

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.177 OF 2024

Broach Sadan Premises Co-op.
Society Ltd.

....Applicant

V/S

The Board of Trustees of the
Port of Mumbai & Ors.

....Respondents

Mr. Anil Sakhare, Senior Advocate with Mr. Rohan Mirpury,
Mr. Ankit Tiwari, Mr. Sagar Chourasiya i/b Mr. Shashipal
Shankar *for the Applicants.*

Mr. Dhruva Gandhi a/w Ms. Nina Motiwalla, Ms. Janhavi
Khandekar i/b M/s. Motiwalla & Co. *for Respondent No.1.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 12 NOVEMBER 2024.**

ORAL JUDGMENT:

1 Revision Application challenges the judgment and order dated 15 July 2017 passed by Appellate Bench of Small Causes Court allowing PSCC Appeal No.6 of 2011 and setting aside the judgment and decree dated 20 December 2010 passed by Small Causes Court in LE & C Suit No.237/276 of 1985. The Appellate Bench has decreed LE & C Suit No.237/276 of 1985 and has directed Defendants to deliver vacant and peaceful possession of the suit premises to the Plaintiff with further direction to conduct an enquiry into mesne profits under provisions of Order 20, Rule 12 of the Code of Civil Procedure, 1908 (**Code**).

2 The facts of the case, in brief, are that on 21 August 1962 Bombay Port Trust (**BPT**) made an offer letter to Mr. Narayandas Jadhavji proposing to grant lease in respect of the suit premises being Final Plot No. 84A admeasuring 367.34 square meters, Elphinstone Estate, Town Planning Scheme No.1, Mumbai, for a period of 99 years. On 5 July 1963, the offer of lease was confirmed by the BPT, however it appears that no lease deed was executed between the parties. In absence of execution of lease deed, BPT however handover possession of the suit plot to Jadhavji on 3 April 1964. It appears that under the offer letter, Jadhavji was permitted to put up construction on the suit plot and accordingly he commenced construction of a building, which was completed by the year 1974. Jadhavji thereafter sold various units (offices) constructed in the building to various purchasers and procured occupancy certificate in respect of the building on 31 July 1974. It appears that 40 constructed units/offices in the building were sold to various purchasers, who formed Broach Sadan Premises Co-operative Society (**Applicant-Society**) which was registered on 12 October 1975. This is how the Society and its members have been occupying the constructed units in the building constructed on the suit plot by Jadhavji since 1974-75.

3 In the above background, BPT served notice dated 1 October 1984 to Jadhavji seeking back possession of the suit plot essentially on the ground that Jadhavji unauthorizedly sold constructed units to third parties in absence of consent of BPT. On 12 August 1985, BPT instituted LE & C Suit No.237/276 of

1985 against Jadhavji/his heirs and the Applicant-Society seeking recovery of possession of the suit plot. The Small Causes Court answered the issue of validity of termination of lease by BPT in its favour. However, it held that Plaintiff-BPT did not have right to seek possession of the suit plot and construction thereon on account of its conduct of not adopting contemporaneous steps after noticing construction of the building. This is how the Trial Court refused to pass a decree of eviction of the Defendants from the suit plot. The suit was partly decreed to the extent of directing Defendant Nos. 1A and 1B to pay to Plaintiff-BPT costs of the suit and an order for conduct of enquiry into mesne profits under provisions of Order 20, Rule 12 of the Code was also passed.

4 Plaintiff-BPT has filed PSCC Appeal No.6 of 2011 before Appellate Bench of Small Causes Court challenging the Trial Court's decree dated 28 December 2010. The Appellate Court has allowed the Appeal filed by Plaintiff-BPT and has set aside the Trial Court's decree dated 28 December 2010. The Appellate Bench has decreed Plaintiff's suit directing the Defendants to handover possession of the suit plot with further enquiry into mesne profits. Aggrieved by the decree passed by the Appellate Court on 15 July 2017, Defendant No.2/Applicant-Society has filed the present Civil Revision Application.

5 Mr. Sakhare, the learned Senior Advocate appearing for the Applicant-Society would submit that Plaintiff-BPT being an instrumentality of State, is expected to act fairly and cannot seek

eviction of the Society whose members are occupying the offices in the building constructed on suit plot since the year 1974-75. He would submit that the Appellate Court has erroneously rejected the contentions relating to the arbitrariness on the part of the Plaintiff-BPT on the ground that the said objection could only be considered by this Court in a writ jurisdiction. He would submit that the Appellate Court has ignored the position that in ***M/s Dwarkadas Marfatia and Sons vs. Board of Trustees of the Port of Mumbai & Anr.***¹, BPT had instituted a suit for eviction and when the proceedings travelled before the Apex Court, the Apex Court held that BPT being an instrumentality of the State, cannot act unfairly or arbitrarily. He would therefore submit that the ratio laid down by the Apex Court in its judgment in ***M/s Dwarkadas Marfatia*** (supra) would squarely apply to the present case. Mr. Sakhare would further invite my attention to the judgment of the Apex Court in ***Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai and another***,² in which the judgment in ***M/s. Dwarkadas Marfatia*** has been followed by the Apex Court.

6 Mr. Sakhare would further contend that the Small Causes Court did not have jurisdiction to try or entertain the suit filed by Plaintiff-BPT in view of provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (**PP Act**) which came into effect on 28 December 1980. That therefore suit filed after coming into effect from the PP Act was clearly not maintainable before the Small Causes Court.

¹ (1989) 3 SCC 293

² (2004) 3 SCC 214

7 Lastly, Mr. Sakhare would submit that during pendency of the suit an offer for compromise was made by Plaintiff-BPT to Jadhavji with copy to the Applicant-Society on 21 April 1997 which was accepted by the Society and the Society made part payments towards the said offer. He would therefore submit that the Appellate Court ought to have permitted the Applicant-Society to complete the payments in terms of the said compromise offer rather than rejecting the said compromise offer on hypertechnical grounds. Mr. Sakhare would accordingly pray for setting aside the decree passed by the Appellate Bench of Small Causes Court.

8 The Civil Revision Application is opposed by Mr. Gandhi, the learned counsel appearing for Respondent/Plaintiff-BPT. He would submit that the judgment of the Apex Court in *M/s. Dwarkadas Marfatia* is clearly distinguishable on facts. He would further submit that the Society claims its alleged rights under the Agreement of 25 May 1976 to which BPT is not a party. That admittedly consent of BPT was not obtained by Jadhavji before assignment of the constructed units to the purchasers. That there is admitted breach of conditions of offer of lease by illegal assignments by lessee Jadhavji. That therefore the Appellate Court has rightly decreed the suit filed by Plaintiff-BPT. He would submit that the Society and its members can at best be treated as mere licensees of Jadhavji and that once BPT secures a decree for eviction against Jadhavji, the Society and its members must vacate the suit plot alongwith Jadhavji.

9 Mr. Gandhi would further submit that since the compromise formula offered by Plaintiff-BPT is not fully acted upon by the Applicant-Society, they cannot now be permitted to rely upon the said compromise offer. That compromise offer was made on without prejudice basis and since the same did not fructify on account of conduct of the Applicant-Society, the Appellate Bench has rightly ignored the said offer and has decided the suit on merits. However, without prejudice to his contention that the compromise offer made in the year 1997 can no longer be looked into, Mr. Gandhi would submit that if any compromise offer is now to be made to the Applicant-Society it must pay to Plaintiff-BPT an amount of Rs. 13,41,91,941/- towards arrears of rent alongwith interest from the date of default till July 2024. He would submit that the said amount of Rs.13,41,91,941/- is computed by taking into consideration the amount of rent as per compromise formula upto 30 September 2012 and rent payable as per the scale of rates adopted by BPT from 1 October 2012 onwards. He would submit that on a without prejudice basis, if the said amount of Rs. 13,41,91,941/- is paid by the Applicant-Society with further willingness to pay the rent in future as per the scale of rents decided by BPT, its proposal for acceptance as direct lessee would be put up before the Board of Trustees. He would submit that the Applicant-Society has however refused to accept the said offer by its letter dated 13 September 2024 and that even the second compromise proposal has failed. That therefore no interference is warranted in the decree passed by the Appellate Court. He would pray for dismissal of the Revision Application.

10 Rival contentions of the parties now fall for my consideration.

11 In the present case, there is no Lease Agreement between the Plaintiff-BPT and Jadhavji and the rights between them are essentially governed by the offer letter for lease dated 21 August 1962 as confirmed by further letter dated 5 July 1963. In absence of execution of lease deed, Plaintiff-BPT has not refused to recognize Jadhavji as a lessee. On the contrary, Plaintiff-BPT recognizes Jadhavji as a lessee on the strength of offer letters dated 21 August 1962 and 5 July 1963. Plaintiff-BPT is also not complaining of the act of Jadhavji in putting up construction on the suit plot as the Plaintiff-BPT recognizes his right to do so by virtue of the covenants of the offer letters. However, the real grouse of Plaintiff-BPT is the conduct of Jadhavji in assigning the lease in favour of third parties viz. purchasers of 40 commercial units constructed on the suit plot. It is the contention of Plaintiff-BPT that before doing so, Jadhavji ought to have approached BPT and sought its consent for further assignment of leasehold rights. Plaintiff-BPT contends that what is assigned by Jadhavji in favour of the unit-holders, and consequently to the Society, is not rights in constructed building but also right in the leasehold land. It is submitted that such an action on the part of Jadhavji in seeking to further assign the suit plot in favour of unit-purchasers, the Society is clearly contrary to the terms of lease and since there is an admitted breach of these terms of lease, Plaintiff-BPT is entitled to secure possession of the suit plot.

12 The Trial Court has answered Issue No.1 about valid termination of leasehold rights in favour of Plaintiff-BPT. However, though termination of lease by Plaintiff-BPT is held to be valid, the Trial Court however declined to grant the relief of possession of the suit plot in its favour by invoking the doctrine of waiver. The Trial Court held that Plaintiff-BPT did not take any steps for termination of lease despite noticing cause of construction by Jadhavji on the suit plot, sale of constructed units to outsiders, formation of society etc. The Trial Court held that despite being fully aware of sale of constructed units and formation of Society, Plaintiff-BPT tolerated such activities and issued notice for the first time on 1 October 1984. On this count, the Trial Court refused to grant a relief of possession of the suit plot in favour of Plaintiff-BPT.

13 When the matter travelled before the Appellate Court, it noticed that during pendency of the suit, Plaintiff-BPT made an offer for compromise to Jadhavji and to the Society by letter dated 21 April 1997. Under that offer, Jadhavji and Society were communicated an amount of Rs. 19,26,331.97/- to be paid towards arrears of rent, penalty and interest, subject to which BPT was to consider accepting the Society as its direct lessee. Two options were given to Jadhavji/Society to make the payment either in 10 monthly installments or in 3 quarterly installments. Jadhavji and Society were directed to communicate acceptance of offer within a period of 15 days. Letter dated 21 April 1997 reads thus :

ESTATE DEPARTMENT

From :
The Estate manager,
Bombay Port Trust,
3rd Floor, Vijaydeep,
S.V. Marg, Bllard estate,
Bombay 400 038.

“WITHOUT PREJUDICE”

To,
Shri, NarayandasJadhavji (Since Deceased)
Ruparel House,
36, Ridge Road,
Walkeshwar, Mumbai

Dear Sirs,

Sub : Final Plot No.84A at Elphinston Estate
Area 367.34 sqmtrs. Case Code No. 31001717
L.E. & C. Suit No.237/276 of 1985
NarayandasJadhavji
(H.C. W.P. No.35 of 1991)

Without prejudice to the board's right and contentions in the above matter, I have to inform you that your request for settlement of the matter on the terms approved by the Board and as further liberalized can be considered on your lodging the amount as per the liability statement enclosed.

On receipt of the amounts/after exercising your option from the two alternatives given in the liability statement, your request for settlement of the matter will be considered. I have now to request you to kindly lodge the said amount within 15 days from the sanction of the competent authority and quote the detailed terms and conditions.

Payment of arrear of rent/compensation as per item 1 of the liability statement can be made in 10 monthly installments or 3 quarterly installments as desired by you.

Please also note that the time limit for compromise and settlement on the basis of the concession granted under the liberalized policy is extended up to 30.6.1997 only

Yours faithfully,
ESTATE MANAGER (I/C)
21 April 1997

DA : Liability Statement

14 The Society responded on 16 July 1997 by stating as under:

BROACH SADAN PREMISES CO-OPERATIVE SOCIETY LTD.

Broach Sadan,
84A, Broach Street,
Bombay-400 009.
Date 16.7.1997

Ref No. Code No.3100417

To,
The Estate Manager,
Bombay Port Trust,
Vijaya Deep, 3rd Floor,
Bellard Estate
Mumbai : 400 038.

Sir,

Sub : Code No. 31001417 Unit No.10
Plot No.84A (final)
Estate Elphinstone.
Ref : Our Letter dated 10.12.1996 and 10.6.1997
Your letter No.EN/U-563/Compromise
Dated 21.4.1997.

1. With reference to your letter under reference No.563 dated 21.4.997 and the liability statement. We wish to write to write to you as under :-
2. We understand that the Supreme Court of India by its Judgment dated 31.10.1995 has set aside the Judgment of the Division Bench of the Bombay High Court and the matters are remitted to the High Court for reconsideration.
3. We have made the application for settlement under the compromise formula and are playing the amounts as demanded and are making the payments ON THE UNDERSTANDING THAT if any concessions are granted in future by any court or any further concessions are granted by Mumbai Port Trust, the same will be extended to us.
4. We exercise of our option for alternative 1 given in the said liability statemnet and we desire to make payments of these arrears in 10 monthly installments.
5. We will give our specific instructions to adjust the amounts paid by use after the terms of lease are received by us.
6. We send you a cheque for the sum of Rs.3,52,636.50 for which you are requested to send us your stamped receipt.
7. Further payment will follow shortly.

8. And all the requisitions are completed and payments are being made by us, we request you to :-

1. Process our application and quote the detailed terms and conditions of lease.
2. Send us the Bill of lease as per revised lease. We will be obliged if you will treat this as urgent.

Yours truly,

For BROACH SADAN PREMISES
CO-OPERATIVE SOCIETY LTD.

Encl : Cheque No.131498 for Rs. Rs. 3,52,636.50 drawn in favour of the Estate Managter, Mumbai Port Trust, Mumbai.

15 Thus, the Society accepted option No.1 of making payment of amount of Rs.19,26,331.97/- in 10 monthly installments and offered amount of Rs. 3,52,636.50/- by way of cheque with promise to pay the balance amount shortly.

16 The Appellate Court has however held that since the deadline of 15 days specified in the letter dated 21 April 1997 had expired before Society's letter dated 16 July 1997, the compromise offer automatically came to an end. In this regard, relevant findings recorded by the Appellate Bench in paragraph 11 of its judgment read thus:

11. It is vehemently argued on behalf of learned Advocate for the defendant society that by letter (exhibit no.36), the plaintiff trust has called upon the defendant society to deposit amount mentioned in liability statement so that its proposal can be considered favourably. From correspondence (Exhibit no.35), it is seen that the defendant society has been consistently requesting the plaintiff trust to consider its proposal under compromise formula. It is worthwhile to mention that from open sentence of letter (exhibit no.36), it is clear that said offer was without prejudice to the plaintiff trust's rights and contentions. Secondly, through said letter, the defendant society was simply asked to deposit amount mentioned in liability statement within the 15 days, upon which its proposal would be considered.

Thus, letter (exhibit no.36) does not talk about proposal of the defendant society having finally accepted. It is worthwhile to mention that deadline set out in letter (exhibit no.36) was 15 days. However, the defendant society vide its letter dated 16th July, 1997 signalled its intention to opt for an offer given in letter (exhibit no.36). One thing is clear that the defendant society did not adhere to deadline of 15 days that was set out in letter (exhibit no.36). On the contrary, the defendant society vide its letter dated 3rd September, 1997 demanded for adjustment of certain amounts. Thus, from correspondence of the defendant society, it is evidence that deadline of 15 days was missed. Secondly, even amount claimed in liability statement was not paid at one stroke and amounts paid earlier were sought to be adjusted. In the circumstances, conditions mentioned in letter (exhibit no.36) were not fulfilled. Therefore, no right accrued in favour of the defendant society under "Compromise Formula". What we find is that occupation of the defendant society is without consent of the plaintiff trust. Proposal submitted by the defendant society was not finally accepted by the plaintiff trust. No lease agreement is executed in favour of the defendant society.

17 However, what is completely ignored by the Appellant Bench is the fact that though the Society was late in responding the letter dated 21 April 1997, Plaintiff-BPT did not reject the offer on that count. In fact, it went on accepting various amounts from the Society in pursuance of its letter dated 16 July 1997. This is evident from Plaintiff-BPT's letter dated 18 May 1998 which reads thus:

The Estate Manager,
Mumbai Port Trust,
Vijaydeep Bldg, 3rd floor,
S.V. Road, Ballard Estate,
Mumbai-400 001

WITHOUT PREJUDICE

To,
Smt. Shridevi Ruparel &
all other H & L Representatives of
lat Shri. Narayandas Jadhavji
Ruparel House, 36, Ridge Road,
Walkeshwar, Mumbai

Dear Sirs,

Sub : Final Plot No.74A at Elephinstone
Estate- LE & C Suit No.237/276 of 1985
Board V/s. H & L Representatives of
late Shri Narayandas Jadhavji
H.C. W.P. No.3570 of 1991.

Ref : This office letter No.EM/U-10/S-29/562
dated 21.4.1997

Without prejudice to the Board's rights and contentions in the above matter, I have to invite your attention to this office letter mentioned above and to inform you that the last date for payment of entire liability has expired on 20.2.1998

2. You are, therefore, requested to clear the entire balance amount as per the updated liability statement enclosed immediately.

Yours faithfully,

FOR ESTATE MANAGER

DA : Updated Liability
Statement

c.c. to the Hon.Secretary, Broach Sadan Premises Co-op Society Ltd, 84A, Broach Street, Mumbai-400 009 with reference to their letter dated 13.4.1998, the proposal has been forwarded to the higher authorities and their decision in the matter will be intimated in due course of time.

In the meantime, kindly liquidate the entire balance amount as per the updated liability statement enclosed herewith.

FOR ESTATE MANAGER,

DA : Updated liability statement

18 Thus, as per letter dated 18 May 1998, BPT acknowledged the fact that the total liability of the Society was Rs.20,33,821.53/-, out of which the Society paid to BPT an

amount of Rs.10,02,761/- and the balance amount payable was Rs.10,31,060.53/-. This aspect is completely glossed over by the Appellate Court which adopted a hyper technical approach by holding that on expiry of deadline of 15 days, the compromise offer automatically expired. The Appellate Court has recorded further perverse finding that the amount demanded by BPT was required to be paid in one stroke, ignoring the fact that BPT had permitted deposit of amount either in 10 monthly installments or 3 quarterly installments. In my view therefore, the findings recorded by the Appellate Court in paragraph 11 of its judgment relating to compromise offer are completely perverse warranting interference by this Court in exercise of revisional jurisdiction under Section 115 of the Code.

19 The Appellate Court ought to have appreciated that both the parties had acted upon the compromise formula and had walked the path of compromise halfway by making about 50% of payments under the compromise. In such circumstances, Appellate Court could have directed the Society to make the balance payment of Rs. 10,31,060.53/- alongwith reasonable interest so as to complete the compromise formula. The Appellate Court has however completely misdirected itself by rejecting the arguments raised by the Society with regard to the compromise offer.

20 In my view, reliance by Mr. Sakhare on judgment of the Apex Court in *M/s. Dwarkadas Marfatia and Sons* (supra)

and ***Jamshed Hormusji Wadia*** (supra) are relevant for the purpose of adjudging the conduct of Plaintiff-BPT, especially with regard to the compromise offer it made to the Applicant-Society. The Plaintiff-BPT, being an instrumentality of the State is expected to act fairly. It did intend to act fairly in the present case by making a compromise offer to the Applicant-Society. However, it unnecessarily laid down strict timelines and walked back on the offer by adopting hyper technical approach in the present case. Perusal of the letter dated 8 May 1998 would indicate that though the timeline for payment of the entire amount had expired on 28 February 1998, Plaintiff-BPT was willing to accept the amount even after 18 May 1998 and in fact it had forwarded a proposal to the higher authorities apparently for the purpose of accepting the Society as a direct lessee. The Appellate Court ought to have appreciated all these developments and ought to have ensured that the compromise, which got struck halfway, is taken to its logical end. The Appellate Court ought to have been mindful of the position that 40 office purchasers are occupying their respective offices in the building since the year 1974-75 and by now period of 50 long years has elapsed since then. For purchase of their offices, they paid consideration to the lessee Jadhavji. The Society-members are willing to accept the Society as a lessee in respect of the suit plot by paying lease rent to the Plaintiff-BPT. In such circumstances, the Appellate Court ought to have ensured that the compromise suggested by the Plaintiff-BPT was taken to its logical end.

21 Having held that a compromise suggested by the Plaintiff-BPT ought to have been taken to its logical end, the course of action needs to be adopted in the present case is to ensure that the entire amount of lease rent payable to the Plaintiff-BPT alongwith interest is paid by the Applicant-Society. However, there appears to be some dispute amongst parties about the quantum of rent payable on account of introduction of fresh scales of rate by Plaintiff-BPT with effect from 1 October 2012. Mr. Gandhi would submit that upto 30 September 2012, BPT has been charging rent as per compromise formula suggested by the Apex Court in ***Jamshed Hormusji Wadia*** (supra) and from 1 October 2012, BPT has introduced new scale of rates which essentially represent the market rent with 6% yearly increment. Mr. Sakhare submits that the fresh scales of rates introduced by BPT are subject matter of challenge by various lessees by filing bunch of Writ Petitions before this Court, which are pending. Mr. Gandhi would however submit that no interim orders have been passed in any of the Petitions by this Court. Upon being queried, Mr. Gandhi however clarifies, after taking instructions from the Officer present in the Court, that during pendency of those Petitions several lessees are paying lease rent in accordance with the compromise formula suggested by the Apex Court. Mr. Sakhare would submit that the Applicant-Society is also desirous of challenging the new scales of rates made applicable by the BPT from 1 October 2012 but was prevented from doing so on account of pendency of Suit and Appeal. He would further submit that till this Court determines the validity of new scale of rates, the Society is willing to pay the rent as per the

compromise formula suggested by the Apex Court in ***Jamshed Hormusji Wadia***.

22 In my view therefore, subject to the right of the Applicant-Society to question the scale of rates introduced from 1 October 2012, the Society can be permitted to pay to Plaintiff-BPT rent alongwith interest as per the compromise formula suggested by the Apex Court in ***Jamshed Hormusji Wadia*** (supra). Liability of the Society to pay rent as per scale of rates from 1 October 2012 can ultimately be decided by the Division Bench in a challenge to be raised by the Society by filing Writ Petition.

23 During the course of previous hearings, this Court had directed Plaintiff-BPT to communicate the figure of arrears of lease rent to the Applicant-Society. Accordingly, on a without prejudice basis, Plaintiff-BPT has communicated the amount of Rs. 13,41,91,941/- upto July 2024 towards arrears of lease rent. As observed above, the said amount of Rs. 13,41,91,941/- is computed on the basis of rate of lease rent as per the compromise formula suggested by the Apex Court in ***Jamshed Hormusji Wadia*** upto 30 September 2012 and from 1 October 2012, BPT has applied the new scales of rates. However, very fairly, Mr. Gandhi has placed on record even the amount of lease rent by applying the rate as per the compromise formula suggested by the Apex Court till July 2024 (by ignoring the rent as per the new scales of rates applicable from 1 October 2012). If the scale of rates applicable from 1 October 2012 are to be momentarily ignored, the arrears of lease rent payable along with interest and

taxes, after excluding the amounts already paid by the Society upto July 2024 would be Rs. 1,14,44,776.15/-. The computation chart placed on record by Plaintiff-BPT is as under:

Sr. No.	CHARGES	ARREARS	ARREARS	ARREARS	
1	AMOUNT PAYABLE WITH INTEREST ON ARREARS UPTO 31.03.2004 AS OF 31.07.2024 (EXCLUDING AMT TOWARDS BREACHES/PENALTIES & DEPOSIT AMT.)	1571222.22	1799375.81	3370598.03	
2	ARREARS W.E.F. FROM 01.04.2004 TO 30.09.2012 WITH INTEREST OF ARREARS AS OF 31.07.2024	1369727.28	3715733.16	5085460.44	
3	ARREARS TOWARDS SERVICE TAX UPTO 30.09.2012 WITH INTEREST IS CALCULATED ON ARREARS UPTO 30.09.2012 OF SERVICE TAX AS OF 31.07.2024	101882.47	57930.84	159813.31	
	TOTAL ARREARS (1+2+3)	30,42,831.97	55,73,039.81	86,15,871.78	A
4	ARREARS W.E.F. FROM 01.10.2012 TO 31.07.2024 (AS PER COMPROMISE PROPOSALS UPHELD IN JAMSHED WADIA CASE) INTEREST IS CALCULATED ON THESE ARREARS AS OF 31.07.2024	2816550.51	2490204.34	5306754.85	
5	ARREARS TOWARDS SERVICE TAX/GST FROM 01.10.2012 TO 31.07.2024 WITH INTEREST ON ARREARS OF SERVICE TAX/GST FOR THIS PERIOD AS OF 31.07.2024	461894.64	422548.76	884443.40	
	TOTAL ARREARS (4+5)	32,78,445.15	29,12,753.10	61,91,198.25	B
6	LESS: AMOUNT PAID IN MISC. DEPOSIT A/C UPTO 31.07.2024	33,62,293.88		33,62,293.88	C
	TOTAL ARREARS UPTO 31.07.2024 WITH INTEREST AS OF 31.07.2024	29,58,983.24	84,85,792.91	1,14,44,776.15	A+B-C=D
7	DIFFERENTIAL SOR ARREARS W.E.F. FROM 01.10.2012 TO 31.07.2024 (DIFFERENCE BETWEEN SOR RATE & RATE AS PER COMPROMISE PROPOSALS) WITH INTEREST ON INCREASED ARREARS AS OF 31.07.2024	59864621.03	43232446.09	10,30,97,067.12	
8	SERVICE TAX/GST ON DIFFL. SOR ARREARS FROM 01.10.2012 TO 31.07.2024 WITH PRESUMING INTEREST ON INCREASED ARREARS AS OF 31.07.2024	10775631.79	8874466.19	1,96,50,097.98	
	TOTAL (7+8)	7,06,40,252.82	5,21,06,912.28	12,27,47,165.10	E
	TOTAL ARREARS AS OF 31.07.2024	7,35,99,236.06	6,05,92,705.19	13,41,91,941.25	D+E
		7.36	6.06	13.42	Rs in Crores

24 The Applicant-Society has communicated willingness to pay the amount of Rs. 1,14,44,776.15/- to the BPT by letter dated 13 September 2024. In my view, the dispute about payment of higher rent @ the new scales of rate introduced by BPT w.e.f. 1 October 2012 need not result in eviction of the Society. It is admitted position that several other lessees of BPT, who have challenged the new scales of rates, are paying to BPT the old rates as per the compromise formula decided by the Apex Court. Since BPT has twice shown willingness to consider the case of the Society for regularization as its direct lessee (*albit* on without prejudice basis), mere dispute about the rate of rent

should not result in eviction of the Society, whose members have purchased their respective units 50 years ago. Therefore, the correct course of action to be adopted in the present case is to take the compromise suggested by Plaintiff-BPT to its logical end by letting the Society pay, at the moment, the rent as per the compromise formula. In the event the rent determined by BPT as per the new Scales of Rates is upheld, the Society would be obliged to pay the difference in rent. However, the dispute over the amount of rent need not result in ouster of the Society from the suit plot. It is however clarified that this arrangement is being made in the light of peculiar circumstances of the case, where the Plaintiff-BPT was willing to accept the Society as its direct tenant in the year 1997-98 and though both sides walked halfway into the compromises, the same could not fructify as that juncture. If the Applicant-Society was to make the payments as envisaged in the letters dated 21 April 1997 and 18 May 1998, it might have been treated as direct lessee of the BPT and would have then challenged the new scales of rates after 2012, as is done by other lessees of BPT.

25 Accordingly, I proceed to pass the following order:

- i) Judgment and decree dated 15 July 2017 passed by the Appellate Bench of Small Causes Court in PSCC Appeal No.6 of 2011 is set aside.
- ii) Judgment and decree dated 20 December 2010 passed by Small Causes Court in LE & C Suit No.237/276 of 1985 is

modified with direction to Defendant No. 2-Society to pay to Plaintiff-BPT an amount of Rs.1,14,44,776.15/- representing the amount of lease rent and interest till 31 July 2024 within a period of four weeks from today. It shall also continue to pay to Plaintiff-BPT the lease rent as per the compromise formula suggested by the Apex Court in ***Jamshed Hormusji Wadia*** from 1 October 2024 onwards.

- iii) After payment of rent up to date as indicated above, the proposal of Defendant No.2-Society shall be put up before the Board of Trustees for consideration of case of Defendant No.2-Society for being treated as direct lessee of Plaintiff-BPT.
- iv) The Defendant No. 2-Society would be at liberty to challenge the scales of rate introduced from 1 October 2012 by filing appropriate proceedings and their liability to pay the difference in the amount of rent as per the compromise formula and rent as per scale of rates would be subject to the outcome of such proceedings. In the event of the Defendant No.2-Society not challenging the new scales of rates within three months or in the event of its challenge being rejected, it shall be liable to pay the difference in the rent between new scale of rates and compromise formula.
- v) The above arrangement is made in the light of peculiar facts and circumstances of the present case and the same shall not be treated as precedent in any other cases.

vi) The decree shall stand modified to the above extent.

23 With the above directions, the Civil Revision Application is partly **allowed and disposed of.**

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
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