
- (d) T has a paid up capital of more than Rs 1 crore, but S has a paid up capital of less than Rs 1 crore (which is the present case) — neither is entitled to protection, for if T goes, then S must go following the decisions I have noted.

38. If Section 3(1)(b) attaches to premises, then these results must necessarily follow, irrespective of the landlord-tenant relationship. If the protective blanket of the Rent Act is taken away *from the premises*, it cannot be pulled back up by a sub-tenant of *those very premises*, or a part of those very premises.

39. There is one final factor. The argument before me that Frick had become a 'direct tenant' of Ion Exchange was not a plea it ever took in its declaratory suit. Ion Exchange was not even a defendant to that suit. In contrast, in its eviction action, Ion Exchange sought eviction and possession from both Bakelite *and* Frick (specifically as Bakelite's sub-tenant). The initial induction of Frick was never in issue. The only issue was its right to continue in view of Section 3(1)(b) and whether, despite that Section, it could continue to enjoy Rent Act protection. That is a question of law that seems to me to have been firmly decided against Frick. Consequently, the various judgments referred to by Mr Jagtiani are inconsequential.¹⁶ None of them say that *despite* the clear enunciation and explanation of the statutory purpose of Section 3(1)(b), a sub-tenant can nonetheless be protected if the head tenant is not under that Section.

40. The CRA is dismissed. There will be no order as to costs.

41. Mr Jagtiani applies for a certificate of leave to appeal. In the view that I have taken, I do not believe this request is justified.

¹⁶ *Anandram Chandanmal Munot & Anr vs Bansilal Chunilal Kabra & Ors*, (2000) 1 SCC 10; *Tirath Ram Gupta vs Gurubachan Singh & Anr*, (1987) 1 SCC 712; *Suleman Haji Ahmed Oomer vs Darabshaw Pirojshaw Dubash*, 1938 SCC OnLine Bom 44 : AIR 1939 Bom 98, (1939) 41 Bom LR 25.

However, the operation of this order is stayed, that is to say the eviction decree against Frick is stayed for eight weeks from today.

(G.S. PATEL, J.)