

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 126 OF 2023
WITH
INTERIM APPLICATION NO. 1420 OF 2023

Shetkari Sahakari Sangh Ltd. Kolhapur,
through Executive Director, Juna
Rajwada, Bhawani Mandap, Dist.-
Kolhapur.

..Appellant
(Orig. Defendant)

: Versus :

Shri. Dilip Shankarrao Patil, age: yers.
Occ. Business/o. 3056 A-Ward, Tarabai
Park, District-Kolhapur.

..Respondent
(Orig.Plaintiff)

Ms. Pooja Khandeparkar with Mr. Ruturaj Pawar, for the Appellant.

Mr. Yuvraj Narvankar for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Resd. On : 19 April 2024.

Pron. On : 25 April 2024.

JUDGMENT :-

THE CHALLENGE

1) Appellant has filed this Appeal challenging the Judgment and Decree dated 29 June 2022 passed by the District Court, Kolhapur

dismissing Regular Civil Appeal No. 313 of 2019 and confirming the Judgment and Decree dated 9 October 2019 passed by the Civil Judge Senior Division, Kolhapur in Regular Civil Suit No. 448/2005. The Trial Court has decreed the suit and has directed the Appellant-Defendant to handover possession of the suit property to Plaintiff/Respondent in addition to conduct of enquiry in respect of mesne profits under Order 20 Rule 12 Code of Civil Procedure, 1908 w.e.f. 31 May 2005 till delivery of possession.

FACTS

2) First floor alongwith its attic located in the three storied building at C.T.S. No. 3056, Tarabai Road, Kolhapur is the suit property. The suit property was owned by Ramrao Mahadev Misal, which was leased to the Defendants, which is Shetakari Sahakari Sangh Ltd., a Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). It is contended that the period of lease expired on 31 October 2002. Original Plaintiff-Ramrao Mahadev Misal filed Regular Civil Suit No. 448/2005 in the Court of Civil Judge Senior Division seeking ejectment of Defendant-Society after terminating the lease and claimed possession, *inter-alia* on the ground of *bonafide* requirement. It was claimed in the Plaint that since Defendant had paid up capital of more than Rs.1 crore, it is not entitled to protection under the Maharashtra Rent Control Act, 1999 (**the Rent Act**). The suit was resisted by Defendant-Society by filing Written Statement *inter-alia* contending that its share capital is less than Rs.1 crore and that Civil Court did not have jurisdiction to entertain the suit involving tenancy disputes. The Trial Court decreed the Suit on 26 March 2010 directing the Defendant to handover possession of the suit

property within six months in addition to conduct of enquiry into *mesne* profits. The Trial Court's Decree was challenged by the Defendant before the District Court, Kolhapur by filing Regular Civil Appeal No.135/2010. During pendency of the Appeal, the suit property was purchased by Dilip Shankar Patil and he thus became owner of thereof. He was arrayed as Respondent No.6 in Regular Civil Appeal No.135/2010. The District Court allowed the Appeal and set aside the decree passed by the Trial Court on 13 June 2018.

3) The purchaser, Dilip Shankar Patil filed Second Appeal No. 710/2018 before this Court challenging the Decree of the first Appellate Court. This Court framed substantial question of law as to whether Defendant is a 'Corporation' within the meaning of Rent Act so as to exclude its applicability. This Court passed Order dated 21 June 2019 remanding the suit before the Trial Court after observing that the issue of Defendant being Corporation was never raised or decided in the first round of litigation. The suit was therefore remanded to the Trial Court to enable Plaintiff to raise a plea that Defendant is a Corporation within the meaning of Section 3(1)(b) of the Rent Act. Liberty was granted for amending the plaint. Accordingly, the plaint was amended raising a plea that Defendant is a Corporation within the meaning of Section 3(1)(b) of the Rent Act. The Trial Court decreed the suit on 9 October 2019 holding that Defendant is a Corporation within the meaning of Rent Act. It also held that Defendant has a share capital of more than Rs.1 crore. It was further held that the provisions of Rent Act are not applicable to the suit. It was further held that the *bonafide* requirement was proved by the Plaintiff and that no hardship would be caused to the Defendant if decree of eviction is passed.

4) The Trial Court's decree was assailed by the Defendant before the District Court, Kolhapur by filing Regular Civil Appeal No. 313 of 2019. The first Appellate Court has however proceeded to dismiss the Appeal and has confirmed the Decree passed by the Trial Court. The first Appellate Court has upheld the finding that Defendant is a Corporation within the meaning of the Rent Act, provisions of which are not applicable to the suit in favour of the Defendant. The first Appellate Court has also held that the share capital of the Defendant is above Rs.1 crore. Aggrieved by the Decree passed by the Trial Court as confirmed by the first Appellate Court, Appellant-Society has filed the present Second Appeal.

5) This Court has admitted the Second Appeal by formulating following substantial questions of law:

i) Whether Defendant fits into the definition of the term 'any corporation established by or under any Central or State Act' used under section 3(1)(b) of the Maharashtra Rent Control Act, 1999 ?

ii) Even if the Defendant does not strictly fit into the words 'any corporation established by or under any Central or State Act' whether the Defendant would be covered by the entities who are exempted from application of provisions of Maharashtra Rent Control Act, 1999 on the principle of 'affordability to pay rent' by applying judgment of Apex Court in **Leelabai Gajanan Pansare and others vs. Oriental Insurance Company and others**, (2008) 9 SCC 720 ?

SUBMISSIONS

6) Ms. Pooja Khandeparkar, the learned counsel appearing for the Appellant would submit that the Trial and the first Appellate Court have erred in holding that Defendant is a Corporation without considering the position that mere status as a 'Corporation' is not sufficient under the provisions of Section 3(1)(b) of the Rent Act and that it must be proved that Corporation is established by or under the Central or State Act. She would submit that perusal of the judgments cited by the Trial and the first Appellate Court would indicate that no enquiry is made by both the Courts as to whether Defendant is established by or under any Central or State Act. That therefore mere generic status of Defendant as 'Corporation' is not sufficient for application of provisions of Section 3(1)(b) of the Rent Act. Ms. Khandeparkar would submit that the Trial and the first Appellate Court have erroneously relied upon the judgment of the Apex Court in ***Daman Singh*** as it does not deal with interpretation of the term 'Corporation established by or under the Central or State Act' and that therefore ***Daman Singh*** cannot be a precedent, which can be relied upon for the purpose of interpretation of the term '*Corporation established by or under a Central or State Act*' as defined under Section 3(1)(b) of the Rent Act. Relying on the judgments of the Apex Court in **Union of India V/s. Dhanwanti Devi¹**, **State of Haryana V/s. Ranbir²** and **Secretary to Government of Kerala V/s. James Vargese³**, Ms. Khandeparkar would contend that a judgment is an authority for what it decides and that therefore ***Daman Singh*** cannot be cited as an authority when it does not

¹ (1996) 6 SCC 44

² 2006(5) SCC 167

³ 2022(9) SCC 593

deal with interpretation of the term 'Corporation' which is 'established by or under a Central or State Act'.

7) Ms. Khandeparkar would submit that interpretation by the Trial and the first Appellate Court of the term '*Corporation established by or under a Central or State Act*' is contrary to the plain reading of the statute as well as other provisions of the Rent Act. That no part of a statute and nor any word therein can be construed in isolation and that a statute will have to be construed so that every word has a place and everything is in its place. She would submit that the term '*Corporation*' and '*Co-operative Society*' have been used in different context in various provisions of the Rent Act. That Section 7(2)(a) makes a reference to the above two terms as being separate and distinct from each other. That therefore a '*Co-operative Society*' cannot be automatically fit in the term '*Corporation*'.

8) Ms. Khandeparkar would further submit that interpretation of Section 3(1)(b) made by the Trial and the first Appellate Court would tantamount to inclusion of '*Co-operative Society*' into Section 3(1)(b) which is impermissible. Application of Section 3(1)(b) cannot be expanded by judicial interpretation. That practice of Courts to legislate upon provisions have been frowned upon by the Apex Court in **Saregama India Limited V/s. Next Radio Limited⁴** and **Union of India V/s. Deoki Nandan Aggarwal⁵** and of this Court in **Pune Zilla Madhyawarti Sahakari Bank V/s. Smt. Urmila Chandrakant Patil⁶**. Ms. Khandeparkar would further submit that a Corporation created by a statute is entirely different than the body or society brought in

⁴ (2022) 1 SCC 901

⁵ (1992) Supp 1 SCC 323

⁶ 2006(3) Mh.L.J. 53

existence by an act of group of individuals, which may in turn be governed by Statute. In support of her contention, Ms. Khandeparkar would rely upon judgment of the Apex Court in **S.S. Dhanoa V/s. Municipal Corporation, Delhi and Ors.⁷**, **Dalco Engineering Private Limited V/s. Satish Prabhakar Padhye and Ors.⁸**, **Commissioner of Income Tax (TDS), Kanpur and Anr. V/s. Canara Bank⁹**, **New Okhla Industrial Development Authority V/s. Commissioner of Income Tax, Appeal and Others¹⁰**.

8) Ms. Khandeparkar would further submit that the Rent Act is a welfare legislation and by virtue of Section 3, the benefits and protection which are otherwise available to tenants is taken away for entities specified therein. That such exemption clause requires strict construction and any attempt made to improve any clause by including an entity to that clause, not specifically mentioned in Section 3, would take away benefit of welfare legislation granted by the legislature. That a Co-operative Society registered under the MCS Act is not intended to be exempted from applicability of provisions of the Rent Act. Ms. Khandeparkar would further submit that MCS Act does not create and/or establish a Co-operative Society and Section 2(27) which defines the term '*Society*' merely accords registration to the proposed society. That registration granted to the Society merely makes it a body corporate under Section 36 and it cannot be stated that a Co-operative Society is created or established by MCS Act. Ms. Khandeparkar would submit that even if Co-operative Society society is considered as '*Corporation*' in the widest sense, the term '*Corporation*' would include both

⁷ (1981) 3 SCC 431

⁸ (2010) 4 SCC 378

⁹ (2018) 9 SCC 322

¹⁰ 2018(9) SCC 342

'statutory' as well as 'non-statutory corporations'. That therefore Corporations would not *ipso facto* be included under Section 3(1)(b) of the Rent Act and only Statutory Corporations established by or under a Central or State Act are exempted from the provisions of the Rent Act. That treating a Co-operative Society as a Corporation for the purpose of applicability of Section 3(1)(b) of the Rent Act would have far reaching consequences where such interpretation would result in non-statutory societies being treated as a 'State' within the meaning of Article 12 of the Constitution of India. Ms. Khandeparkar would submit that since Appellant-Society is not a 'Corporation established by or under Central or State Act', and that therefore, it would be exempted from application of Rent Act.

10) Mr. Narvankar, the learned counsel appearing for Respondent would oppose the Appeal and support the judgments of the Trial and the first Appellate Court. According to Mr. Narvankar, the present case arises out of Rent Act and Section 3(1)(b) is wide in its exclusions. It not just excludes government entities but also does not shy away from excluding private limited companies, multi-national companies, international agencies from the purview of the Act. If the intention of the legislation was to exclude only government or statutory corporations, then the exclusion under Section 3(1)(b) ought to have been only for smaller or analogous entities, as is the case under Section 3(1)(a) in which exemption applies only to premises belonging to government or local authorities. Section 3(1)(b) on the other hand contains varied and disjoint entities. That the range of exclusions is indeed wide ranging from public sector banks to private multi-national companies.

11) According to Mr. Narvankar, the golden thread which runs through the entities specified in Section 3(1)(b) of the Rent Act is the 'financial criteria'. He would rely upon judgment of the Apex Court in **Leelabai Gajanan Pansare and Ors. V/s. Oriental Insurance Company Ltd. and Ors.**¹¹, which according to him, clearly underlines the legislative intent behind exclusion under Section 3(1)(b) of the Rent Act. He would submit that before the Apex Court, the issue revolved around Government Company, which did not find its mention under Section 3(1)(b). That the Apex Court held that the intent of exclusion was a part of comprehensive package and that it was not a standalone provision. That the idea was to exclude '*cash rich entities*' from the provisions of the Rent Act. That employment of the word 'entities' by the Apex Court shows considerable expansion on scope of exclusions by applying the test of '*financial criteria*'. That the Apex Court has given purposive interpretation to Section 3(1)(b). That the Apex Court has invoked the doctrine of '*Noscitur a sociis*' for holding that exclusions under Section 3(1)(b) applies to different categories as enumerated by the Section. Mr. Narvankar would further submit that none of the judgments relied upon by the Appellant applies in the context of the provisions of the Rent Act whereas the judgment in **Leelabai Pansare** is in the analogous facts and the one delivered by interpreting the provisions of Section 3(1)(b) of the Rent Act.

12) Mr. Narvankar would further submit that attempt on the part of the Appellant to seek holistic exclusion of category of 'Co-operative Society' from Section 3(1)(b) would constitute a complete anathema as to the legislation and would infact render the Section vulnerable to constitutional challenge of discrimination under Article

¹¹ (2008) 9 SCC 720

14 when there is no intelligible differentia or reasonable nexus for exclusion of the Co-operative Society reserving other entities specified in Section 3(1)(b). That the only way to save the provision from the vice of arbitrariness would be to read Co-operative Society as the one established by or under the Act being MCS Act.

13) Mr. Narvankar would further submit that applying the test of '*financial creteria*' the Appellant in the present case clearly gets excluded under Section 3(1)(b) as its paid up share capital is above Rs.1 crore as is currently held by both the Courts below. That the figure of Rs.1 crore, though in strict sense applies to a private or public limited company, the same is of great importance in the present case as high capital value would indicate '*cash richness*' or '*financial viability*' of the Appellant-Society, which is the sole determining factor to apply exclusion under Section 3(1)(b). That the figure of Rs.1 crore cannot be read in limited context of a company, but must be given a wider amplitude to derive the exact legislative intention and the golden thread. Mr. Narvankar would further submit that consideration of *bonafide* requirement by both the Courts below is only an added factor and is not the only basis for ordering eviction of Defendant. That the lease is validly terminated by resorting to provisions of Section 106 read with Section 14 of the Transfer of Property Act, 1882, which termination has never been seriously disputed by the Appellant. Mr. Narvankar would pray for dismissal of the Appeal.

REASONS AND ANALYSIS

14) The pivotal issue that arises for consideration is whether the Appellant-Defendant is a '*corporation established by or under any*

Central or State Act for the purpose of application of exemption under Section 3(1)(b) of the Rent Act. Rent Act applies to all premises let for the purpose of residence, education, business, trade or storage in the areas specified under Schedule-I and II of the Rent Act. Section 3 provides for exemption from application of provisions of Rent Act in certain cases and provides thus:

3. Exemption.

(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 Undertaking) 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 purposes of a charitable nature or to any class of premises used for such purposes;

(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 subsection (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, 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.

15) Thus, under Section 3(1)(a), provisions of Rent Act do not apply to any premises belonging to any Government or local authority nor it applies against government to any tenancy, license or other like relationship. It applies to premises let or given on licence to the Government or local authority or taken on behalf of the Government on

such basis by/or in the name of its officer. Clause-(b) of subsection (1) of Section 3 seeks to exempt certain entities from application of the Act. Essentially four categories of entities are excluded from application of provisions of the Rent Act under Section 3(1)(b) viz;

- (i) Banks,
- (ii) Any Public Sector Undertakings or any Corporation established by or under any Central or State Act,
- (iii) Foreign missions, international agencies, multinational companies and private limited companies and public limited companies having paid up share capital of Rs.1 crore or more.

If any premises are let or sublet to the entities specified under Clause-(b) of Section 3(1), the rights between the landlord and tenant or lessor and lessee or licensor and licensee shall not be governed by the provisions of the Rent Act. They would however be governed by the provisions of Transfer of Property Act.

16) In the present case, the landlord has filed a suit seeking decree of eviction against the Defendant-Society before the Civil Court under the provisions of Transfer of Property Act. Defendant-Society took a defence that the provisions of Rent Act are applicable to the parties and that therefore Civil Judge Senior Division did not have jurisdiction to decide the suit, which was required to be transferred to the Rent Court being Civil Judge Junior Division. It is in this context that the issue has arisen as to whether the Defendant is exempted from application of provisions of the Rent Act under Section 3(1)(b). If he is held to be so exempted, it would not only be not entitled to any protection under the Rent Act, but the suit filed for eviction in the Court of Civil Judge Senior Division would be within jurisdiction. On the contrary, if the Defendant is held to be not exempted from application of provisions of Rent Act, in addition to seeking protection against

eviction under the Rent Act, the Court of Civil Judge Senior Division would lose its jurisdiction and the Suit will have to be transferred to Civil Judge Junior Division. After the suit was decreed in the first round and the decree of eviction was reversed by the first Appellate Court, this Court had made an order of remand on 21 June 2019 after formulating the following substantial questions of law:

“Whether the respondent is a Corporation within the meaning of the Maharashtra Rent Control Act so as to exclude the applicability of the said Act as a result of which the City Civil Court would get jurisdiction to hear and decide the Suit?”

17) Thus, after remand of the suit to the Trial Court, the issue that was required to be considered was whether the Respondent is a Corporation within the meaning of Section 3(1)(b) of the Rent Act. It appears that, in the previous round of litigation, the Plaintiff had raised a plea that Defendant is a Company having paid up share capital of Rs.1 crore or more for the purpose of exemption under Section 3(1)(b) of the Rent Act. Plaintiffs’ attempt failed before the first Appellate Court in the previous round of litigation and in Second Appeal, Plaintiff gave up the said plea, changed its stance and sought to contend that Defendant is a ‘Corporation’ within the meaning of Section 3(1)(b) of the Rent Act. Plaintiff had never contended in the pleadings nor it led evidence to prove that Defendant is a Corporation but sought to contend before this Court that it being a pure question of law, the same can be raised directly in Second Appeal before this Court. It appears that the Defendant agreed before this Court for remand of the suit for the purpose of enabling the Plaintiff to amend the plaint and to raise the plea of Defendant's status as ‘Corporation’. The suit came to be remanded by this Court by Order dated 21 June 2019.

18) Upon remand, the Trial Court framed Issue No.1(a) about Defendant status as '*Corporation*' within the meaning of Rent Act. The issues that have been decided by the Trial Court are as under :

	<u>Issues</u>	<u>Findings</u>
1)	Do plaintiffs prove that defendant has share ... capital of 1 crore or more ?	<u>In the affirmative</u>
1-A)	Whether the defendant is the corporation within the meaning of the M.R.C. Act ?	<u>In the affirmative</u>
2)	Whether the provisions of the M.R.C. Act are ... applicable to the suit ?	<u>In the negative</u>
3)	Do plaintiffs prove that they bonafide and ... reasonably require the suit property ?	<u>In the affirmative</u>
4)	If the decree of eviction is passed, to whom ... the greater hardship will cause ?	<u>Does not survive</u>
5)	Are plaintiffs entitled for relief sought ? ...	<u>In the affirmative</u>

19) On Issue No.1A, the Trial Court held as under :

09. It is argued before me that the defendant is neither public sector undertaking nor the corporation and thus, the provision of Section 3 of the Maharashtra Rent Control Act is not applicable. The learned advocate for the plaintiff in this context, argued that the defendant is the corporation in accordance with Section 3(1)(b) of the Maharashtra Rent Control Act and according to the provisions of the Maharashtra Co-operative Societies Act and thus, the provision is applicable to the defendant.

10. I studied Section 3 of the Maharashtra Rent Control Act, Section 8 of the Maharashtra Co-operative Societies Act, Section 2(11) and Section 167 of the Companies Act. I have also studied the case law reported in Daman Singh Vs. State of Punjab, 1985(2) SCC 670. I have also studied the case

laws of Kopargaon Big Bagayatkar Vividha Karyakari Sahakari Society Ltd., Vs. Deorao Sakharam Pawar and another, AIR 1976 Bombay 333, Bassein Catholic Co-operative Bank Ltd. and another etc., Vs. State of Maharashtra and others, AIR 1988 Bombay 72, Bhullan Vs. Sarvodaya Vita Kavelu Kumbhar Kam Sahakari Audyogik Utpadak Sanstha, AIR (BOM)-1978-0-259 and Daman Singh and others Vs. State of Punjab and others, AIR 1985 Supreme Court 973. I have studied the case laws. They are become profitable to me to arrive at the conclusion. In view of the case law of Daman Singh as well as the provision of Section 2(11) of the Companies Act, the society fall under the definition of Corporation. The defendant is the society registered under the Maharashtra Co-operative Societies Act. Thus, it is lies under the provision of Section 3 of the Maharashtra Rent Control Act and accordingly, the issue is answered in the affirmative.

20) Perusal of findings recorded in the judgment of the Trial Court would indicate that it did not even bother to reproduce the provisions of Section 3(1)(b) of the Rent Act and by merely making reference to the various judgments including that of *Daman Singh* (supra), the Trial Court held that a society is a Corporation. It further held that since Defendant is a society registered under the provisions of the MCS Act, it is covered by the provision of section 3 of the Rent Act. It must be observed that the discussion of the Trial Court on Issue No.1-A is sketchy and does not inspire confidence.

21) The first Appellate Court framed following issues:

S.N.	POINTS	FINDINGS
1	Is defendant a corporation in view of the provisions of The Maharashtra Rent Control Act 1999 ?	... In the affirmative
2.	Is share capital of the defendant is above one crore ?	.. In the affirmative

- | | | |
|---|--|-------------|
| 3 | Whether the provisions of The Maharashtra Rent Act 1999 are ... | No |
| | applicable in favour of the defendant? | |
| 4 | Is plaintiff entitled for possession of ... | In the |
| | the suit premises ? | affirmative |
| 5 | Is there any need to interfere in the Judgment & Decree in R.C.S. No. 448/2005 ? | ... |
| | | No |

22) The first Appellate Court has discussed the issue of Defendant's status as 'Corporation' in the light of the judgment of the Apex Court in ***Daman Singh***. Perusal of the judgments passed by the Trial and the first Appellate Court would indicate that both the Courts have considered whether Defendant-Society is a 'Corporation' in its generic sense. What they ought to have considered is whether Defendant-Society is a corporation '*established by or under Central or State Act*'. There is however no discussion by both the Courts below as to whether Defendant-Society can be said to be established by or under any Central or State Act. No doubt, Defendant-Society is registered under the provisions of the MCS Act. The question is whether its registration and governance by the provisions of the MCS Act would render it an entity 'established by or under the State Act' ?

23) Both the Courts have relied upon judgment of Constitution Bench in ***Daman Singh***. The issue before the Apex Court was constitutional validity of Section 13 (8) of Punjab Co-operative Societies Act, which provided for compulsory amalgamation of Co-operative Societies if it is considered necessary in the interests of such societies. Under Section 30 of the Punjab Co-operative Societies Act, registration

of a Co-operative Society renders it a 'body corporate' having perpetual succession and common seal with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. Article 31-A(1)(c) of the Constitution of India provides that no law providing for amalgamation of two or more Corporations either in public interest or in order to secure proper management of any of the Corporations shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19. In the light of the above provisions of Punjab Co-operative Societies Act read with Article 31-A(1)(c), the issue before the Apex Court was whether a Co-operative Society can be treated as 'Corporation' for application of provisions of Article 31-A(1)(c). The Apex Court held in paras-4, 6 and 8 as under :

4. We are unable to find any justification for giving such a limited or narrow interpretation to the expression 'corporations' occurring in Article 31-A(1)(c). On the other hand, we think that the very requirement of public interest or proper management of the corporation mentioned in Article 31-A(1)(c) requires the expression to be given a broad interpretation since there can be no higher interest than the public interest. We do not however desire to quibble with rules of construction since we propose to examine what a 'corporation' means and comprehends ordinarily and in the scheme of the Constitution.

6. We have already extracted Section 30 of the Punjab Act which confers on every registered co-operative society the status of a body corporate having perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. There cannot, therefore, be the slightest doubt that a co-operative society is a corporation as commonly understood. Does the scheme of the Constitution make any difference ? We apprehend not.

8. It was obviously thought by the Parliament that the protection should not be confirmed to companies only but should extend to all corporations which would naturally include Statutory Corporations. The more generic expression "corporations" was used so that all companies, statutory corporations and the like may be brought in. There is no indication that notwithstanding the use of the generic expression "corporations", the expression was intended to exclude corporations other than companies and statutory corporations. Parliament apparently chose the broader expression not with a view to limit the protection of the legislation relating to amalgamation to any class of corporations but with a view to protect legislation pertaining to amalgamation of all classes of corporations.

24) Thus, in ***Daman Singh*** the Apex Court has decided the issue as to whether a Co-operative Society can be considered '*Corporation*' for the purpose of applicability of Article 31-A(1)(c) for repelling challenge to *vires* of provisions for amalgamation of societies. The Apex Court was thus considering whether a Co-operative Society can be treated as a '*Corporation*' in its generic sense. The case before the Apex Court did not involve an issue whether every Co-operative Society can be treated as a '*corporation established by or under a Central or State Act*'. Therefore, in my view, ***Daman Singh*** cannot be relied upon in support of an absolute proposition that for applicability of provisions of Section 3(1)(b) of the Rent Act, every Co-operative Society must be treated as '*Corporation established by or under a Central or State Act*'. The Trial and the first Appellate Court have erred in blindly relying upon Constitution Bench judgment in ***Daman Singh*** without appreciating the issue before the Apex Court. In this regard, reliance by Ms. Khandeparkar on the judgment of the Apex Court in ***Union of India V/s. Dhanwanti Devi*** (supra) is apposite. The Apex Court has held that only essence in a decision is its ratio which is binding and that every observation found therein cannot be treated as a precedent. The Apex

Court has held that every decision must be read as applicable to the particular facts proved. The Apex Court held in paras-9 and 10 as under:

9. Before advertng to and considering whither solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that *Hari Kishan Khosla* case is not a binding precedent nor does it operate as *ratio decidendi* to be followed as a precedent and per se per incuriam. **It is not everything said by a Judge who giving judgment that constitutes a precedent.** The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well settled theory of precedents, every decision contain three basic postulates - [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. **What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment.** Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi*.

10. Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent in the use of precedents.....

(emphasis supplied)

25) In my view therefore, Constitution Bench Judgment in ***Daman Singh*** is of little assistance for deciding the issue at hand about status of a Defendant-Society as a '*Corporation established by or under Central or State Act.*'

26) In fact, the fine distinction between a 'Corporation formed by association of persons' and 'Corporation established by or under statute' has been discussed by the Apex Court in ***S. S. Dhanoa*** (supra). The issue before the Apex Court was whether a member of Indian Administrative Services, whose services are placed at the disposal of the organisation which is neither a local authority, nor a corporation established by or under a Central, Provincial or State Act, can be treated as a '*public servant*' within the meaning of clause Twelfth of Section 21 of the Indian Penal Code for the purpose of sanction under Section 197 of the Code of Criminal Procedure, 1973. The Appellant therein was placed at the disposal of Department of Cooperation, for his appointment as General Manager, Super Bazaar, Connaught Place, New Delhi. He contended that the Cooperative Store Limited, which was running a store bazaar was registered under the provisions of Section 23 of the Bombay Co-operative Societies Act, 1925 and was therefore a '*body corporate*' under Section 23 thereof and therefore he was a

'public servant' within the meaning of Clause-Twelfth of Section 21 of the Indian Penal Code. The Apex Court has answered the issue by holding in paras-7, 8, 9 and 10 as under:

7. Clause Twelfth of Section 21 of the Indian Penal Code protects two classes of public servants, viz., (a) every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government, and (b) every person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956. The appellant does not answer any of these descriptions. During his period of deputation, he was not an officer in the service or pay of the Government, nor was he in the service of a local authority, a corporation established by or under an Act or a Government company. It is, however, urged that the expression 'corporation' appearing in sub-clause (b) of clause Twelfth of Section 21 of the Indian Penal Code is wide enough to include not only a corporation established by or under a Central, Provincial or State Act, but also a body corporate. The submission proceeds on the basis of Section 23 of the Bombay Cooperative Societies Act, 1925, which reads:

23. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Clause Twelfth does not use the words "body corporate", and the question is whether the expression "corporation" contained therein, taken in collocation of the words "established by or under a Central, Provincial or State Act" would bring within its sweep a cooperative society. Indubitably, the Cooperative Store Limited is not a corporation established by a Central or State Act. The crux of the matter is whether the word 'under' occurring in clause Twelfth of Section 21 of the Indian Penal Code makes a difference. Does the mere act of incorporation of a body or society under a Central or a State Act make it a corporation within the meaning of clause Twelfth of Section 21? **In our opinion, the expression 'corporation' must, in the context, mean a corporation created by the Legislature and not a body or society brought into existence by an act of a group of**

individuals. A cooperative society is, therefore, not a corporation established by or under an Act of the Central or State Legislature.

8. A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may. The following definition of corporation was given by Chief Justice Marshall in the celebrated *Dartmouth College* case :

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only these properties which the charter of its creation, confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; proper ties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is a succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being.

The term 'corporation' is, therefore, wide enough to include private corporations. But, in the context of clause Twelfth of Section 21 of the Indian Penal Code, the expression 'corporation' must be given a narrow legal connotation.

9. Corporation, in its widest sense, may mean any association of individuals entitled to act as an individual. But that certainly is not the sense in which it is used here. Corporation established by or under an Act of Legislature can only mean a body corporate which owes its existence, and not merely its corporate status, to the Act. For example, a Municipality, a Zilla Parishad

or a Gram Panchayat owes its existence and status to an Act of Legislature. on the other hand, an association of persons constituting themselves into a Company under the Companies Act or a Society under the Societies Registration Act owes its existence not to the Act of Legislature but to acts of parties though, it may owe its status as a body corporate to an Act of Legislature.

10. There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*. It was observed: [SCC p.435 : SCC (L&S) p.115, para 25]

A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act.

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute. In *Sabhajit Tewary v. Union of India* the question arose whether the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act, was a statutory body. It was urged that because the Council of Scientific and Industrial Research had government nominees as the President of the body and derived guidance and financial aid from the Government, it was a statutory body. Repelling the contention, the Court observed: [SCC pp.486, 487 : SCC (L& S) p.100, para 4]

The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the

Council towards the development of industries in the country are carried out in a responsible manner.

Whatever has been said with regard to the Council of Scientific and Industrial Research, which was a society registered under the Societies Registration Act, equally applies to the Cooperative Store Limited, which is a society registered under the Bombay Cooperative Societies Act, 1925. **It is not a statutory body because it is not created by a statute. It is a body created by an act of a group of individuals in accordance with the provisions of a statute.**

(emphasis supplied)

27) Thus, the Apex Court has highlighted the marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute. It has held that the expression '*Corporation*' must be in the context mean a corporation created by the legislature and not a body or society brought into existence by an act of a group of individuals. The Apex Court held that merely because the Cooperative Store Limited was registered under the Bombay Co-operative Societies Act, 1925 it is a not a statutory body as the same is not created by a statute. That it is a body created by an act of group of individuals in accordance with the provisions of a statute. In my view, the judgment of the Apex Court in ***S. S. Dhanoa*** clearly applies to the present case where the Defendant-Society can be treated as a Corporation brought into existence by an act of group of individuals. It is a not statutory corporation created by legislature.

28) In ***Dalco Engineering*** (supra), the issue was about interpretation of the term '*establishment*' employed in Section 47 of

Right of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 2(k) defined ‘*establishment*’ to mean inter alia ‘*a corporation established by or under Central, Provincial or State Act*’. The employers in the two Appeals decided by the Apex Court were companies incorporated under the Companies Act, 1956. It was sought to be contended that the employers were ‘*Corporation established by or under a Central, Provincial or State Act*’. The Apex Court held in paras-16 and 18 as under:

16. The words “a corporation established by or under a Central, Provincial or State Act” is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under statute. For example, it is used in sub-clause (b) of Clause Twelfth of Section 21 of the Indian Penal Code (“IPC” for short) and Section 2(c)(iii) of the Prevention of Corruption Act, 1988 (“PC Act” for short). Both these statutes provide that a person in the service of a ‘Corporation established by or under a Central, Provincial or State Act’ is a public servant.

18. The meaning of the term “corporation” came up for consideration in *S. S. Dhanoa v. MCD* with reference to section 21 of IPC. This Court held: (SCC pp.437-38, paras 7-10)

“7. ...

...

....

29) The Apex Court thereafter referred to its judgment in *S. S. Dhanoa* in para-18 and thereafter held in para-21 as under:

21. Where the definition of “establishment” uses the term “a corporation *established* by or under an Act”, the emphasis should be on the word “established” in addition to the words “by or under”. The word “established” refers to coming into

existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between “established *by* a central Act” and “established *under* a central Act”?

(emphasis supplied)

30) Thus, as held by the Apex Court, the emphasis should be on the word ‘*established*’ in addition to the words ‘*by or under*’. The Apex Court held that the word ‘*established*’ refers to coming into existence by virtue of an enactment and that the same does not refer to a Company which is merely governed by the provisions of an enactment. After referring to the two illustrations, the Apex Court held in paras-31 and 32 as under:

31. We agree that the socio-economic legislations should be interpreted liberally. It is also true that courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of “State” under Article 12). **Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself.**

32. We should not lose sight of the fact that the words “corporation established by or under a Central, Provincial or State Act” is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in

various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in *Dhanoa* [(1981) 3 SCC 431 : 1981 SCC (Cri) 733 : 1982 SCC (L&S) 6] which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are “State” and non-statutory bodies and corporations for the purposes of enforcement of fundamental rights. **The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of the Penal Code and the Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of “State” thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations, etc.**

(Emphasis supplied)

31) Thus, in *Dalco Engineering*, the Apex Court has once again highlighted the distinction between ‘*statutory corporations*’ and ‘*non-statutory companies*’. The Apex Court has held that express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself. The Apex Court has gone a step ahead and has held that, if such non-statutory companies are treated as ‘*statutory corporations*’ employees of such companies would become public servants amenable to punishment under the Indian Penal Code and Prevention of Corruption Act and would also result in all non-statutory companies and private sector companies being included in the definition of ‘State’ thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations etc. In fact, this is the exact submission canvassed by Ms. Khandeparkar. The implications of treating a Co-operative Society as a corporation ‘established by or

under' MCS Act would be far-fetched rendering the actions of Co-operative Societies susceptible to challenges on touchstone of arbitrariness and equality.

32) The distinction between a 'statutory corporation' and 'a body after its creation being governed in accordance with the provisions of the statute' is once again highlighted by the Apex Court in *Commissioner of Income Tax (TDS), Kanpur* (supra). The Apex Court, after referring to its decision in *S.S. Dhanoa* and *Dalco Engineering*, held that New Okhla Industrial Development Authority (NOIDA) is an authority constituted under a Notification issued under Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 was an authority established by that Act.

33) In the present case, it is nobody's case that Defendant-Society is established under a particular Central or State Act. It is formed by association of person and has been registered under the provisions of MCS Act. Though it is a body corporate under Section 36 of the MCS Act, it is merely governed by the provisions of the State Act, and it is not '*established by or under*' the MCS Act. In my view therefore, the Defendant-Society cannot be considered as a corporation be governed by or under Central or State Act.

34) Faced with the difficulty that Defendant-Society has not been established by or under the provisions of the MCS Act, Mr. Narvankar does not really join issue with Ms. Khandeparkar on this aspect but has slightly diverted the direction of his defence by contending that Defendant-Society is required to be covered by the provisions of Section 3(1)(b) of the Rent Act by applying the criteria of

‘*affordability to pay rent*’ as well as ‘*economic package*’ offered by the provisions of the Rent Act. What Mr. Narvankar essentially contends is that Courts need not strictly go by the entities covered by Section 3(1)(b) and can read into it, even other entities who find themselves exempted from applicability of Rent Act on account of their affordability to pay rent at market rate. He has strenuously relied upon judgment of the Apex Court in ***Leelabai Pansare*** (supra), which according to Mr. Narvankar, is a direct authority on interpretation of Section 3(1)(b) of the Rent Act as opposed to judgments in ***S. S. Dhanoo*** and ***Dalco Engineering*** not dealing with the provisions of the Rent Act. It would therefore be necessary to discuss in detail the judgment of the Apex Court in ***Leelabai Pansare***.

35) The issue before the Apex Court in ***Leelabai Pansare*** was whether a government company falls within the expression ‘*any Public Sector Undertakings*’ or ‘*corporation established by or under the Central or State Act*’ under Section 3(1)(b) of the Rent Act, the exact question formulated by the Apex Court in para-3 is as under:

3. An important question of law regarding interpretation of Section 3(1) (b) of the Maharashtra Rent Control Act, 1999 is involved in the present appeal, namely :

“Whether a government company falls within the compendious expression ‘any public sector undertakings or corporation established by or under any Central or State Act’ in Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 (‘the Rent Act’, in short).”

36) In ***Leelabai Pansare***, the suit premises were let out by the landlords to Oriental Insurance Company Limited (OICL), which is a Government Company incorporated under Section 617 of the

Companies Act, 1956, over which the Government of India exercises overall control. The landlords terminated the tenancy by issuing notice under Section 106 of the Transfer of Property Act and instituted a suit for eviction. In defence, OICL contended that it is not covered by any of the exemptions under Section 3(1)(b) of the Rent Act as it is neither a Public Sector Undertaking nor a Corporation established by or under central or state Act. It was contended that OICL was a Government Company and stood under a separate category which is absent in Section 3(1)(b) and therefore continued to enjoy protection of the Rent Act. In the above factual position, the Apex Court has decided the issue by holding that OICL and all other Government Companies incorporated under Section 617 of Companies Act, 1956 are not entitled to protection under Section 3(1)(b) of the Rent Act. Thus, even though '*Government Company*' is not included under Section 3(1)(b) of the Rent Act, the Apex Court has interpreted the word '*Public Sector Undertakings*' to mean and include even a government company only for the purpose of Section 3(1)(b) of the Rent Act. Some of the reasons recorded by the Apex Court for including '*Government Company*' into the ambit of '*Public Sector Undertakings*' appearing in Section 3(1)(b) of the Rent Act are as under :

58. Therefore, the legislature was required to keep in mind the vulnerability of fixing standard rent as on 1-9-1940. At the same time, the legislature had to keep in mind two aspects, namely, tenancy protection and rent restriction. The problem arose on account of economic factors. However, the legislature found the solution by evolving an economic criterion. The legislature evolved a package under which the prohibition on receiving premium under Section 18 of the 1947 Act stood deleted. In other words, landlords were given the liberty to charge premium. The second package was to exclude cash-rich body corporates

and statutory corporations from the protection of the Rent Act. This part of the economic package helps the landlords to enhance the rent and charge rent to the entities mentioned in Section 3(1)(b) who can afford to pay rent at the market rate. This was the second item in the economic package offered to the landlords under the present Rent Act. The third item of the Rent Act was to give the benefit of annual increase of rent @ 5% under the present Rent Act. All three items constituted one composite package for the landlords. The underlying object behind the said economic package is to balance and maintain the two-fold objects of the Rent Act, namely, tenancy protection and rent protection. The idea behind excluding cash-rich entities from the protection of the Rent Act is also to continue to give protection to tenants who cannot afford to pay rent at market rate.

59. The above discussion is relevant because we must understand the reason why Section 3(1)(b) came to be enacted. As stated above, in our view, with the offer of an economic package to the landlords, the legislature has tried to maintain a balance. The provisions of the earlier Rent Act, as stated above, have become vulnerable, unreasonable and arbitrary with the passage of time as held by this Court in the above judgment. The legislature was aware of the said judgment. It is reflected in the report of the Joint Committee. In our view, the changes made in the present Rent Act by which landlords are permitted to charge premium, the provisions by which cash-rich entities are excluded from the protection of the Rent Act and the provision providing for annual increase at a nominal rate of 5% are structural changes brought about by the present Rent Act, 1999 vis-à-vis the 1947 Act. The Rent Act of 1999 is the sequel to the judgment of this Court in the case of *Malpe Vishwanath Acharya*.

60. The entire discussion hereinabove is, therefore, not only to go behind Section 3(1)(b) and ascertain the reasons for enactment of the said subsection but also to enable this Court to give purposive interpretation to the said subsection.

70. According to the respondents, the words “PSUs” in Section 3(1)(b) has to be read with the words “any corporation established by or under Central or State Act.” In other words, according to the respondents, only those PSUs which are established by or under any Central or State Act alone stand excluded from the protection of the Rent Act. According to the respondents, PSUs which are Government companies incorporated under Section 617 of the 1956 Act are entitled to the protection as they are not expressly excluded under Section 3(1)(b). We do not find merit in this submission. Firstly, it may be noted that several entities have been enumerated in Section 3(1)(b), namely, banks, PSUs or statutory corporations, foreign missions, international agencies, multinational companies and private limited and public limited companies having a paid up share capital of Rs. 1,00,00,000 or more. As stated above, the said Rent Act, 1999 has brought about structural changes in the legislation. In this case, it was open to the legislature to opt for any of the tests, namely, test of origin, test of public character of the functions performed by each of these entities, test of public character of each of the undertakings, test of agency or instrumentality, test of monopolistic status, test of mobilization of resources etc. In the present case, we find that the legislature has opted for an economic criteria, namely, entities which are in a position to pay rent at market rates are to stand excluded from Rent Act protection. This is the test of Financial Capability. This is the golden thread which runs through Section 3(1)(a). Be it banks, PSUs. Statutory corporations, multinational companies, foreign missions, international agencies and public and private limited companies having a paid up share capital of Rs. 1,00,00,000 or more stand excluded from the Rent Act protection. This criterion has been selected by the legislature knowing fully well that each of these entities including PSUs can afford to pay rent at the market rates.

74. Thirdly, we are of the view that, in this case, the principle of *noscitur a sociis* clearly applicable. According to this principle, when two or more words which are susceptible to analogous meaning are coupled together, the words can take their colour from each other. Applying this test, we hold that Section 3(1)(b) clearly applies to different

categories of tenants all of whom are capable of paying rent at the market rates. Multinational companies, international agencies, statutory corporations, Government companies, public sector companies can certainly afford to pay rent at the market rates. This thought is further highlighted by the last category in Section 3(1)(b). Private limited companies and public limited companies having paid up share capital of more than Rs. 1,00,00,000 are excluded from the protection of the Rent Act. This further supports the view which we have taken that each and every entities mentioned in Section 3(1)(b) can afford to pay rent at the market rates.

75. We may note that to meet the challenge of discrimination under Article 14 it is not sufficient to state that there is an intelligible differentia but it is further essential requirement to show that the differentia has a rational nexus to the object sought to be achieved by the Statute in question. (See *State of Rajasthan v. Mukund Chand.*)

37) Relying on the judgment in *Leelabai Pansare*, Mr. Narvankar contends that since enactment of Rent Act is in the nature of economic package which sought to exclude 'cash rich body corporates' from protection of Rent Act, every body corporate including a Co-operative Society, which can afford to pay rent at market rate, must be included in the exemption clause of Section 3(1)(b) of the Rent Act. I find myself unable to agree with the contention sought to be advanced by Mr. Narvankar. Merely because the Apex Court proceeded to include a government company within the word '*Public Sector Undertaking*' appearing in Section 3(1)(b) of the Rent Act, it does not mean that every entity which is capable of paying rent at market rate would stand exempted from applicability of provisions of the Rent Act under Section 3(1)(b). The Apex Court was mainly concerned with the issue as to whether 'Government Companies' form a separate class than that of

PSUs for the purpose of application of Section 3(1)(b) of the Rent Act. The Apex Court held in para-69 that '*statutory corporations, public sector companies and government companies are merely corporate forms and that entities like PSUs may be in the corporate form or in the form of statutory corporations or in the form of public sector companies*'. It is because of these reasonings that the Apex Court did not find attractive the argument of exclusion of government companies from PSU's or statutory corporations for the purpose of applicability of Section 3(1)(b) of the Rent Act. In my view, judgment in ***Leelabai Pansare*** cannot be read to mean that every entity which is capable of affording market rent, would stand excluded under the provisions of the Rent Act.

38) If argument of Mr. Narvankar is accepted, then every Co-operative Society, irrespective of its financial status, will then have to be exempted from applicability of provisions of Rent Act. There may be smaller Co-operative Societies formed by a particular group of persons such as fishermen, agriculturists, etc. where such societies may not have very bright financial operations. Whether even such Co-operative Societies are required to be treated as 'Corporations' for the purpose of application of Section 3(1)(b) of the Rent Act ? The answer to this query by Mr. Narvankar is that in the present case, fortunately an enquiry has been conducted by the Trial and the first Appellate Court about financial status of Defendant by holding that its paid up share capital is in excess of Rs.1 crore. He would therefore contend that applicability of Section 3(1)(b) to a Co-operative Society will have to be considered on case to case basis by considering the financial capacity of a particular Society. Here again, I am unable to agree. If the intention of law makers was to exclude every entity whose share capital is in excess of Rs.1

crore, it would not have restricted applicability of Section 3(1)(b) to only public limited companies and private limited companies. Instead, it could have used the word '*entities having paid up share capital of Rs.1 crore or more*'. There is yet another folly in the submission of Mr. Narvankar. If his contention of financial affordability is applied, then even individuals would stand excluded from applicability of provisions of Rent Act. By applying the test of '*financial affordability*', landlord would seek ouster of individuals by proving that they have the financial capacity to pay market rent. Thus, interpretation sought to be advanced by Mr. Narvankar would open a pandora's box and leave interpretation of Section 3(1)(b) of the Rent Act to limitless possibilities, where landlord would seek to exclude entities and individuals from applicability of Rent Act by proving their financial status in each individual case. Such is neither the legislative intent nor the objective sought to be achieved while enacting Section 3(1)(b) of the Rent Act. The test of 'affordability to pay market rent' therefore cannot be the ruse for this Court to legislate and include within the exemption clause of the Rent Act something which has been expressly excluded. In ***Dalco Engineering***, the Apex Court has held that express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself.

39) In my view, therefore the judgment in ***Leelabai Pansare*** cannot be relied upon to hold that a Co-operative Society, which has paid-up share capital in excess of Rs.1 crore, can be included in Section 3(1)(b) of the Rent Act.

40) Inclusion of a Co-operative Society within the exemption clause of Section 3(1)(b) of Rent Act would be to read something which

is absent in the provision or to supplant the terms of provisions, which exercise has been repeatedly frowned upon by the Supreme Court. In this regard reference can be made to the Apex Court judgment in ***Union of India V/s. Deoki Nandan Aggarwal*** (supra) in which it is held:

14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as “more than five years” and as “more than four years” in the same paragraph for the period subsequent to November 1, 1986. **It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there.** Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.

(emphasis supplied)

41) The above principle is restated by the Apex Court in ***Saregama (India) Ltd.*** (supra), in which it is held as under:

22. The court is entrusted by the Constitution of the power of judicial review. In the discharge of its mandate, the court may evaluate the validity of a legislation or rules made under it. A statute may be invalidated if it is ultra vires constitutional guarantees or transgresses the legislative domain entrusted to the enacting legislature. Delegated legislation can, if it results in a constitutional infraction or is contrary to the ambit of the enacting statute be invalidated. **However, the court in the exercise of judicial review cannot supplant the terms of the provision through judicial interpretation by rewriting statutory**

language. Draftsmanship is a function entrusted to the legislature. Craftsmanship on the judicial side cannot transgress into the legislative domain by rewriting the words of a statute. For then, the judicial craft enters the forbidden domain of a legislative draft. That precisely is what the Division Bench of the High Court has done by its interim order.

(emphasis supplied)

42) I am therefore of the view that the Defendant-society is neither a corporation established by or under any Central or State Act nor it can be included in the exemption clause by applying the test of 'affordability to pay market rent'.

CONCLUSIONS

43) The substantial questions of law are accordingly answered as under:

- i) Defendant does not fit into definition of the term '*any corporation established by or under Central or State Act*' used in Section 3(1)(b) of the Maharashtra Rent Control Act, 1999.
- ii) By applying the ratio of the judgment of the Apex Court in ***Leelabai Gajanan Pansare*** (supra) the Defendant cannot be treated as an entity which is exempted from application of provisions of Rent Act by applying the principle of 'affordability to pay market rent'.

44) I therefore find that the impugned Decrees passed by the Trial and the first Appellate Court to be indefensible. The Defendant-Society would be governed by the provisions of the Rent Act. The Rent Court alone, which in the present case is Civil Judge Junior Division, would have jurisdiction under Section 33 of the Rent Act to try and

entertain Plaintiff's suit for eviction of the Defendant-Society and Plaintiff will have to seek eviction of Defendant-society strictly in accordance with the provisions of the Rent Act.

ORDER

45) The Appeal accordingly succeeds. The Judgment and Decree dated 9 October 2019 passed by the Civil Judge Senior Division, Kolhapur in Regular Civil Suit No.448/2005 as upheld by the District Court, Kolhapur in Regular Civil Appeal No. 313 of 2019 are set aside. Plaintiff's suit is dismissed for want of jurisdiction of Civil Judge Senior Division. Plaintiff would be at liberty to file fresh suit against Defendant-Society in court of competent jurisdiction in accordance with the provisions of the Rent Act.

46) With the above directions, the Second Appeal is allowed. There shall be no order as to costs. With disposal of the Second Appeal, Interim Application does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.