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MCO LEGALS

15th May, 2020

REGISTRATION OF LEASE DEED VIZ-A-VIZ THE RENT CONTROL STATUTES

1. Paul v. Saleena, 17.12.2003, [(2004) 1 KLT 924], Relevant para 11, 12, 13, 19

- When eviction is sought by the landlord under the provisions of the Rent Control Act tenant cannot claim total prohibition of eviction on the basis of the provisions contained in the Transfer of Property Act or the provisions contained in the Contract Act.
- Held that unregistered lease deeds would not bar the landlord from filing eviction suits under the Rent Control Act.
- Proceed as if rent agreements executed between the parties are leases from month to month.

A copy of the judgment attached hereto at **page no. 2 to 10.**

2. Anthony v. K.C. Ittoop & Sons, 21.07.2000, [(2000) 6 SCC 394], Relevant para 8, 11, 12, 13, 14, 16

- Unregistered lease could not create a base on the basis of the inhibition contained in Section 107 of the Transfer of Property Act, 1882 and Section 17(1) and 49 of the Registration Act, 1908
- Mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.
- Non registration can lead to only two situation one lease is not exceeding one year and second, the unregistered deed is useless for the consideration for creation of lease.
- The handing over of possession, payment of rent all clearly establish the creation of lease.

A copy of the judgment attached hereto at **page no. 11 to 18.**

3. Bajaj Auto Ltd. v. Bahari Lal Kolhi, 08.08.1989, [(1989) 4 SCC 39], Relevant para 6, 8

- If a document is inadmissible for non-registration all its terms are inadmissible including the one dealing with the landlord's permission to his tenant to sublet.
- No specific pleading to the effect that the consent of the landlord was specifically given to sub-let the property.

A copy of the judgment attached hereto at **page no. 19 to 23.**

4. Shashikant v. Nirmala, 19.04.2011, [2011 SCC OnLine Bom 509], Relevant para 01 to 11

- In the absence of written and registered agreement, the terms and conditions, subject to which the premises have been given to the tenant, as contended by the tenant, shall have to be accepted.
- Section 55 nowhere provides for "any other consequence" for failure on the part of the landlord to get the agreement drawn in writing or getting the same registered, except those provided in sub-section (2) and (3) of section 55.
- No embargo in respect of entertain-ability of any legal action by the landlord either for recovery of possession or for rent.
- Thus application under Order VII Rule 11 for dismissal of suit on the sole ground of want of Registered Lease Deed held to be not maintainable

A copy of the judgment attached hereto at **page no. 24 to 27.**

5. Raj Pras anna Kondur v. Arif Taher Khan, 23.12.2004, [2005(4) Bom.C.R. 383], Relevant para 6, 7, 8, 9, 10

- Held that the right of a landlord under section 24 to get a person evicted from the premises on expiry of license is not curtailed in any manner on account of absence of the agreement being in writing or registered, as contemplated by section 55 of the Act.

A copy of the judgment attached hereto at **page no. 28 to 37.**

6. Shanta Tukaram Kasare v. Father Milton Gonsalves, 18.10.2004, [(2005) 2 Mah LJ 344], Relevant para 14, 23, 32 and 33

- No eviction can be ordered for want of compliance of the conditions of registration of lease deed under Section 22
- The proceedings before the Courts under Rent Act were void ab initio.
- Contention of lease being much prior to commencement of the Rent Act and no registration required also disregarded.
- Same done under Writ Petition under Article 226 of Constitution.

A copy of the judgment attached hereto at **page no. 38 to 43.**

2003 SCC OnLine Ker 599 : (2004) 1 KLT 924

Kerala High Court
(BEFORE K.S. RADHAKRISHNAN AND PIUS C. KURIAKOSE, JJ.)

Paul

Versus

Saleena

C.R.P. Nos. 1628, 1764 & 1985 of 1999
Decided on December 17, 2003

ORDER

K.S. RADHAKRISHNAN, J.:— Would the bar under S. 11(9) of Act 2 of 1965 affect an application filed under S. 11 of the Act if the parties are governed by an unregistered lease deed is the interesting question that has come up for consideration in these cases.

2. Tenants are the revision petitioners in these cases. Petitions for eviction preferred under S. 11(2)(b), 11(4)(ii) and 11(4)(v) were resisted by the tenants under S. 11(9) of the Act bn the ground that where the tenancy is for a specific period agreed to between the landlord and the tenant, landlord is not entitled to apply before the Rent Control Court for an order of eviction before the expiry of that period. C.R.P. No. 1628 of 1997 arises out of R.C.P. No. 2 of 1990, a petition filed by the landlord under Ss. 11 (2)(b) and 11(4)(ii) of the Act. Parties are governed by

Ext. A2 rent agreement dated 5.9.1988. Room was let out on a monthly rent of Rs. 750/-. Rent Control Petition was filed on 3.2.1990 claiming arrears of rent under S. 11 (2)(b) and the Rent Control Court found that tenant had committed default in payment of rent from 5.10.1988 onwards till 31.12.1990 at the rate of Rs. 750/- per month and ordered eviction under S. 11(2)(b). Rent Control Court also allowed the plea of the landlord that the tenant has used the building in such a manner as to destroy or reduce its value or utility, materially and permanently. Appellate Authority also confirmed the findings of the Rent Control Court.

3. C.R.P. No. 1764 of 1999 arises out of R.C.P. No. 35 of 1995 which is a petition filed by the landlord under Ss. 11(2)(b) and 11(4)(v). Parties are governed by Ext. A1 rent dated 17.1.1994. Schedule room was rented out on a monthly rent of Rs. 400/-. Landlord claimed arrears for the period from January 1995 to July 1995. Rent Control Court noticed that there is no arrears of rent. Consequently claim under S. 11(2)(b) was rejected. Noticing that the tenant had ceased to occupy the building continuously for a period of six months without reasonable cause, the Rent Control Court ordered eviction. Appeal filed against that order was rejected.

4. C.R.P. No. 1985 of 1999 arises out of the order in I.A. No. 291 of 1998 in. R.C.P. No. 30 of 1997. I.A. No. 291 of 1998 was filed for setting aside the *ex parte* order. Rent Control Court found no reason to set aside the order and dismissed the application. Appellate Authority confirmed the said order against which this revision was filed by the tenant.

5. Ext. A2 unregistered lease deed dated 5.9.1988 governs the parties in C.R.P. No.

1628 of 1997. Ext. A2 would indicate that the petition schedule building was let out for a period of 15 years for the purpose of carrying on the business of selling gold and silver ornaments. Rate of rent shown in the document is Rs. 750/- per month which had to be paid by the tenant on or before fifth of every month. Rent Control Petition was filed on 3.2.1990 before the expiry of fifteen years from the date of agreement. In CRP No. 1764 of 1999 parties are governed by Ext. A1 rent chit dated 17.1.1994. Rate of rent fixed was Rs. 400 per month and the period of lease is for five years. Rent Control Petition was filed on 24.7.1995. In CRP No. 1985 of 1999 also parties are the same in CRP No. 1764 of 1999 and are governed by the same rent chit dated 17.1.1994. In that case rent control petition was filed on 4.7.1997 within a period of five years.

6. The question that is posed for consideration as we have already mentioned, is whether tenant could use the unregistered lease deed as a defence under S. 11(9) of the Act to defeat a claim raised by the landlord within the period, specified in the lease deed for eviction of the tenant on any of the grounds mentioned in S. 11 of the Act? The Kerala Buildings (Lease and Rent Control) Act, 1965 is an Act enacted to regulate

the leasing of buildings and to control the rent of such buildings in the State of Kerala. The reason for the enactment is to regulate the leasing of the buildings, prevention of unreasonable eviction of tenants and also for control of rent. The Act is a self contained statute and the rights and liabilities of the landlord and tenant are to be governed by its provisions. Rights available to the tenant and landlord under the general law and the Transfer of Property Act are substantially curtailed by the provisions of the Rent Control Act. Though Rent Control Act is a piece of social legislation mainly to protect tenants from frivolous eviction, certain salutary provisions have also been made in the Act in order to do justice to the landlord. The legislation is neither pro-tenant nor-pro-landlord. Rent Control Act does not clearly disable the provisions contained in the Transfer of Property Act as far as rights of parties are concerned. At the same time, it makes provision for eviction on such specified grounds and it cannot be resisted on the basis of rights conferred under the Transfer of Property Act. When eviction is sought by the landlord under the provisions of the Rent Control Act and once the requirement contemplated under the Rent Control Act are satisfied, tenant cannot claim total prohibition of eviction on the basis of the provisions contained in the Transfer of Property Act or the provisions contained in the Contract Act.

7. S. 11 of the Act confers certain rights on the landlord to get the tenant evicted on specified grounds. But S. 11(9) gives an assurance to the tenant that he would not be evicted for a specified period if parties so agree so that he could modulate his future course of action accordingly. Grounds of *bonafide* need for own occupation or his dependent who is a member of his family or requirement of additional accommodation etc. are not available to be raised by the landlord during that specific period. But if the tenant fails to pay rent or without the consent of the landlord sublets the building or transfers his rights or uses the building in such a manner as to reduce its value or utility materially or permanently or ceased to occupy the building, landlord can seek an order of eviction even if a specific period is mentioned in the lease deed and S. 11 (9) will not therefore be a bar. There are certain statutory prohibitions, which the tenant is bound to honour unless a contrary intention is spelt out from the agreement. On the guise of specific period mentioned in the agreement the tenant is not expected to sublease the premises unless otherwise agreed to or destroys the utility or value of the tenanted premises materially and permanently or commits default in payment of

rent or violates the statutory obligations. S. 11(9) calls for a purposive interpretation so as to promote the purpose and object of the Act and not to circumvent the statutory obligations cast on the tenant by the Rent Control Act.

8. "Landlord" defined in S. 2(3) of the Act includes any person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others is one of the essential terms is the landlord-tenant relationship. If rent is not paid by the tenant S. 11(2) comes to the rescue of the landlord. S. 11(3) also enables the landlord to apply for an order of

eviction if the landlord *bonafide* needs the building for his own occupation or for the occupation by any member of his family dependent on him. S. 11(4)(i) prohibits sublease as well as transfer of tenant's rights in the event of which it enables the landlord to apply for eviction of the tenant. S. 11(4)(ii) also would caution the tenant that he shall not use the building in such a manner as to destroy or reduce its value or utility, materially and permanently. S. 11(4)(iii) states that the Rent Control Court can order eviction if the tenant has in his possession a building or subsequently acquires possession of or puts up a building reasonably sufficient for his requirement in the same city, town or village. S. 11(4)(iv) enables the landlord to apply for eviction of the building if the building is in such a condition that it needs reconstruction and if the landlord requires *bona fide* to reconstruct the same and if he satisfies the Court that he has the plan and licence, if any required and the ability to rebuild and if the proposal is not made as a pretext for eviction. S. 11(4)(v) enables the landlord to apply if the tenant ceases to occupy the building continuously for six months without reasonable cause. S. 11(5) enables the landlord who wants to renovate the building to apply for an order directing the tenant to permit him to enter and carry put the renovation within a time to be fixed by the Court. S. 11(8) enables the landlord to apply for eviction if he requires additional accommodation for his personal use. Ss. 11 (2) and 11(3) gives various rights and obligations to the tenant as well as to the landlord, so also S. 11(8). Contention was raised that when the landlord and tenant agree themselves that the tenancy is for a specified and stipulated period as per the agreement, registered or otherwise, parties are bound by the said agreement and irrespective of the grounds available to the landlord under Ss. 11(2), 11(4)(ii) and 11 (4)(iv) landlord is not entitled to apply for eviction before the expiry of the said period as per S. 11(9) of the Act.

9. The lease of immovable property is governed by Chapter V of the Transfer of Property Act. The term "lease" defined in S. 105 of the Transfer of Property Act reads as follows:

> "A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

10. Contract to the contrary mentioned in S. 106 is from the date of notice of termination of the lease and not with regard to the period of lease. Lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days notice unless there is a contract to the contrary. S. 106 deals with

duration of certain leases in the absence of written contract. S. 107 of the Transfer of Property Act

states that lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by registered instrument. Rights and liabilities of the lessor and lessees are dealt with in S. 108 of the Act. S. 108(A) deals with rights and liabilities of the lessor. S. 108(B) deals with rights and liabilities of the lessee. S. 107 stipulates that lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered document.

11. The effect of non-registration of document required to be registered is dealt with in S. 49 of the Registration Act, 1908, which says that "no document required by S. 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power unless it has been registered. Proviso states that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument. Inter relation between S. 49 of the Registration Act read with S. 107 of the Transfer of Property Act and S. 91 of the Evidence Act has come up for consideration before the Apex Court and various High Courts. Counsel on either side took us through the various decisions on the point.

12. Apex Court in *Anthony* v. *K.C. Ittoop & Sons*, (2000) 6 SCC 394, examined the relationship between landlord and tenant on the basis of the unregistered instrument. That was a case where lease deed was intended to be operative for a period of five years. The deed was unregistered document. Apex Court held that such lease could not create a base on the basis of the inhibition contained in S. 107 of the Transfer of Property Act, 1882 and Ss. 17(1) and 49 of the Registration Act, 1908. The Court held that the resultant position is insurmountable that iso far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court, is disabled from using the instrument as evidence and hence it goes out of consideration, hook, line and sinker. In *Satish Chand Makhan* v. *Govardhan Das Byas*, (1984) 1 SCC 369, the Apex Court examined the scope of unregistered draft lease agreement. While dealing with the provisions of S. 17(1)(d) and 49 read with S. 106 of the Transfer of Property Act, held as follows:

> "The unregistered draft lease agreement Ext. B2 was clearly inadmissible in evidence under S. 4 of the Registration Act, except for the collateral purpose of proving the nature and character of possession of the defendants. The document Ext. B2 was admissible under the proviso to S. 49 only for a collateral purpose of showing the nature and character of possession of the defendants. The proviso to S. 49 was however not applicable in the present case inasmuch as

the terms of a lease are not a "collateral purpose" within its meaning. It follows that

the unregistered draft lease agreement Ext. B2 was inadmissible in evidence to prove the transaction of lease. It was also ineffectual to create a valid lease for a renewed term of nine years for want of registration as required under S. 17(1)(d) of the Registration Act."

13. The Apex Court in *Samir Mukherjee* v. *Davinder K. Bajaj*, (2001) 5 SCC 259, examined the scope of Ss. 106 and 107 of the Transfer of Property Act and held as follows:

> "S. 106 lays down a rule of construction which is to apply when the parties have not specifically agreed upon as to whether the lease is yearly or monthly. On a plain reading of this section it is clear that the Legislature has classified leases into two categories according to their proposes and this section would be attracted to construe the duration of a valid lease in the absence of a contract or local law or usage to the contrary. Where the parties by a contract have indicated the duration of a lease, this section would not apply. What this section does is to prescribe the duration of the period of different kinds of leases by legal fiction-Leases for agricultural or manufacturing purposes shall be deemed to be lease from year to year and all other leases shall be deemed to be from month to month. Existence of a valid lease is a prerequisite to invoke the rule of construction embodied in S. 106 of the Transfer of Property Act.

14. S. 107 prescribes the procedure for execution of a lease between the parties. Under the first para of this section a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument and remaining classes of leases are governed by the second para, that is to say all other leases of immovable property can be made either by a registered instrument or by an oral agreement accompanied by delivery of possession".

15. The above mentioned statutory provisions and the decisions would conclusively show in the absence of a registered instrument no valid lease from year to year or a term exceeding one year or reserving yearly rent can be created.

16. In the instant case, admittedly lease deeds are unregistered documents. Therefore, tenancy is to be treated as tenancy from month to month. Contention was raised even if lease agreements are unregistered, period mentioned in the unregistered agreement is the essential condition of the lease and consequently parties are bound by the said terms and conditions irrespective of the fact whether a document is registered or not. Counsel also submitted that unregistered document can be treated as evidence under the proviso to S. 49. S. 49 is extracted below for easy reference.

> 49. Effect of non-registration of documents required to be registered.—No document required by S. 17 (or by any provision of the Transfer of Property Act, 1882) to be registered shall—
>
> (a) affect any immovable property comprised therein, or
>
> (b) confer any power to adopt, or

> (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:
>
> Provided that an unregistered document affecting immovable property and

required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.

17. We may now examine even if document is an unregistered one, whether the period mentioned therein would be binding on the parties and consequently petition filed before the period mentioned in the document would be hit by S. 11(9) of the Act. In the absence of registration, lease of immovable property from year to year or for any term exceeding one year shall be deemed to be from month to month. Therefore, we may proceed as if rent agreements executed between the parties in these cases are leases from month to month. All the same, we may examine as to whether the period specified in the unregistered lease deeds could be treated as defence within the meaning of the proviso to S. 49 and consequently fall within the rigor of S. 11(9) of the Act. S. 17 of the Registration Act deals with documents of which registration is compulsory. S. 17(d) deals with leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent which requires compulsory registration. It is true that S. 17 does not say that unregistered document shall not be received in evidence. S. 49 bars reception in evidence of document or proceeding which is required to be registered under S. 17 of the Registration Act but not registered. The Apex Court in *Champalal* v. *Samrathbai* (AIR 1960 SC 629) held that filing of an unregistered award under S. 49 is not prohibited, what is prohibited is that it cannot be taken into evidence so as to affect immovable property falling under S. 17. In *Dinaji* v. *Daddi*, (1990) 1 SCC 1 : AIR 1990 SC 1153, the Apex Curt held that non registration of a document which is required to be registered under S. 17(1)(b) of the Registration Act will not avail to create, declare, assign, limit or extinguish any right, title or interest in or to the immovable property comprised in the document. S. 49 stipulates that no document required to be registered under S. 17 of the Transfer of Property Act shall be received as evidence of any transaction affecting such property or conferring such power unless it has been registered. The Apex Court in *Satish Chand Mukhan* v. *Goverdhandas Byas*, (1984) 1 SCC 369 : AIR 1984 SC 143, held that where a lessee remained in possession under an unregistered deed of renewal of lease, such deed of renewal was inadmissible in evidence under S. 49 except for the collateral purpose of proving the nature and character of his possession. In *Bajaj Auto Ltd.* v. *Bahari Lal Kolhi*, (1989) 4 SCC 39 : AIR 1989 SC 1806, the Apex Court held that where a lease is entitled to create a sub-lease or not is undoubtedly a question of a term of the transaction of lease, and if it is incorporated in the document it cannot be disassociated from the lease and considered separately in isolation. If a document is inadmissible for nonregistration all its terms are inadmissible including the one dealing with the landlord's

permission to his tenant to sublet. The Calcutta High Court in *Pieco Electronics & Electricals Ltd.* v. *Smt. Tribeni Deve* (AIR 1990 Cal. 135), held that ejectment cannot be sought on the basis of a duration clause in an unregistered lease. Unregistered lease could at best be looked into for ascertaining the commencement of possession, rate of rent or similar other provisions which are collateral to the principal transaction. The Court held it could never have been the intention of the legislature that under the first part of the section we should discard an unregistered document for want of registration and at the same time under the camouflage of the proviso we should be permitted to look into and rely upon all the terms of the inoperative document which do form the integral parts of the principal transaction.

18. The various provisions contained in Ss. 11(2) to 11(8) of the Rent Control Act are substantial provisions. Compulsorily registerable document, though unregistered and inadmissible as evidence of a transaction affecting immovable property, may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. Reference be made to the decision of the Bombay High Court in *Bai Gulabbai* v. *Shri Datgarji*, 1907 (9) Bom. L.R. 393, and *Panchapagesa* v. *Kalyanasundaram*, AIR 1957 Madras 472). An unregistered deed of lease can be used for a collateral purpose to show the nature of possession. In *Ishwar Dutt* v. *Sunder Singh* (AIR 1961 J & K 45) it was held that the term of lease is not a collateral purpose. In *Antonia Perreira* v. *Upendra Venkatesh Juarkar*, AIR 1978 Goa 19, it was held that the duration of the lease for a fixed period exceeding one year is not a collateral purpose. In *A.N. Parkas* v. *N.H. Nagvi*, AIR 1989 Delhi 277, it was held that an unregistered document of lease can be looked into to know the purpose of letting whether residential or commercial, because the said term can be deemed to be collateral matter. In *Jagajit Industries Ltd.* v. *Rajiv Gupta*, AIR 1981 Delhi 359) it was held that term in a lease regarding notice of eviction in a term which affects immovable property and therefore it cannot be said to be a collateral transaction. In *Zarif Ahmad* v. *Satish Kumar*, AIR 1983 All. 164) it has been held that an unregistered lease cannot be admitted in evidence for the purpose of ascertaining the date on which the tenancy began and what the rent reserved was. The Apex Court in *Rai Chand Jain* v. *Miss Chandra Kanta Khosla*, (1991) 1 SCC 422 : AIR 1991 SC 744, held that an unregistered lease can be looked into for collateral purposes like for ascertaining whether the purpose of the lease was residential or not.

19. The above mentioned judicial pronouncements and the principles laid down therein would clearly show that an unregistered document cannot be used for the purpose of establishing that that document created or declared or assigned or limited or extinguished a right to immovable property. Period of lease is integral part of the agreement and not a collateral one. Unregistered lease deeds cannot be pressed into service to create, declare, assign, limit or extinguish any right, title or interest in or to

the property comprised in the document. They create only month to month tenancy and only if the lease is registered under the Registration Act, it would create transfer of right to enjoy the immovable property for a specific term exceeding one year. We therefore hold that unregistered lease deeds by which rights of parties in these cases are governed would not stand in the way of the landlord from filing application under Ss. 11(2)(b), 11(4)(ii) or 11(4)(v) of Act 2 of 1965 and the application would not be hit by S. 11(9) of the Act.

20. Counsel appearing for the tenant contended that the landlord is not entitled to get eviction under S. 11(4)(ii) of the Act. In the rent chit it is specifically stated that the building shall not be subjected to material alteration. Contention of the tenant was that he had removed window situated on the northern side wall and closed down that portion using bricks. Similarly a window was also removed from the western wall and another door from the southern wall and closed down those portions using bricks. Tenant also lowered the level of the floor of the building and cut and removed six wooden pieces and has installed concrete pillars at a distance of one feet from the wall of the building. Landlord submitted that the tenant has used the building in such a manner as to destroy and reduce its value and utility materially and permanently. In

order to establish the case landlord took out a commission. Ext. C1 is the commission report dated 23.11.1992. Tenant on the other hand contended that the modification he has made has not affected the utility or value of the building materially or permanently. Counsel also placed reliance on several decisions. Reference was made to the decision of the Apex Court in *Manmohan Das Shah* v. *Bishum Das*, AIR 1967 SC 643, *Vipin Kumar* v. *Roshanlal Anand*, (1993) 2 SCC 614, *Seethalakshmi Ammal* v. *Nabeesath Beevi*, 2003 (1) KLT 391, *Waryam Singh* v. *Baldev Singh*, (2003) 1 SCC 59, *Aboobacker* v. *Nanu*, 2001 (3) KLT 815, *G. Arunachalam* v. *Thopndarperienambi*, (1992) 1 SCC 723 : AIR 1992 SC 977, and various other decisions. It is well settled to examine the question as to whether tenant used the building in such a manner as to reduce its value and utility permanently or materially, stand point of the landlord is important. The question as to whether the tenant has altered the tenanted premises reducing its value and utility materially or permanently has to be decided in the facts and circumstances of each case. Formation of the opinion by the landlord is subjective but the existence of circumstances relevant to the inference is a *sine qua non* for the formation of such opinion by the landlord.

21. As far as this case is concerned, Ext. C1 commission report would positively show that window was removed from the western wall and a window from the northern wall. Commission report would indicate that the commissioner could not see any door or window on the northern and western walls of the building. Tenant examined as CPW 1 had admitted that at the time when he took the petition schedule building on rent there was a door on the western wall and a window on the northern wall and that he had removed both of them. He also admitted that he had removed two windows

from the northern wall, one door and a window from the western wall and another door from the southern wall. Commission report would indicate that the scheduled room is the north-eastern room of a larger old building and that the floor of the scheduled room lies at a level lower by one feet from the floor level of the adjacent southern room. The floor of the southern room was found furnished with old tiles and the floor was seen cemented. Commissioner has also noted that in the other adjacent room there are only folding wooden frames whereas for the scheduled room alone concrete pillars and beam have been found installed to which rolling shutters have been fitted. It is also stated that for the purpose of installing the rolling shutter and above the shutter the eastern end of the rafters of the roof have been found cut and removed to a length of 2 ft. The above mentioned facts would show that tenant has used the building in such a manner as to reduce its utility and value materially and permanently. Both the Rent Control Court and the Appellate Authority found that ground against the tenant. We find no reason to take a different view in our revisional jurisdiction. Tenant in CRP No. 1764 of 1999 has also attacked the order of eviction under S. 11(4)(v). It is trite law that it is the burden of the landlord to show that tenant has ceased to occupy the premises continuously for a period of six months without reasonable cause. In order to establish the case, it is the specific case of the landlord that the schedule room was never occupied by the first respondent after it is entrusted to him. Though for sometime tenant has been conducting vegetable shop thereafter the shop room was kept closed. After 1994 the shop room was always kept locked and unoccupied. Third petitioner gave evidence to the effect that first respondent has not used the building after it was taken on rent from the original landlord's father in November 1994. First respondent used to open the room and clean it. Thereafter the room was always remaining locked. First respondent was working at Bombay since January 1995 onwards. Exts. A3 and A4 are the notices issued to the

first respondent which were returned undelivered. In order to show that the room was kept closed PW 2 was examined. PW 1 has also given evidence to that effect. In Ext. C1 commission report it has been stated that RW 6 has stated that at the time of inspection on 24.7.1875 schedule room was seen closed and locked with rust and cobwebs on the front shutters. There were posters affixed on the front shutters. First respondent has stated that for doing the business in soda, cigarette, beedi, pan etc. no licence was obtained by him. Fifth respondent who inspected the schedule room on 25.7.1995 could not find any business in cool drinks as claimed by RW 3. The fact that there was no shelf or other device to keep the vegetables in the schedule room would indicate that no such business was carried on there. All these factors were taken into consideration by the Rent Control Court and the Appellate Authority and came to the conclusion that tenant has ceased to occupy the premises. We find no reason to interfere with the orders of the courts below in our revisional jurisdiction. The revision petition stands dismissed.

22. C.R.P. No. 1985 of 1999 also has to be dismissed. Order of eviction was passed in this case since tenant failed to pay the rent. Though application to set aside the order was filed the same was dismissed which was later confirmed by the Appellate Authority. Since we have already found that landlord is entitled to get eviction under S. 11(4)(v) this revision is also liable to be dismissed. We do so. The tenants in all these cases are given three month's time from today for vacating the premises on condition that each of them should file an undertaking before the Rent Control Court within one month from today that they would vacate the premises within the aforesaid period and would pay arrears of rent, if any and future rent.

(2000) 6 Supreme Court Cases 394

(BEFORE K.T. THOMAS, D.P. MOHAPATRA AND R.C. LAHOTI, JJ.)

ANTHONY .. Appellant;

Versus

K.C. ITTOOP & SONS AND OTHERS .. Respondents.

Civil Appeal No. 5904 of 1999†, decided on July 21, 2000

A. **Rent Control and Eviction — Landlord-tenant relationship — Proof of, in the face of unregistered instrument — Owner of a building inducting a person into possession of the building and such person paying, or agreeing to pay, monthly rent — In such circumstances, notwithstanding that they had executed only an unregistered lease deed for a period exceeding one year, the relation between them, held, was that of landlord and tenant — Hence, after commencement of Kerala Buildings (Lease and Rent Control) Act, 1965, such a person became a statutory tenant and could not be evicted except on a statutory application moved before the Rent Control Court — Lease deed — Effect of non-registration where registration was compulsory — Tenant — Proof of status of — Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), Ss. 2(6), (3), (1) and 11 — Transfer of Property Act, 1882, Ss. 107 and 105 — Registration Act, 1908, Ss. 17(1) and 49 — Evidence Act, 1872, S. 116**

The owner of the building in question inducted the appellant in possession thereof as per lease deed dated 4-1-1974 which was ostensibly meant for a period of five years and fixed a monthly rent of Rs 140. The appellant paid the rent to the said landlord, and later, to his successors-in-interest. Ultimately, the then owner of the building filed a suit for eviction of the appellant. The question was whether there was, on facts, a lease of the said building. If yes, the jurisdiction of the civil court would stand barred and the landlord would have to approach the Rent Control Court to get an order of eviction on a statutory ground under the Kerala Buildings (Lease and Rent Control) Act, 1965. The High Court held that the appellant had failed to prove that independent of the void lease there existed a landlord-tenant relationship. Accordingly, it decreed the owner's suit for recovery of possession. Allowing the appeal, the Supreme Court

Held:

The lease deed relied on by the plaintiff was intended to be operative for a period of five years. It was an unregistered instrument. Hence, it could not create a lease on account of the inhibiting provisions of Section 107 of the Transfer of Property Act, 1882, and Sections 17(1) and 49 of the Registration Act, 1908. Therefore, so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence. (Paras 8 and 11)

Shantabai v. *State of Bombay*, AIR 1958 SC 532 : 1959 SCR 265; *Satish Chand Makhan* v. *Govardhan Das Byas*, (1984) 1 SCC 369; *Bajaj Auto Ltd.* v. *Behari Lal Kohli*, (1989) 4 SCC 39 : AIR 1989 SC 1806, *relied on*

† From the Judgment and Order dated 4-9-1997 of the Kerala High Court in SA No. 835 of 1988

But, this above finding does not exhaust the scope of the issue whether the appellant was a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para deals with the mode of creating the particular kinds of leases mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument, parties can create a lease as envisaged in the second para of Section 107. (Para 12)

When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed. (Para 13)

Since the appellant was inducted into the possession of the building by the owner thereof and was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact-situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second para of Section 107 of the TP Act. (Para 14)

Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted. (Para 16)

H.S. Rikhy (Dr) v. *New Delhi Municipal Committee*, AIR 1962 SC 554 : (1962) 3 SCR 604, *distinguished*

Technicians Studio (P) Ltd. v. *Lila Ghosh*, (1977) 4 SCC 324; *Biswabani (P) Ltd.* v. *Santosh Kumar Dutta*, (1980) 1 SCC 185 : (1980) 1 SCR 650, *considered*

The appellant occupied the building as a tenant and he paid rent to the landlord and continued as such. Hence with the coming into force of the Rent Act he became a statutory tenant whose eviction could be considered only when an application was moved in that behalf before the Rent Control Court concerned. (Para 20)

B. Rent Control and Eviction — Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) — S. 2(1), (6) & (3) — Word "let" in S. 2(1), held, means to demise on lease — Words and Phrases — "Let" (Para 6)

Appeal allowed H-M/TZ/22867/C

Advocates who appeared in this case :

T.L. Vishwanath Iyer, Senior Advocate (T.G.N. Nair, Advocate, with him) for the Appellant;

P. Krishnamurthy, Senior Advocate (S. Prasad, Ms Ashta Tyagi and Ms Poonam Prasad, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (1989) 4 SCC 39 : AIR 1989 SC 1806, *Bajaj Auto Ltd.* v. *Behari Lal Kohli* 399*b-c*
2. (1984) 1 SCC 369, *Satish Chand Makhan* v. *Govardhan Das Byas* 399*b-c*
3. (1980) 1 SCC 185 : (1980) 1 SCR 650, *Biswabani (P) Ltd.* v. *Santosh Kumar Dutta* 401*d*
4. (1977) 4 SCC 324, *Technicians Studio (P) Ltd.* v. *Lila Ghosh* 401*a*
5. AIR 1962 SC 554 : (1962) 3 SCR 604, *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee* 400*f*
6. AIR 1958 SC 532 : 1959 SCR 265, *Shantabai* v. *State of Bombay* 399*b-c*

The Judgment of the Court was delivered by

THOMAS, J.— A dispute which constantly caused many litigations to prolong in the past (whether a lease could be made by an unregistered instrument when such deed is compulsorily registerable) has once again been raised and that dispute has lengthened the longevity of this litigation through a chequered career. The successor of the party who was mainly responsible for not registering the instrument has now been benefited of it as the impugned judgment gave a decree for eviction of the person who was admittedly inducted into possession of the building by the former. Though the appellant claimed protection under the provisions of the rent control legislation the High Court discountenanced it on the premise that the document executed by the parties regarding the transaction is void under law. The simple question now is whether the appellant can claim protection as a tenant under Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Rent Act").

2. Facts, mostly undisputed, are the following:

The building which is the subject matter of this litigation is described as a shed which originally belonged to a family the senior member of which inducted the appellant in possession thereof as per a lease deed dated 4-1-1974 which was ostensibly meant for a period of five years. The monthly rent of the building had been fixed at Rs 140. The appellant paid rent of the building at the said rate till October 1974. Sometime during this period ownership of the building happened to be allotted to a female member of the family (Devaki) as per a partition effected between its members. Thereafter rent of the building was paid by the appellant to the aforesaid Devaki. Subsequently ownership of the building was transferred by Devaki to the respondent who filed the suit as plaintiff (for the sake of convenience respondent can be referred to as "the plaintiff"). The trial court decreed the suit by repelling the contention of the appellant that the suit was not maintainable as he is protected from eviction under the provisions of the Rent Act. The trial court found that the appellant is not a tenant as the lease was void on account of non-registration of the lease deed. In the first appeal filed by the appellant a District Judge held that in spite of non-registration of the instrument there was a valid tenancy of the building and hence the appellant could not be evicted except in accordance with the provisions of the Rent Act.

3. In a second appeal filed by the respondent a Single Judge of the High Court of Kerala set aside the judgment of the District Court and remanded the first appeal to that court by holding that the plaintiff was inducted into possession under a void lease and hence the court should consider "whether, independent of this lease the defendant was in possession as a lessee from month to month". Learned Single Judge pointed out that since it is a question of fact the same has to be decided on the evidence on record. After the remand the District Court entered upon a finding that despite the defect of non-registration of the instrument "the facts and circumstances of this case and the evidence discussed above could clearly show that the parties intended to create a lease". The District Judge further held that the appellant is the tenant as defined in the Rent Act and hence the plaintiff is not entitled to a decree in this case and his remedy is to apply before the Rent Control Court.

4. When the matter went up to the High Court again in a second appeal a learned Single Judge did not agree with the approach made by the District Judge after remand and the following observations, inter alia, have been made by the High Court:

> "It has to be noted that if the conclusion of this Court on the earlier occasion were that payment and acceptance of rent pursuant to the void contract itself would bring about the relationship of landlord and tenant between the parties protected under the Kerala Buildings (Lease and Rent Control) Act, this Court would have certainly dismissed the suit filed by the plaintiff by so finding and would not have remanded the appeal to the lower appellate court in the manner in which it was done. The lower appellate court has ignored this aspect while purporting to record a finding that the first defendant would be a tenant protected by the Kerala Buildings (Lease and Rent Control) Act even if he had paid rent only under the void lease. The said approach by the appellate court appears to me to be totally unsustainable....
>
> I am therefore constrained to set aside the finding of the lower appellate court that the first defendant is a tenant protected by the Kerala Buildings (Lease and Rent Control) Act. I hold that the first defendant has not proved that independent of the void lease, a relationship of landlord and tenant has come into existence between the parties. In view of this finding, the plaintiffs will be entitled to a decree for recovery of possession of the plaint schedule property."

5. In this appeal by special leave a Bench of two judges heard this matter and after noticing a conflict of opinions expressed by Benches of equal strength it was felt that this appeal should be decided by a larger Bench.

6. In spite of the chequered career of the litigation the only question which has now bogged down to be decided is whether the suit building is held by the appellant under a lease or not. The word "tenant" is defined in Section 2(6) of the Rent Act as "any person by whom or on whose account rent is payable for a *building* ...". Landlord is defined as including "the person who is receiving or is entitled to receive the rent of a *building*". Now

the definition of "building" must be looked into. In clause (1) of Section 2 it is defined as "any building or hut or part of a building or hut, *let or to be* let separately for residential or non-residential purposes ...". In the above context the word "let" has only one meaning and that is to demise on lease.

7. The above three definitions unmistakably point to the necessity for a building to be covered by a lease under law in order to bring such building within the purview of the Rent Act. If there is no lease of a building the Rent Act has no application. Thus what is important now is to know whether there has been a lease of the building in question. If the appellant is a lessee of the building, it is not disputed before us that jurisdiction of the civil court would stand evacuated and the plaintiff has to approach the Rent Control Court if he is desirous of getting an order of eviction on any one of the grounds recognised in the Rent Act.

8. The lease deed relied on by the plaintiff was intended to be operative for a period of five years. It is an unregistered instrument. Hence such an instrument cannot create a lease on account of three-pronged statutory inhibitions. The first interdict is contained in the first paragraph of Section 107 of the Transfer of Property Act, 1882 (for short "the TP Act") which reads thus:

> "107. A lease of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent, can be made *only* by a registered instrument." (emphasis supplied)

9. The second inhibition can be discerned from Section 17(1) of the Registration Act 1908 and it reads thus: (only the material portion)

> "17. *Documents of which registration is compulsory.*—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:
>
> (*a*)-(*c*) * * *
>
> (*d*) leases of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent;"

10. The third interdict is contained in Section 49 of the Registration Act which speaks about the fatal consequence of non-compliance of Section 17 thereof. Section 49 reads thus:

> "49. *Effect of non-registration of documents required to be registered.*—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—
>
> (*a*) affect any immovable property comprised therein, or
>
> (*b*) confer any power to adopt, or
>
> (*c*) be received as evidence of any transaction affecting such property or conferring such power,
>
> unless it has been registered.
>
> Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be

registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

No endeavour was made by the counsel to obviate the said interdict with the help of the exemptions contained in the proviso.

11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide *Shantabai* v. *State of Bombay*[1], *Satish Chand Makhan* v. *Govardhan Das Byas*[2] and *Bajaj Auto Ltd.* v. *Behari Lal Kohli*[3].

12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:

"All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession."

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.

14. When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural

1 AIR 1958 SC 532 : 1959 SCR 265
2 (1984) 1 SCC 369
3 (1989) 4 SCC 39 : AIR 1989 SC 1806

relationship between the parties. Such a jural relationship, on the fact-situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second para of Section 107 of the TP Act extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee.

15. Shri P. Krishnamoorthy, learned Senior Counsel contended that a lease need not necessarily be the corollary of such a situation as possession of the appellant could as well be permissive. We are unable to agree with the submission on the fact-situation of this case that the appellant's possession of the building can be one of mere permissive nature without any right or liabilities attached to it. When it is admitted that legal possession of the building has been transferred to the appellant there is no scope for countenancing even a case of licence. A transfer of right in the building for enjoyment, of which the consideration of payment of monthly rent has been fixed, can reasonably be presumed. Since the lease could not fall within the first paragraph of Section 107 it could not have been for a period exceeding one year. The further presumption is that the lease would fall within the ambit of residuary second paragraph of Section 107 of the TP Act.

16. Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted.

17. Shri P. Krishnamoorthy, learned counsel cited certain decisions to support his contention that the Court did not treat similar transactions as lease. In *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee*[4] a contention made by a party to the suit that he had a right under the local Rent Control Act was negatived on the ground that there was no landlord-tenant relationship between the parties. In that decision this Court did not accept the contention that the word "letting" which was contemplated in the particular Rent Control Act included not merely a transfer to a tenant but also to a licensee, or that the word "rent" precluded the landlord from pleading that there was no relation of landlord and tenant between the parties. The finding made in that case against the plea of landlord was based on the premise that the transfer was not made by the municipal committee in accordance with the law and hence there was no transfer at all. That decision has no application to the points involved in the present case.

4 AIR 1962 SC 554 : (1962) 3 SCR 604

18. In *Technicians Studio (P) Ltd.* v. *Lila Ghosh*[5] a two-Judge Bench considered the effect of a compromise decree which mentioned that the defendant would become a direct tenant on a monthly rent of Rs 1000 and the lease would be for a period of sixteen years. But compromise decree was not registered nor did the parties execute a lease deed pursuant thereto. The contention in that the case was two-fold. First was that by payment and acceptance of rent during the period of sixteen years the monthly tenancy had been created. Second was that the compromise decree can be treated as evidence of part payment under Section 53-A of the TP Act. This Court noted that the High Court has found in agreement with the finding of the subordinate courts that payment of rent and acceptance of the same did not create any tenancy. The said fact finding was not disturbed by this Court in that particular case. However, their Lordships observed therein that: (SCC p. 328, para 5)

> "Whether the relationship of landlord and tenant exists between the parties depends on whether the parties intended to create a tenancy, and the intention has to be gathered from the facts and circumstances of the case. It is possible to find on the facts of a given case that payments made by a transferee in possession were really not in terms of the contract but independent of it, and this might justify an inference of tenancy in his favour. The question is ultimately one of fact."

19. In *Biswabani (P) Ltd.* v. *Santosh Kumar Dutta*[6] a two-Judge Bench of this Court found that though a second lease deed executed between the parties (on the expiry of the period mentioned in the first lease deed) is void for want of registration, the tenant would continue to be protected under the relevant Rent Control Act because on the expiry of the period of first lease the tenant had acquired the right of a statutory tenant.

20. None of the observations made in the above decision is in conflict with the view expressed by us above. The appellant occupied the building as a tenant and he paid rent to the landlord and continued as such. Hence with the coming into force of the Rent Act he became a statutory tenant whose eviction can be considered only when an application is moved in that behalf before the Rent Control Court concerned. We, therefore, allow this appeal and set aside the impugned judgment of the High Court. The suit filed by the respondent will stand dismissed without prejudice to the right of the respondent to move under the provision of the Rent Act.

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5 (1977) 4 SCC 324
6 (1980) 1 SCC 185 : (1980) 1 SCR 650

where reference to arbitration made prior to commencement of Interest Act, 1978

Executive Engineer (Irrigation), Balimela v. Abhaduta Jena, (1988) 1 SCC 418, followed

Appeal allowed in part R-M/9480/C

Advocates who appeared in this case :

G. L. Sanghi, Senior Advocate (D. P. Mohanty, Advocate, with him), for the Appellant ;

Raja Ram Agarwalla, Senior Advocate (M. M. Kshatriya, Advocate, with him), for the Respondent.

The Judgment of the Court was delivered by

SHARMA, J.—This appeal by special leave arises out of the judgment of the Orissa High Court in an appeal under Section 39 of the Arbitration Act.

2. On reference of a dispute to an arbitrator in 1977 an award was made and filed in court. The appellant raised several objections to the prayer of the claimant for making it a rule of the court. It was inter alia contended that the award was illegal as it was not supported by reasons. This question now stands concluded against the appellant by the judgment of a Bench of five Judges, in the case of *Raipur Development Authority* v. *M/s Chokhamal Contractors*[1]. So far the other questions are concerned, they have been rightly rejected by the High Court and it is not necessary to discuss them any further. The only point which survives is with respect to the grant of interest in the award. The case arose before the coming in force of the Interest Act, 1978, and in view of the decision of this Court in *Executive Engineer (Irrigation) Balimela* v. *Abhaduta Jena*[2], the arbitrator had no jurisdiction to allow the interest as has been done. The award is, therefore, modified to that extent. Subject to the above, the decision of the High Court is confirmed. Accordingly, the appeal is allowed in part. The parties are directed to bear their own costs.

(1989) 4 Supreme Court Cases 39

(BEFORE L. M. SHARMA AND N. D. OJHA, JJ.)

M/S BAJAJ AUTO LIMITED .. Appellant ;

Versus

BEHARI LAL KOHLI .. Respondent.

1. (1989) 2 SCC 721
2. (1988) 1 SCC 418

Civil Appeal No. 2443 of 1980†,
decided on August 8, 1989

Rent Control and Eviction — Sub-letting — Lease granted to a business concern — Assignment, underletting or parting with possession of the premises in favour of 'associate concerns' of the lessee — Lessee putting its dealer and distributor in possession of the premises without landlord's consent — Held, dealer or distributor, not 'associate concerns' of the lessee, and therefore, sub-lease created contrary to the terms of the lease deed — Delhi Rent Control Act, 1958, Section 14(1) proviso (b) (Para 6)

Rent Control and Eviction — Lease deed — Non-registration of — Effect — Held, all the terms of the lease inadmissible in evidence — Clause in the lease regarding creation of snb-lease, being a term of the lease, cannot be looked into to determine legality of sub-letting where lease deed is not registered — Sub-letting — Transfer of Property Act, 1882, Section 107

Held :

A deed purporting to create a lease is inadmissible in evidence in case it is not registered. As such all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. The question whether a lessee is entitled to create a sub-lease or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it cannot be disassociated from the lease and considered separately in isolation. (Para 8)

Sachindra Mohan Ghose v. Ramjash Agarwalla, AIR 1932 Pat 97, approved

Rent Control and Eviction — Sub-letting — General permission granted in lease deed to assign or part with possession of the premises to 'associate concerns' of the tenant concern — Held, cannot be treated as permission to specific sub-letting — Section 14(1) proviso (b) of Delhi Rent Control Act enjoins tenant to obtain landlord's consent to each specific sub-letting — Delhi Rent Control Act, 1958, Section 14(1) proviso (b)

M/s Shalimar Tar Products v. S. C. Sharma, (1988) 1 SCC 70, followed

Appeal dismissed with costs R-M/9482/C

Advocates who appeared in this case :

Mukul Mudgal, Advocate, for the Appellant ;

Rajinder Sachar, Senior Advocate (Ms J. Wad, Advocate, with him), for the Respondent.

†From the Judgment and Order dated September 8, 1980 of the Delhi High Court in S.A.O. No. 339 of 1980

The Judgment of the Court was delivered by

SHARMA, J.—This is a tenant's appeal against the decree for his eviction from certain disputed premises passed by the Rent Controller, Delhi and confirmed in appeal and second appeal.

2. The respondent, the owner of the premises, let it out to the appellant in 1961 as a monthly tenant. An unregistered deed of lease was executed on that occasion containing the following statement as one of the clauses :

> That they will not assign or underlet or part with the premises hereby demised without the permission in writing of the landlord subject however to this proviso that they shall be entitled to assign or otherwise part with the possession of the said premises or any part thereof to their associate concerns without such consent but in any event the lessees shall be liable for the payment of the rent during the term hereby granted.

3. The appellant is a manufacturing company of scooters, pick-up vans and auto-three-wheelers. Alleging that the appellant had sub-let the premises to M/s United Automobiles without his consent, the respondent contended that the ground mentioned in Section 14(1) Proviso (*b*) of the Delhi Rent Control Act, 1958 was made out and the appellant was liable to be evicted.

4. The eviction proceeding was defended by the appellant on the ground that the M/s United Automobiles are the authorised dealer and distributor of the product manufactured by the appellant and has been in occupation of the premises in that capacity and cannot, therefore, be described as a sub-tenant. It was alternatively argued that in view of the term of the lease as quoted above the arrangement with the M/s United Automobiles cannot be condemned as a sub-lease without the consent of the respondent. The stand of the respondent has been that the abovementioned term of the lease cannot be looked into as the document was not registered and further the M/s United Automobiles cannot be assumed to be an 'associate concern' within the meaning of the term. The Rent Controller, as well as the appellate authority held that the aforementioned term of the lease was not inadmissible and the appellant was entitled to rely upon the same, but ordered eviction on the ground that M/s United Automobiles was inducted in the premises as a sub-lessee. The High Court dismissed the appellant's second appeal in limine, and in this situation the present appeal by special leave has been filed.

5. It has been strenuously contended by the learned counsel for the appellant that as, (*i*) the United Automobiles is a distributor of the product manufactured by the appellant on the basis of commission,

(*ii*) it pays the same amount to the appellant as the rent of the premises payable by the appellant to the respondent, and (*iii*) is entitled to be in possession only as long as it continues to be a distributor, it should be held to be an 'associate concern' within the meaning of the aforementioned term of the lease. In reply to the respondent's contention that the term cannot be taken into consideration as the deed is not a registered one, it was urged that the appellant, in view of the provisions of Section 49 of the Registration Act, is entitled to rely upon the term for 'collateral purpose'. The argument is that the document may not be admissible for the purpose of proving the existence of a lease or the terms thereof, but as the aforementioned clause does not come within that category, inasmuch as, it merely amounts to a written permission to the appellant to create a sub-lease, it cannot be excluded from consideration on the ground of non-registration.

6. There is no dispute that the appellant has put M/s United Automobiles in possession of the premises and has thus parted with the possession within the meaning of Section 14(1) Proviso (*b*) of the Act. The appellant-company has a separate legal entity and has nothing to do with M/s United Automobiles except that the latter is the dealer-distributor of some of its manufactured articles. M/s United Automobiles is not a licensee and is not in possession of the premises on behalf of the appellant. The monetary benefit available to the dealer is confined to the commission it receives on the sale of every vehicle ; and does not include the right of enjoyment of the premises. The dealer pays a fixed sum as rent to the appellant and the rent is not related or dependent on the sale of any vehicle. The fact that this amount is same as what is paid by the appellant to the respondent does not appear to be material. The irresistible conclusion is that the appellant has created a sub-lease in favour of its dealer. The question now is whether the clause in the lease mentioned above amounts to the respondent's consent in writing.

7. The contention of the learned counsel for the respondent that the aforesaid clause cannot be looked into for want of registration of the lease deed appears to be correct. Reliance has been placed on the observations of Fazl Ali, J. in *Sachindra Mohan Ghose* v. *Ramjash Agarwalla*[1] that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.

1. AIR 1932 Pat 97

8. The learned counsel for the appellant attempted to meet the point by saying that so far the consent of the landlord permitting sub-letting is concerned, it does not require registration and the clause, therefore, must be excepted from the requirement of registration and consequent exclusion from evidence. We do not see any force in this argument. The question whether a lessee is entitled to create a sub-lease or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it cannot be disassociated from the lease and considered separately in isolation. If a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It follows that the appellant cannot, in the present circumstances, be allowed to rely upon the clause in his unregistered lease deed.

9. There is still another reason to hold that the aforesaid clause cannot come to the aid of the appellant. A perusal of its language would show that it contains the respondent's consent in general terms without reference to M/s United Automobiles. As a matter of fact M/s United Automobiles came to be inducted as a sub-tenant much later. Can such a general permission be treated to be the consent as required by Section 14(1) Proviso (*b*) of the Act ? It was held by this Court in *M/s Shalimar Tar Products* v. *S. C. Sharma*[2] that Sections 14(1) Proviso (*b*) and 16(2) and (3) of the Delhi Rent Control Act, 1958 enjoin the tenant to obtain consent of the landlord in writing to the specific sub-letting and any other interpretation of the provisions will defeat the object of the statute and is, therefore, impermissible. Since it is not suggested that the consent of the respondent was obtained specifically with reference to the sub-letting in favour of M/s United Automobiles, the clause in the lease deed, which has been relied on cannot save the appellant, even if it be assumed in its favour that the clause is admissible and the sub-lessee is appellant's associate concern. The appeal, therefore, fails and is dismissed with costs.

(1989) 4 Supreme Court Cases 43

(BEFORE B. C. RAY AND S. RATNAVEL PANDIAN, JJ.)

ABDUL RAZAK NANNEKHAN PATHAN .. Petitioner ;

Versus

POLICE COMMISSIONER, AHMEDABAD AND ANOTHER .. Respondents.

2. (1988) 1 SCC 70

iii) The parties to appear before the Additional commissioner, Amravati on 25-8-2011. The Additional Commissioner, Amravati, thereafter to decide the Appeal by 31st September, 2011.

iv) The parties are at liberty to produce further material in support of their respective cases.

4. Rule is accordingly made absolute with parties to bear their respective costs.

Rule made absolute.

MAHARASHTRA RENT CONTROL ACT, SECTION 55

(R. M. Borde, J.)

SHASHIKANT s/o RAMRAO KULKARNI *Petitioner.*

vs.

NIRMALA w/o VASANTRAO GORE *Respondent.*

Maharashtra Rent Control Act, 1999 (18 of 2000), S. 55 — *Section 55 itself does not prohibit presentation of a plaint in the event of failure of securing the tenancy agreement.*

Rule 11(d) of Order VII of the Code of Civil Procedure, provides that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Section 55 of the Maharashtra Rent Control Act, 1999, mandates that the tenancy agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of the Act, shall be in writing and shall be registered under the Registration Act, 1908. The consequences of failure of reducing the tenancy agreement in writing and securing its registration are prescribed in sub-sections (2) and (3) of section 55. In the absence of written and registered agreement, the contention as regards the terms and conditions, subject to which the premises have been given to the tenant, as contended by the tenant, shall have to be accepted. Section 55 nowhere provides for "any other consequence" for failure on the part of the landlord to get the agreement drawn in writing or getting the same registered, except those provided in sub-section (3) of section 55. It nowhere puts an embargo in respect of entertainability of any civil action by the landlord either for recovery of rent or for recovery of possession of the tenanted premises on account of his failure to secure an agreement of tenancy in the form, as contemplated by section 55(1) of the Act. (Paras 7, 9 and 10)

For petitioner : *C. R. Deshpande*

For respondent : *D. G. Nagode*

List of cases referred :

1. *Shanta Tukaram Kasare vs. Milton Gonsalves and others, 2005(2) Mh.L.J. 344 = 2005(3) Bom.C.R. 417* (Paras 8, 9)
2. *Raj Prasanna Kondur vs. Arif Taher Khan and others, 2005(4) Bom.C.R. 383* (Para 10)

JUDGMENT :— Heard Shri C. R. Deshpande, learned Counsel for the petitioner and Shri D. G. Nagode, learned Counsel for the Respondent.

Civil Rev. Appln. No. 7 of 2011 decided on 19-4-2011. (Aurangabad)

Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. This is a petition by the original defendant raising exception to the order dated 23-9-2010, passed by 5th Joint Civil Judge, Junior Division, Latur, below Exhibit-23 in Regular Civil Suit No. 447/2009.

2A. Petitioner herein, (referred to as 'the defendant'), tendered an application under Order VII, Rule 11(d) of the Code of Civil Procedure, requesting the Court to reject the plaint. The application tendered by the petitioner came to be rejected. Hence, this Civil Revision Application.

3. Plaintiff instituted suit claiming recovery of an amount of Rs. 39,000/- towards arrears of rent against the defendant. It is the contention of plaintiff that defendant is a tenant in respect of residential premises which were let out to him. The monthly rent was fixed at Rs. 1500/- per month. Defendant occupied the premises since December 2006, however, it is contended that since May, 2007, for a period of about 26 months, defendant has failed to pay the rent. As such, plaintiff is claiming recovery of amount towards arrears of rent.

4. The suit claim was opposed by the defendant by presenting his written statement. Defendant has denied oral agreement of tenancy. Defendant has also controverted plaintiff's status as owner of the suit premises. Defendant controverted relationship of landlord and tenant and he further claims that the property exclusively belongs to his sister, which has been bequeathed in his favour by his sister after demise of her daughter Apurva. Defendant, as such, requests for dismissal of the suit.

5. In the pending suit, defendant presented an application under Order VII, Rule 11(d) of the Code of Civil Procedure requesting for rejection of the plaint. It is contended by the defendant that the plaintiff, in the suit, pleaded oral agreement of rent in respect of the suit premises. In view of provisions of section 55 of the Maharashtra Rent Control Act, 1999, an agreement in respect of payment of rent is compulsorily required to be in writing and be registered and the consequence of failure to record the agreement in writing and getting the same registered would lead to penal consequences. It is, thus, contended that the very foundation of the claim raised by the plaintiff is an illegal agreement, which cannot be the basis for raising claim for recovery of rent and as such, plaint is required to be rejected.

6. Plaintiff opposed the application contending that the consequences for failure to register the agreement of rent are as laid down in the section itself and as such, plaint presented by the plaintiff claiming recovery of rent cannot be rejected.

7. Rule 11(d) of Order VII provides that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Section 55 of the Maharashtra Rent Control Act, 1999, mandates that the tenancy agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908. The responsibility of securing registration of the agreement is on the shoulders of the landlord and in the absence of written registered agreement, the contention of the tenant about the terms and conditions,

subject to which premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise. Sub-section (3) of section 55 provides that in the event of contravention of the provisions of this section by any landlord, he shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both.

Thus, on perusal of the section, it is clear that the consequences of failure of reducing the tenancy agreement in writing and securing its registration are prescribed in sub-sections (2) and (3) of section 55. In the absence of written and registered agreement, the contention as regards the terms and conditions, subject to which the premises have been given to the tenant, as contended by the tenant, shall have to be accepted. The penal consequences for contravention of mandate of section 55(1) are as those stated in sub-section (3) of section 55. The section in itself does not prescribe any bar of presenting a suit based on any tenancy agreement, which is not in consonance with section 55. The objection raised by the defendant that contravention of sub-section (1) of section 55 shall lead to consequence of rejection of plaint, as contemplated by Order VII, Rule 11(d), is not acceptable.

8. Learned Counsel for the petitioner seeks leave to place reliance on the judgment in the matter of *Shanta Tukaram Kasare vs. Milton Gonsalves and others*, reported in *2005(2) Mh.L.J. 344 = 2005(3) Bom.C.R. 417*. It is contended that section 22 of the Maharashtra Rent Control Act, 1999, also mandates an agreement to be in writing while creating a service tenancy. In the reported judgment, tenancy created in favour of the tenant was not in consonance with section 22(1) of the Act, and as such, an objection was raised as regards tenability of the application before the competent authority seeking eviction of the tenant, as contemplated by section 22(2) of the Act, which was upheld by this Court. It is contended by the petitioner that a parallel can be drawn in respect of the agreement required to be entered with the tenant, as contemplated by section 55 and creation of service tenancy as contemplated by section 22(1) of the Act. As this Court has held in the reported matter, that contravention of provisions of section 22(1) of the Act leads to consequence of dismissal of a plaint under section 22(2) of the Act, a similar parallel can be drawn in respect of a claim raised in the instant matter for recovery of rent based on tenancy agreement, which, according to the defendant, is not in consonance with section 55(1) of the Act and as such, the suit shall have to be held as not maintainable.

9. The contention raised by the defendant cannot be accepted for the simple reason that sub-section (2) of section 22 itself provides that after creation of service tenancy under sub-section (1), if the tenant ceases to be in the service or employment of the said landlord, either by retirement, resignation, termination of service, death or for any other reason, the tenant or any other person residing with him or claiming under him failed to vacate such premises or any part thereof immediately, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Competent Authority shall, if it is satisfied, on an application made to it in this behalf by such landlord within thirty days, make an order that the tenant or any such person as aforesaid shall place the landlord in vacant possession of such premises or part thereof. It is, thus, clear that one of the

requirements for entertaining an application under sub-section (2) of section 22 is creation of a service tenancy under sub-section (1) of section 22. However, in contrast with provisions of section 22, section 55 of the Act does not provide for a similar consequence as laid down under sub-section (2) of section 22. The consequence of failure to register a tenancy agreement or reduce the same into writing, as provided in sub-section (3) of section 55 provides for punishment of imprisonment, which may extend to three months or with fine not exceeding Rs. 5000/- or both. As stated earlier, section 55 itself does not prohibit presentation of a plaint in the event of failure of securing the tenancy agreement, as contemplated by section 55(1) of the Act. The judgment in the case of *Shanta* (supra), relied upon by the petitioner, is not applicable to the facts of this case and no parallel can be drawn between section 22 and section 55 of the Act, so far as it relates to maintainability of a suit in the event of failure to record the tenancy agreement, as contemplated by section 55(1) of the Act.

10. This Court, in the matter of *Raj Prasanna Kondur vs. Arif Taher Khan and others,* reported in *2005(4) Bom.C.R. 383,* has held that the right of a landlord under section 24 to get a person evicted from the premises on expiry of license is not curtailed in any manner on account of absence of the agreement being in writing or registered, as contemplated by section 55 of the Act.

Section 55 of the Act nowhere provides for "any other consequence" for failure on the part of the landlord to get the agreement drawn in writing or getting the same registered, except those provided in sub-section (3) of section 55. In other words, on account of failure of the landlord to get the agreement registered, he cannot be precluded or prohibited from presenting a plaint in Civil Court seeking recovery of rent. The consequence of failure to record the agreement in writing and to get it registered, would put the tenant in an advantageous position at trial, as his contention as regards the terms and conditions of tenancy will have to be accepted, unless proved otherwise. Section 55 of the Act nowhere puts an embargo in respect of entertainability of any civil action by the landlord either for recovery of rent or for recovery of possession of the tenanted premises on account of his failure to secure an agreement of tenancy in the form, as contemplated by section 55(1) of the Act.

11. The contention raised by the petitioner – original defendant that on account of failure of the tenant to secure an agreement of tenancy in the form mandated by section 55(1) of the Act would necessarily lead to a consequence of invalidating civil remedies necessitating rejection of plaint, cannot be accepted. The trial Court was justified in rejecting the application tendered by the petitioner original defendant seeking rejection of the plaint, as contemplated under Order VII, Rule 11 of the Code of Civil Procedure.

12. In the result, Civil Revision Application stands dismissed. Rule discharged. No costs.

Revision dismissed.

2004 SCC OnLine Bom 1055 : (2005) 4 Bom CR 383

Bombay High Court
(BEFORE KHANDEPARKAR R.M.S., J.)

Raj Prasanna Kondur ... Petitioner;
Versus
Arif Taker Khan & others ... Respondents.

Writ Petition No. 3151 of 2004
Decided on December 23, 2004

The Judgment of the Court was delivered by

KHANDEPARKAR R.M.S., J.:— Heard the learned Advocates for the petitioner and the respondents. Perused the records. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order passed by the Additional Commissioner, Konkan Division, on 21st March, 2004 rejecting the revision application filed by the petitioner against the order dated 12th November, 2003 passed

by the competent authority at Mumbai rejecting the Application No. 19 of 2003 which was filed by the petitioner for setting aside the *ex parte* order of eviction of the petitioners from the suit premises. The respondent Nos. 1 and 2 are the owners of the suit premises situated at Park View, 129 Carter Road, Bandra (West), Mumbai. The suit premises were permitted to be occupied and used by the petitioner for residential purposes since 1st April, 2001 and the agreement in that regard was executed by the parties on 3rd April, 2001. The said agreement was for a period of 11 months with an option to the petitioner to extend the said agreement for three further periods of 11 months each, subject to the license fee being increased by the petitioner sifter the second period of 11 months, and further that the petitioner as well as the respondents/owners were to have the right to terminate the agreement by giving a three months notice to each other. The said agreement was lodged for registration by the respondents on 31st December, 2002, A notice dated 13th January, 2003 came to be served upon the petitioner by the respondents asking him to vacate the premises on 1st February, 2003 or within three months of the notice as the respondents did not wish to renew the agreement any further. Since the petitioner did not vacate the premises, the respondents filed an application before the competent authority under section 24 of the Maharashtra Rent Control Act, 1999, hereinafter called as “the said Act”, for eviction of the petitioner from the suit premises and the summons came to be issued to the petitioner in respect of the said proceedings in accordance with the provisions of section 43 of the said Act as well as by the registered post. However, the summons sent by the registered post was not collected by the petitioner though intimation in that regard by the postman was stated to have been given at the suit premises. The copy of the summon, however, was served on the servant of the petitioner on 5th May, 2003, As the petitioner failed to appear and to seek leave to defend in the matter within 30 days from the date of the service of the summons, the competent authority passed the order dated 15th July, 2003 for eviction of the petitioner from their suit premises. On 13th October, 2003, the petitioner filed an application before the competent authority for setting aside the said *ex parte* order.

After hearing the parties, the competent authority dismissed the said application by its order dated 12th November, 2003. The petitioner approached this Court with the Writ Petition No. 8767 of 2003, which was subsequently withdrawn by the petitioner to approach the revisional authority under the said Act. The petitioner thereupon filed the revision application before the revisional authority under the said Act which, after hearing the parties, was dismissed by the impugned order dated 21st March, 2004. Hence the present petition.

3. While challenging the impugned order, the learned Advocate for the petitioner has submitted that the authorities below ought to have considered that the entire proceedings before the authority were *ab initio* bad in law in the absence of valid and lawful agreement of leave and license between the parties, and therefore, the *ex parte* order passed therein was also bad in law and failure on the part of the petitioner to seek leave to defend the proceedings could not have validated the illegal proceeding and the order passed therein by the competent authority, and therefore, the authorities below ought to have allowed the application filed by the petitioner. Drawing attention to

section 24 read with section 55 of the said Act and further to the fact that the agreement in question was sought to be registered after 20 months of the execution of the agreement, it was contended that there was no valid registration of the agreement in terms of the provisions of Registration Act, 1908, and consequently, the agreement in question is not admissible in evidence, and therefore, no application under section 24 of the said Act based in such invalid and inadmissible agreement could have been entertained by the competent authority, and therefore, the entire proceedings ought to have been dismissed being devoid of cause of action. It was also sought to be contended that there was no proper service of the summons of the proceedings as there was no compliance of the provisions of section 43 of the said Act and being so, no fault could have been found with the petitioner approaching the competent authority on 13th October, 2003 for setting aside the *ex parte* order, subsequent to his arrival in the town after his business tour. Referring to section 55 of the said Act, it was sought to be argued that in the absence of registration of the agreement of leave and license, the contention of the licensee about the terms and conditions subject to which the premises were allowed to be occupied would prevail in any proceeding under section 24 of the said Act, and therefore the authority below could not have given any credence to the contention of the respondents in relation to the terms and conditions of the leave and license agreement, once it was apparent that the agreement was not registered in accordance with the provisions of law, and therefore inadmissible and hence could not have been looked into. Reliance is sought to be placed in the decisions of the Punjab High Court in the matter of (*Ram Singh Sant Ram* v. *Jasmer Singh Hardit Singh*)[1], reported in A.I.R. 1963 Punjab 100, of the Patna High Court in (*Smt. Dil Kuer* v. *Hart Chandar Prasad*)[2], reported in A.I.R. 1976 Patna 193, as also of the Apex Court in the matter of (*Achutananda Baidya* v. *Prafullya Kumar Gayen*)[3], reported in (1997) 5 SCC 76.

4. The learned Advocate appearing for the respondents, on the other hand, drawing attention to the decision of the Apex Court in (*Prakash H. Jain* v. *Marie Fernandes Ms.*)[4], reported in 2004 (2) Bom. C.R. (S.C.) 592 : (2003) 8 SCC 431 submitted that *quasi judicial* authorities created under the statute have to function within the parameters of the powers given to them and in the manner stipulated in such statute, and

considering the same no fault can be found with the impugned orders passed by the authorities below. Drawing attention to the fact of service of summons upon the servant of the petitioner and failure on the part of the petitioner to seek leave to defend the proceedings within 30 days as was otherwise required in terms of the provisions of section 24 of the said Act, the learned Advocate for the respondents submitted that the petitioner could not have been heard in defence by the competent authority without prior leave being obtained. Being so, the competent authority had no option than to reject the application for setting aside the *ex parte* order, and for the same reason, there is no jurisdictional error on the part of the revisional authority in passing the impugned orders.

5. As already seen above, it is undisputed fact that the parties had executed the written agreement dated 3rd April, 2001 permitting the petitioner to occupy and used the suit premises on leave and license basis. The said agreement was not registered with eight months but it was lodged for registration

by the respondents on 31st December, 2002. The petitioner did not appear before the registering authority to admit the execution of the agreement. Undisputedly, a notice dated 13th January, 2003 was served upon the petitioner to vacate the premises latest within a period of three months and the said notice was duly received by the petitioner. Even though the summons in relation to the proceedings under section 24 of the said Act were served upon the servant who was in occupation of the suit premises on 5th May, 2003, and the intimation regarding the summons through R.P.A.D. was given to his by the postman on 8th May, 2003, no steps were taken by the petitioner to seek leave to defend the proceedings by approaching the competent authority, within a period of one month from the date of the service of the summons and consequently the order of eviction of the petitioner from the suit premises came to be passed on 15th July, 2003.

6. Section 24 of the said Act entitles the landlord to seek recovery of possession of the premises on the expiry of license period for which the premises were permitted to be occupied by the licensee. Sub-section (1) thereof provides that notwithstanding anything contained in the said Act, a licensee in possession or occupation of the premises given to him on licensee for residence shall deliver possession of such premises to the landlord on expiry of period of license, and on failure of the licensee to deliver the possession of the premises, the landlord would be entitled to recover possession of such premises given on license, on the expiry of the period of license by making an application to the competent authority and the competent authority on being satisfied that the period of license has expired, could pass an order for eviction of the licensee. Sub-section (3) provides that the competent authority shall not entertain any claim of whatsoever nature from any other person who is not a licensee according to the agreement of license. Sub-clause (b) of the Explanation clause to section 24 of the said Act provides that the agreement for license in writing shall be conclusive evidence of the facts stated therein.

7. Section 24 of the said Act obviously entitles the landlord to seek eviction of the licensee on expiry of the period of license. The said provision merely relates to the right of the landlord to get back the possession of the premises from the person whose license to occupy the premises granted to him has come to an end, either on account of expiry of the period of license or termination thereof. The provision of law comprised under section 24 of the said Act by itself nowhere deals with the manner in which the license was required to be granted nor it prescribes any form or methodology for grant

of license by the landlord. The said provision nowhere provides that the license has necessarily to be either in writing or that the agreement in that regard has necessarily to be a registered one. Being so, plain reading of section 24, therefore, would reveal that moment the license granted to a party to occupy the premises has come to an end, the right of the landlord to get such person evicted from the premises arises and the competent authority thereupon is empowered to pass an order of eviction in case it is satisfied that the period of license has expired. The section nowhere imposes any embargo over such right of the landlord on account of the agreement of license being not registered or even on account of such agreement being not in writing.

8. The term “License” has not been defined under the said Act. However, the term “Licensee” has been defined under section 7(5) of the said Act. It

provides that the licensee in respect of any premises or any part thereof to mean a person who is in occupation of the premises or any such part thereof, as the case may be, under a subsisting agreement for licence given for a license fee or charge. It obviously discloses that moment a person enters into an agreement with another to occupy the premises under the control of another for a license fee or charge, it will constitute an agreement for license to occupy such premises. The definition of the term “Licensee” nowhere discloses the requirement of such agreement to be either in writing or that the same needs to be registered. Nonetheless, section 55 of the said Act speaks of the requirement of registration of such agreement. What would be the effect of the provision regarding requirement of registration on the right of the landlord to seek eviction of the person whose license has come to an end or has been terminated by seeking relief under section 24 and whether the competent authority is empowered to entertain such grievance from the landlord in the absence of registration of the agreement is the question for consideration.

9. Section 55 of the said Act deals with the subject of requirement of registration of the agreement executed between the landlord and the licensee. Sub-section (1) thereof provides that notwithstanding anything contained in the said Act, any other law for the time being in force, any agreement for leave and license or letting of any premises, entered into between the landlord and the licensee, after the commencement of the said Act, shall be in writing and shall be registered under the Registered Act, 1908. The said Act received the assent from the President of India on 10th March, 2000 and the notification regarding enforcement of the said Act was published in the Government *Gazette* on 10th March, 2000 declaring the enforcement of the said Act from the said date. Sub-section (2) of section 55 provides that the responsibility of getting such agreement registered shall be upon the landlord and in the absence of the registered written agreement, the contention of the licensee about the terms and conditions subject to which a premises have been given to him by the landlord on leave and license or have been let to him, shall prevail, unless proved otherwise. Sub-section (3) provides that any landlord who contravenes the provisions of the said section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding Rs. 5,000/- or with both.

10. Evidently, any agreement relating to the leave and license entered into between the landlord and the licensee on or after 10th March, 2000 is required to be in writing and further is to be registered under the provisions of law comprised under the Registration Act, 1908. The responsibility to get the agreement registered rests upon the landlord. In case the parties fail to register the agreement, there is a presumption in favour of the contention of the licensee in relation to the terms and conditions of the

license, albeit it being a presumption, the same is rebuttable. However, contravention of the provision, *i.e.* failure on the part of the landlord to get the agreement registered, may invite prosecution which may result in punishment to the landlord in the form of fine of Rs. 5,000/- or imprisonment to the extent of a period of three months or both.

11. Plain reading of section 55(1) would disclose that since enforcement of the said Act, if any premises are allowed to be occupied on leave and license basis, then the agreement in respect of such license has necessarily to be

drawn in writing and it should be registered under the Registration Act, 1908. Sub-section (2) of section 55 clarifies that it would be the responsibility of the landlord to get such agreement registered. Two consequences are enumerated under sub-sections (2) and (3) of section 55, in case of failure to comply with the obligation of the landlord to register such agreement. Under sub-section (2), in the absence of registration of such agreement, the contention of the licensee regarding terms and conditions of the license would prevail unless proved otherwise. In other words, the contention regarding the terms and conditions by the licensee will have a presumptive value. Secondly, in terms of sub-section (3) of section 55 of the said Act, the landlord will warrant penalty of punishment to the extent of three months imprisonment or fine not exceeding Rs. 5,000/- or both. The said Act nowhere provides for any other consequences for failure on the part of the landlord to get the agreement drawn in writing or being registered. In other words, the said Act specifically provides only for two consequences on account of failure on the part of the landlord to get the agreement registered, as is otherwise required to be done under sub-section (2) of section 55 of the said Act. The said failure on the part of the landlord to get the agreement registered, however, does not result in denying other rights assured to the landlord under the said Act. Obviously, therefore, the right of the landlord under section 24 of the said Act to get the person evicted from the premises of expiry of the license is not curtailed in any manner on account of absence of the agreement being in writing or registered.

12. It is also to be noted that the Explanation Clause (b) to section 24 of the said Act specifically provides that “an agreement of license in writing shall be conclusive evidence of the fact stated therein.” This is in relation to the evidentiary value of the written agreement of licence. It nowhere prescribes that such an agreement is necessarily to be a registered one. Undoubtedly, the conclusiveness spoken of under the said clause is in relation to the facts stated in the written agreement, irrespective of the fact that the agreement is registered or not.

13. The said Clause (b) in the Explanation to section 24 may, at first glance, appears to be contrary to the provisions under section 55 of the said Act, since sub-section (1) of section 55 requires an agreement to be in writing, besides its registration being mandatory, and sub-section (2) thereof provides that in the absence of written registered agreement, the contention of the licensee regarding terms and conditions of the agreement would prevail, unless proved otherwise. It is to be noted that the presumptive value attached to the contention of the licensee in relation to the terms and conditions of the license is for the eventuality of “absence of written registered agreement”, whereas, the conclusive evidence spoken of under Clause (b) in the Explanation to section 24 relates to “facts” stated in the written agreement. Harmonious reading of section 55(1) and (2) along with the said Clause (b) in the Explanation to section 24 of the said Act would reveal that though it is mandatory for

the landlord to get the agreement of leave and license recorded in writing and registered under the Registration Act, 1908, failure in that regard would warrant consequences as stipulated under section 55 of the said Act, however, once the matter reaches the stage of evidence, and if there is an agreement in writing, though not registered, even then the facts stated in

such agreement could be deemed to be conclusively established on the basis of such written agreement itself and there would be no other evidence admissible in that regard. On the other hand, the provisions of section 55(2) and 55(3) of the said Act relate to the consequences of failure on the part of the landlord to comply with the requirement of registration of the agreement. In other words though, in terms of sub-section (2) of section 55 of the said Act, there will be presumptive value to the contentions of the licensee in respect of the terms and conditions of the agreement in the absence of the registered written agreement, nevertheless, once the agreement is in writing and even though it is not registered, the same, as regards the facts stated therein, would be deemed to have been proved conclusively on production of the agreement itself, and in which case, any presumption arising in relation to the terms and conditions of the license contrary to the facts stated in such agreement would stand rebutted.

14. The Contention of the learned Advocate for the petitioner that the absence of registered written agreement would render of license to be invalid and therefore, it would result in the absence of jurisdictional fact to enable the competent authority to entertain the application under section 24 of the said Act, cannot be accepted. The jurisdictional fact which is required for the competent authority to entertain the application for eviction under section 24 of the said Act is the expiry of license for residence in favour of the person occupying the premises and moment the same is disclosed based on whatever material placed before the competent authority, it will empower the competent authority to take cognizance of such application and to proceed to deal with the matter. Absence of registration or even the agreement being not in writing, that would not render the license to be invalid. Undoubtedly, expiry of licence presupposes existence of license prior to its expiry. However, the existence of licence does not depend upon its record in writing or registration thereof. It depends upon the availability of permission by the landlord to another person to use the landlord's premises for consideration and moment those factors are established, the person using the premises would be the licencee within the meaning of the said expression under the said Act. Obviously, the written record in relation to the agreement of licence would be the conclusive proof about the terms of licence and in case of registration of such agreement would help the landlord to avoid the consequences stipulated under section 55(2) and (3) of the said Act. This is apparent from the definition of the term “Licensee” under section 7(5) of the said Act which nowhere requires the license granted to occupy the premises for license fee or charge to be necessarily in writing or the agreement to have been registered. If the contention of the learned Advocate for the petitioner is accepted, the provisions of sub-section (2) of section 55 of the said Act as well as the Clause (b) to the Explanation of section 24 would be rendered otiose. No provision of law can be interpreted to nullify the affect thereof or to render the provision to be nugatory.

15. Undoubtedly, as submitted by the learned Advocate for the petitioner, the Item No. 6 of the Concurrent List of the Seventh Schedule of the Constitution of India deals with the subject of transfer of property other than the agricultural lands, registration

deeds and documents. Apparently, the subject of the registration of the documents falls in the Concurrent List, and the

State as well as the Central Government are empowered to enact the statutes in respect of the said subject. However, merely referring to the said item in the concurrent list, it is difficult to accept the contention on behalf of the petitioner that though the section 17 of the Registration Act, 1908 does not enumerate the agreement for leave and license being one of the documents which is compulsorily required to be registered, by virtue of the provisions comprised under section 55(1) of the said Act, the said document would stand included in or appended to the list of documents provided under section 17 of the Registration Act, 1908. The contention that the provisions regarding compulsory requirement of registration of the leave and license agreement found in section 55(1) of the said Act will have to be read along with the list of compulsorily registerable documents under section 17 of the Registration Act, 1908 cannot be accepted. In fact, while providing for the consequences of failure on the part of the landlord to get such agreement registered, the provisions of law in the said Act nowhere exclude unregistered agreement of leave and license to be inadmissible in evidence. On the contrary, the said agreement has been made specifically admissible under Clause (b) of the Explanation to section 24 of the said Act which is not in consonance with the provision of law comprised under section 49 of the Registration Act, 1908. If it was the intention of the legislature that the provision regarding the requirement of registration of leave and license agreement has to be read along with section 17 of the Registration Act, 1908, nothing would have prevented the legislature to introduce amendment to section 17 itself or at least to make such agreement inadmissible in the evidence rather than specifically providing for admissibility of such document in evidence as being a conclusive proof of the facts stated therein irrespective of the fact that the agreement is not registered. This fact clearly reveals that the provisions comprised under section 55(1) of the said Act cannot be read with the provisions of section 17 of the Registration Act, 1908, and for the same reason, the provisions of section 49 of the Registration Act, 1908 would not be attracted in relation to the agreement for leave and license.

16. It is also argued that the procedure provided under section 24 are of summary nature. There is no appeal provided against the order to be passed in such proceedings. The orders passed by the competent authority under section 24 are not appealable in view of the provisions in that regard under section 44(1), However, they are revisable under sub-section (2) of section 44 provided that the application in that regard has to be presented within 90 days of the date of order sought to be revised. The jurisdiction of the Civil Court to deal with such matters is barred under section 47. Any order passed under section 24 in favour of the landlord would result in dispossession of the person in occupation of the premises. Being so, the provisions are to be liberally construed bearing in mind the drastic effect thereof. The contention is devoid of substance. The competent authority created under the said Act to order eviction of the licensee on the expiry of the period of license in terms of section 24 does not speak of eviction of a person in occupation of the premises otherwise than as the licensee and whose license has expired or terminated. Mere absence of the appeal remedy is of no consequences. The appellate remedy is a statutory remedy. There is no inherent right in a litigant to prefer appeal against the order of every Court or *quasi judicial* authority of original

jurisdiction. Besides, under the guise of interpretation, it does not permit interpolation or addition or substitution of the words in or to or from the statutory provision. If the contention of the petitioner is accepted, one will have to read the expression "written and registered" in section 24 in relation to the agreement of license, which will virtually amount to violence to the said statutory provision. Besides, the law on the point as laid down by the Apex Court in *Prakash Jain's case* (supra) does not prevent any such interpretation to the provisions of law comprised under the said Act.

17. Undisputedly, the alleged license in favour of the petitioner was granted since 1st April, 2001 *i.e.* much after the enactment of the said Act. Undisputedly, the agreement in that regard was executed in writing on 3rd April, 2001. In other words, the first requirement of section 55(1) was duly complied with by the parties. It is also undisputed fact that agreement was lodged for registration 31st December, 2002. In terms of section 23 of Registration Act, a document is required to be presented for registration within four months from the date of its execution and in case of unavoidable circumstances, with the leave of the Registrar, it can be presented within the period of four months immediately after expiry of the initial period of four months. Obviously, a document required to be registered has to be presented for registration maximum within a period of eight months from the date of its execution. If the document is not so presented for registration, obviously, consequences provided under section 49 of the Registration Act, 1908 would follow. In the case in hand, undisputedly, the agreement was not presented within eight months. The document was executed on 3rd April, 2001. It was presented for registration on 31st December, 2002, nearly after 20 months after its execution. Being so, the document could not have been registered. However, as already observed above, non-registration of the agreement will not affect the right of the landlord to seek eviction of the licensee on the expiry of the license period nor the delay in presentation the agreement for registration will come in the way of the competent authority in taking cognizance of the application of the landlord on expiry of the licensee to the person in occupation of the premises of the landlord.

18. Next point relates to irregularity of service of summons. Section 43(2) requires the competent authority to issue summons in the prescribed format as specified in Schedule III. Sub-section (3)(a) of section 43 provides that the competent authority shall, in addition to, and simultaneously with the issue of summons for service on the licensee also direct the summons to be served by registered post, acknowledgment due, addressed to the licensee or agent empowered by such licensee to accept the service at the place where the licensee or such agent actually and voluntarily resides or carries on business or personally works for gain. Sub-section (3)(b) of section 43 provides that when an acknowledgment purporting to be signed by the licensee or their agent received by the competent authority or the registered article containing summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the licensee or his agent had refused to take delivery of the registered article, the competent authority may proceed to here and decide the application as if there has been a valid service of summons.

19. Clause (a) of sub-section (4) of section 43 of the said Act provides that the licensee on whom the summons is duly served in the ordinary way or by

registered post in the manner laid down in sub-section (3) of section 43, shall not contest the prayer for eviction for the premises unless, within 30 days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to context the application for evidence and obtains leave from the competent authority in the manner provided in the said Act, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the licensee, and the applicant shall be entitled to an order for eviction on the ground aforesaid. The Apex Court in *Prakash Jain's case* (supra) has clearly ruled that:—

> "Clause (a) of sub-section (4) of section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filling, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the competent authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filling an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction of the ground so stated by him in his application for eviction."

20. Certainly it is not the case of the petitioner that the servant who had accepted the summons had no authority to accept the summons on behalf of the petitioner. Besides, it is a matter of record that the notice was sent at the correct address by registered post. There was therefore a presumption available under section 27 of the General Clauses Act, 1897, about due service of summons. In (*David K.N.* v. *S.R. Chaubey (Chaturuedi)*)[5], reported in 2003 (4) Bom. C.R. 612, after taking note of various decisions, it was clearly held that "where the provision of law speaks only of sending of letter by registered post or tendering or delivering the notice personally to the party, one will have to conclude that the moment a letter is sent by registered post disclosing correct address of the addresses, on return of such letter to the sender, apparently disclosing postal notings of refusal or unclaimed by the addressee, presumption under section 28 of the Bombay General Clauses Act would inevitably arise in relation to the service of such notice upon the addressee." Undisputedly, the postal remark disclosed the intimation of the letter and failure to claim the same. Being so, no fault can be found with the order passed by the competent authority. Even otherwise, once the license had expired, there is hardly any case for the petitioner to contend that the competent authority had no jurisdiction to entertain the application.

21. Once the factum of expiry of license is established, the competent authority, being satisfied about the same, is left with no alternate than to order the eviction of the person whose licence to occupy the premises has come to an end, and the same is clear from the ruling of the Apex Court in *Prakash Jain's case* (supra) wherein in view of section 43(4)(a) of the Act, it was held that "the net result of an application/affidavit with grounds of defence and leave to contest not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the competent authority to proceed further to enquire into the merits of the defence, the competent

authority is obliged, under the constraining influence of the compulsion statutorily cast upon it to pass orders of eviction in the manner envisaged in Clause (a) of sub-section (4) of section 43 of the Act".

22. The decision of Division Bench of the Punjab High Court in *Ram Singh Sant Ram case* (supra), was regarding the time factor within which a document can be registered under the Registration Act. The Patna High Court in *Smt. Oil Kuer* v. *Hari Chander Prasad*, reported in A.I.R. 1976 Patna 193, referring to section 3 of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, held that the said provision of law would prevail over other laws notwithstanding anything to the contrary contained therein. It is held that "according to Article 254(2) of the Constitution of India, the law made by the State legislature making Wills compulsorily registrable, although the same are exempted under the Registration Act, must prevail over the Central Act, inasmuch as the subject "Registration" falls under the concurrent list and the Ceiling Act has received the assent of the President of India". Undoubtedly, the said Act obtained the consent of the President of India on 31st March, 2000 and the notification in that regard was published in the Government Gazette on the same day. The decision in *Hari Chander Prasad's case* (supra) therefore rather than assisting the petitioner justifies the rejection of argument sought to be canvassed on behalf of the petitioner since the provisions section 24 Explanation (b) of the said Act would prevail over the provisions of section 49 of the Registration Act, 1908 and though under section 49, the un-registered agreement of leave and license would not be admissible in evidence, yet the same would not only be admissible in evidence *vide* section 24 Explanation (b) of the said Act, but would be conclusive evidence of the facts stated therein. It is not necessary to refer to the decision of the Supreme Court in *Achutananda Baidya's case* (supra). The said case is on the well settled law relating to the scope of powers of the High Court in the proceedings under Article 227 of the Constitution of India. It has been held that it is open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate Court comes to a conclusion without any evidence or upon manifest misreading of the evidence thereby indulging improper exercise of jurisdiction or if its conclusions are perverse.

23. The fall out of the above discussion is that there is no substance in the challenge by the petitioner to the impugned orders and the petition is devoid of substance and therefore fails and is dismissed. Rule is discharged with no order as to costs.

24. Petition dismissed.

maintainable. Reliance has been placed upon its earlier judgment reported at *AIR. 1982 SC page 1397* between *Rani Choudhuri vs. Surajjit Chondhary.* Relying upon this judgment at *AIR 1982 SC page 1397*, Division Bench of this Court in *Chandu J. Ambekar vs. Digamber Kisanrao Kulkarni* has held that an appeal presented out of time is an appeal and order dismissing it as time barred is one passed in the appeal. In view of this position, if proviso to sub-section (1) does not permit filing of appeal, there is no question of moving application for condonation of delay in filing it. If proviso to sub-section (1) is given its full meaning, the sweep of non obstante clause in sub-section (3) is diluted because it cannot in that event govern proviso to sub-section (2). If said non obstante clause is given full effect, sweep of last part of proviso to sub-section (1) is curtailed. However, from discussion above it is apparent that in that contingency a lacuna to the disadvantage of the employees for whose benefit section 59 has been enacted, is created. In the circumstances of case, such an intention cannot be attributed to the legislature and hence, interpretation which advances the purpose of section 59 will have to be accepted.

13. The petitioner has not challenged the justness or sufficiency of reasons accepted by said Tribunal while condoning the delay. Hence, said issue is not required to be gone into in present petition.

14. No case is made out for interfering with the order of Tribunal. The writ petition therefore fails and is dismissed accordingly however without any order as to costs.

Petition dismissed.

MAHARASHTRA RENT CONTROL ACT, SECTION 22

(R. M. S. Khandeparkar, J.)

SHANTA TUKARAM KASARE *Petitioner.*

vs.

FATHER MILTON GONSALVES and others *Respondents.*

(a) Maharashtra Rent Control Act, 1999 (18 of 2000), SS. 22, 16 and 55(1) — *Eviction of service tenant sought by landlord in application under section 22 — Applicant did not disclose the basic ingredient of section 22 which would enable the Competent Authority to take cognizance of the proceedings — There was no written agreement between parties in relation to the premises in question — Occupation of tenant was not by virtue of terms of service conditions — The primary requirement of section 22(1) of the Act was not satisfied to enable the Competent Authority to take cognizance of the plaint — Proceedings before the Competent Authority are ab initio bad and void in law.* (Paras 10 and 11)

(b) Maharashtra Rent Control Act, 1999 (18 of 2000), S. 22 — *Point relating to jurisdiction of Competent Authority to entertain application for eviction — Mere absence on part of tenant to raise the point in that regard will not disentitle him to raise the issue in writ jurisdiction nor it would legalise an act which is ab initio illegal on the part of the Competent Authority in taking cognizance.* (Para 12)

For petitioner : *S. S. H. Murthy*

For respondent No. 1 : *A. Y. Sakhare* with *P. M. Havnur*

W. P. No. 787 of 2004 decided on 18-10-2004. (Bombay)

ORAL JUDGMENT :— Heard the learned advocates for the parties. Perused the records.

2. Rule. By consent, rule is made returnable forthwith.

3. The petitioner challenges the proceedings initiated by the respondent for eviction of the petitioner from the suit premises under section 22 of the Maharashtra Rent Control Act, 1999 ("the said Act" for short) as well as the orders passed by the Competent Authority dated 3rd March, 1999 and by the Revisional Authority on 31st May, 2003 on three grounds. The challenge is three-fold. Firstly, that the Competent Authority had no jurisdiction to entertain the proceedings in the absence of written agreement in relation to the alleged tenancy between the parties. Secondly, the application did not disclose the rent amount, if any, agreed between the parties payable for occupation of the premises and, in the absence of the basic ingredient of the lease agreement between the parties, there was no jurisdictional fact in existence which could enable the Competent Authority to take cognisance of the complaint, and, thirdly, that the original application discloses that the petitioner had retired from the services of the respondent on 31st December, 1996 and the application was filed on 29th May, 2002, i.e. much beyond the period of limitation prescribed for filing such application under section 22(2) of the said Act and there was neither prayer for condonation of delay nor the facts justifying the condonation of delay were disclosed in the application, and in those circumstances the respondent could not have been allowed to amend the plaint after service of summons to the petitioner in relation to the original plaint and there being no notice served upon the petitioner about the proposed amendment to the plaint.

4. As regards the first ground of challenge, the learned advocate for the petitioner has stated that in order to enable the Competent Authority to assume the jurisdiction to entertain the application under section 22 of the said Act, it is necessary that tenancy in favour of the occupant of the premises has to be created by the landlord under an agreement in writing and in the absence of such agreement in writing, there could be no occasion for the Competent Authority to entertain the application for eviction under the said provision of law. Drawing attention to section 16(f) of the said Act, it was submitted that in the absence of such agreement, the landlord is not without remedy of eviction of such service tenant as the said provision comprised under section 16 empowers the landlord to seek eviction of the service tenant, who was in service or employment of the landlord had ceased to be in service or employment of the landlord either before or after commencement of the said Act. Referring to the pleadings in the plaint, it was argued on behalf of the petitioner that the said pleadings apparently disclose absence of any such agreement in writing as well as even the oral agreement.

5. The learned advocate for the respondent, on the other hand, submitted that in case of service-tenants, there may not be any specific agreement in writing and it may form part of the service conditions and, therefore, unless the party seeking to raise objection in that regard appears before the Competent Authority and raises an issue in that regard, there could be no occasion for the applicant landlord to establish his or her case about the existence of such agreement between the parties. Since the petitioner in the case in hand did not bother to appear before the Competent Authority and to seek leave to defend in the matter,

there was no occasion for the respondent to establish the case as regards the agreement in writing between the parties and such a point cannot be allowed to be raised for the first time in writ jurisdiction.

6. Section 22(1) of the said Act provides that where any landlord intends to let out any premises or any part thereof belonging to him, to his employee, such landlord and the employee may enter into an agreement in writing to create a service tenancy in respect of such premises or any part thereof; and, notwithstanding anything contained in the said Act, the tenancy so created shall remain in force during the period of service or employment of the tenant with the landlord. Undoubtedly, therefore, the pre-requisite of section 22(1) is the existence of agreement in writing creating service tenancy in favour of the tenant by the landlord who is the employer of the tenant. In other words, the existence of agreement in writing between the applicant-landlord and the opponent-tenant is a must being a jurisdictional fact which would empower the Competent Authority to entertain an application for eviction of such tenant under sub-section (2) of section 22 of the said Act. When the matter relates to the jurisdictional fact, which would empower the statutory or quasi-judicial authority to assume the jurisdiction to deal with the dispute sought to be raised before it, such a jurisdictional fact must be disclosed from the pleadings placed before such authority by the party approaching such authority. It would not depend upon what defence the respondent would or could take in the matter, but it would essentially depend upon the case pleaded by the party approaching such authority for the relief under sub-section (2) of section 22 of the said Act. No amount of failure on the part of the respondent to raise such an issue would give jurisdiction to the authority if the authority does not enjoy such jurisdiction under the statute under which it is created. It is well settled that the statutory or quasi-judicial authority created under special statutes have to exercise their function under the relevant statute within the scope and limitation prescribed under the statute under which they are created and for the purpose they are required to act, and in accordance with the provisions of such statute which prescribes the limitation for the scope of their power, and they have to act within the prescribed parameters accordingly. Being so, it is necessary for the applicant itself to disclose the fact about the existence of the written agreement between the parties when the applicant approaches the Competent Authority for the relief under section 22(2) of the said Act against the service-tenant on the ground that the tenant has ceased to be in the employment of the landlord.

7. It is also to be noted that such agreement is required to be registered in terms of the provisions comprised under section 55(1) of the said Act which provides that notwithstanding anything contained in the said Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of the said Act, shall be in writing and shall be registered under the Registration Act, 1908. Undoubtedly, the registration is expected in relation to the agreement between the parties after the enforcement of the said Act. However, section 22(1) by itself does not make any differentiation between the agreement which is registered or not. Nevertheless,

the said provision specifically refers to the requirement of such agreement to be in writing.

8. Perusal of the pleadings in the plaint filed by the respondent before the Competent Authority discloses that the respondent was permitted to stay on the plot of land and was further permitted to construct a structure and to occupy the same. The pleadings in that regard are to be found in para 3 of the plaint. Para 4 speaks about the permission having been continued for occupation of the premises by the petitioner from time to time since 1970 onwards. Para 11 makes a categorical statement about the absence of any agreement being entered into between the parties. It reads thus :—

> "No agreement was entered into by and between the applicant and the respondent for payment of any rent/compensation to the applicant."

Apart from this statement, there is no other statement in the application regarding any agreement in writing having been entered into between the parties at any point of time in relation to the suit premises. Undoubtedly, therefore, the primary requirement of section 22(1) of the said Act was not satisfied to enable the Competent Authority to take cognisance of the plaint under the said provision of the Act and to proceed against the petitioner for eviction from the suit premises in terms of the provisions of section 22 of the said Act.

9. It is however contended on behalf of the respondent that since the tenancy had commenced much prior to the enforcement of the said Act, there was no occasion for the agreement being entered into in writing, nevertheless from time to time the respondent used to execute the written note in relation to her occupation of the premises in question. Undoubtedly, there appears to be some statements under the thumb impression of the applicant, copies of which have been placed on record at pages 33 to 46 of the petition and they relate to different years. One of such statements reads to the following effect:—

> "I, the undersigned SHANTA KASARA agree and state that I am living in the school compound with my husband and three children only till such time as the Principal of St. Elias has no objection and that I shall leave within a day if he so wishes."

In fact, the pleadings to that effect are also to be found in para 4 of the plaint. However, the said statement, by no stretch of imagination, can be construed as an agreement of lease between the parties. In order to construe the relationship between the parties to be that of landlord and tenant, certainly the agreement must disclose a consideration for occupation of the premises by the tenant. It was sought to be contended by the respondent that in service tenancy, there is no need to fix any rent as such for the premises. Undoubtedly, there may not be specific quantum of rent to be paid by the service tenant to the employer landlord. However, in that regard, it would be necessary for the landlord to disclose the said fact in the plaint and approach the authority with necessary pleadings and supporting materials in that regard. Certainly quantum of rent may not be disclosed. Some consideration will have to be revealed from the record and it would be necessary for the landlord to plead the said fact in the plaint and produce necessary material in support of such pleading. It is nowhere the case of the respondent that the respondent was having any such terms and conditions attached to her service with the respondent. Besides, admittedly the petitioner

had retired from the service of the respondent with effect from 31st December, 1996 and yet she continued to occupy the premises and such occupation was with the consent of the respondent. Apparently, such an occupation cannot be said to be by virtue of the terms of the service conditions nor that has been the case of the respondent in the plaint.

10. For the reasons stated above, it is apparent that the plaint does not disclose the basic ingredient of section 22 which would enable the Competent Authority to take cognisance of the proceedings under section 22 and on that count itself, the entire proceedings before the Competent Authority are to be held to be ab initio bad and void in law.

11. Once it is apparent that the Competent Authority had no jurisdiction to entertain the application on the face of it, it is not necessary to deal with the other points sought to be raised by the petitioner in the matter.

12. Before parting with the matter, it is necessary to deal with the objection sought to be raised by the respondent in relation to the failure on the part of the petitioner to appear before the Competent Authority to raise the plea regarding absence of jurisdiction in the Competent Authority to entertain the application. As already observed above, since such point relates to the jurisdiction of the Competent Authority to entertain the application itself, it goes to the root of the matter and it is purely a question of law to be decided on the face of the pleadings in the plaint and, therefore, the mere absence on the part of the petitioner to appear before the Competent Authority to raise the point in that regard will not disentitle the petitioner to raise such issue in writ jurisdiction nor it would legalise an act which is ab initio illegal on the part of the Competent Authority in taking cognisance of the plaint filed by the respondent.

13. It was also sought to be contended on behalf of the petitioner that in view of the entire exercise being illegal, the petitioner is entitled for restoration of the premises or at least restoration of the open area which was admittedly allowed to be occupied by the petitioner as the structure in occupation of the petitioner has already been demolished subsequent to the order of the Competent Authority. Undoubtedly, the demolition has been carried out consequent to the order passed by the Competent Authority and at that time there was no stay against the execution of such order. It is also revealed from the record, that the petitioner had approached the Bombay City Civil Court against the action proposed by the Municipal Corporation for demolition of the structure on the ground that the same was illegal. It is sought to be contended on behalf of the petitioner that the suit has been dismissed on account of structure having been demolished while is sought to be submitted on behalf of the respondent that the suit was dismissed for default. Indeed the order which is placed before the Court discloses that the suit has been dismissed for default. In any case, the suit having been dismissed and admittedly no steps having been taken by the petitioner either for restoration of the suit or for filing a fresh suit for restoration of the premises, the question of issuing direction in the writ jurisdiction to the respondent to restore the suit premises or to deliver the possession of the premises, which were allowed to be occupied by the respondent, does not arise. The remedy for the petitioner in that regard lies somewhere else. It will not be proper for this Court in writ jurisdiction to issue any such direction as there are bound to be disputed

questions of fact and admittedly there were proceedings sought to be initiated by the Municipal Corporation on the ground that the structure was illegal. In case the petitioner seeks necessary redress in that regard, the observations made herein for disposal of the petition in relation to the alleged structure and the plot shall not come in the way of the Court or the authority before whom the parties may appear and all the contentions in that regard by both the parties shall have to be decided in accordance with the provisions of law.

14. In the circumstances, therefore, the petition partly succeeds. The impugned orders passed by the Competent Authority and the Revisional Authority are hereby held to be ab initio bad in law as the Competent Authority had no jurisdiction to entertain the proceedings which were sought to be initiated in the matter in hand by the respondent. Rule is made absolute accordingly with no order as to costs.

15. Authenticated copy of this order be made available to the parties.

Petition partly allowed.

CIVIL PROCEDURE CODE, ORDER 37, RULE 3

(B. P. Dharmadhikari, J.)

PUSHPA D. SOOD *Petitioner.*

vs.

BOBCARDS LTD. *Respondent.*

Civil Procedure Code, O. 37, R. 3(5) and (6) — *Order granting leave to defend must show appreciation of material by the trial Court while recording a conclusion that a triable issue is raised by the defendant.*

An order granting leave to defend must show appreciation of material by the trial Court while recording a conclusion that a triable issue is raised by the defendant. The defendant has to move application disclosing such facts as are sufficient to enable the trial Court to gather that the defendant has a substantial defence to raise and the said defence is neither frivolous nor vexatious. AIR 1977 SC 577 and (2002) 4 SCC 736, Rel. (Paras 4 and 5)

For petitioner : *S. A. Bari*

For respondent : *R. Issac*

List of cases referred :

1. *State Bank of Saurashtra vs. M/s. Ashit Shipping Services Pvt. Ltd., (2002) 4 SCC 736 = 2002 supremecourtonline.com case No. 225* (Para 3)
2. *AIR 1977 SC page 577* (Para 3)
3. *Central Bank of India vs. Manipur Vasant Kini, 2000 (1) Mh.L.J. 744* (Para 3)
4. *Bombay Enamel Works vs. Purshottam S. Somaiya, 1974 Mh.L.J. 947 = AIR 1975 Bombay 128* (Para 3)
5. *Leela Capital and Finance Ltd vs. Modiluft Ltd., 2001 (1) Mh.L.J. 534* (Para 3)
6. *Mechelec Engineers and Manufacturers vs. Basic Equipment Corporation, AIR 1977 SC 577* (Para 4)

ORAL JUDGMENT :— In this writ petition under Article 227 of Constitution of India the petitioner/original defendant in summary suit

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W. P. No. 4548 of 2004 decided on 13-1-2005. (Nagpur)