

ANANDRAM CHANDANMAL MUNOT AND ANR.

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v.

BANSILAL CHUNILAL KABRA (SINCE DECEASED)
THROUGH LRS AND ORS.

NOVEMBER 19, 1999

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[M. JAGANNADHA RAO AND D.P. WADHWA, JJ.]

Rent Control & Eviction:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947: Sections 5 (11), 12, 13 (I)(f) and 14—Premises let out by appellants—Tenant sublet the premises in 1972-73—Suit for eviction dismissed by the trial court—On appeal, eviction orders against tenant passed on the ground of default in payment of rent—Petition filed by the appellants in the High Court dismissed—Tenancy of the tenant held to be determined from the date of decision of the Appellate Court instead of the date of issuance of notice by the appellants—Sub-tenancy held to be lawful—On appeal—Held, sub-tenancy lawful—By the 1987 amendment, lawful sub-tenancies created prior to February, 1973 were saved—In the notice rent was claimed from the tenant only—In the suit also eviction was sought against tenant only—Sub-tenant cannot be a direct tenant in all the circumstances—Interest of a sub-tenant satisfying conditions of Section 14 ripens into that of a tenant.

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Words & Phrases:

'Tenant'—Meaning of in the context of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

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The appellants had let out certain shop premises to respondent No. 1 who had further let out the same to respondent Nos. 2 and 3. By a notice dated 16-01-1975 the appellant demanded arrears of rent from R-1 wherein he also stated that R-1 had inducted R-2 to the shop premises by taking a substantial amount as 'Pagri'. The appellants filed a suit for eviction against the respondents under the provisions of the Bombay rents, Hotel and Lodging House Rates Control Act, 1947 on the grounds of (i) non-payment of rent, (ii) damage to the premises, (iii) *bonafide* requirement. Subletting was stated to be in the year 1972-73. The said suit was dismissed on all the grounds. On appeal, the appellate Court, however, ordered eviction of R-1 on the ground of

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- A default in payment of rent. R-2 being a lawful sub-tenant, no decree was passed against him. An adverse inference was drawn against the appellants as he failed to produce the alleged counter foils of the rent receipts which according to the appellants were signed by R-2. Writ petition filed by appellants was also dismissed by the High Court with the modification that tenancy of the R-1 stood determined on the day of dismissal of the appellants appeal instead of on the day of issuance of notice by the appellants, as held by the lower appellate Court. Hence the present appeals.

- The appellant contended that since R-1 had contravened the provisions of Section 12 of the Act he was liable to eviction and since R-2, the sub-tenant claims through him, he was also liable to eviction inasmuch under clause (11) of Section 5 of the Act tenant includes sub-tenant. It was also contended that when rent is in arrears, it is qua the premises and the sub-tenant who is occupying the premises would also be liable for default in payment of rent of the premises and thus could be evicted along with the main tenant. The subletting by R-1 was also contended to be unlawful.

Dismissing the appeals, the Court

- HELD : 1.1. When the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 was enacted, a sub-tenant was saved from the eviction if sub-tenancy had been created prior to February 13, 1948. Under the Ordinance of 1959, which was subsequently replaced by the Bombay Act 49 of 1959, a lawful sub-tenancy created prior to May 21, 1959 was also saved. Again by the amending Act (Bombay Act 18 of 1987) lawful sub-tendencies created prior to February 1, 1973 were saved. Thus a sub-tenant is protected if sub-tenancy, which is lawful, is created prior to February 1, 1973. Now a tenant is barred from even giving on licence any premises or any part thereof after February 1, 1973 unless of course contract between him and to landlord so provided. [503-F, G, H; 504-A, B, C]

- 1.2. Under Section 14 of the Act sub-tenant becomes tenant only after tenancy of the tenant is determined. In the notice dated January 16, 1975, the appellants have claimed rent only from R-1. It is his tenancy which is determined and the allegation is that R-1 inducted R-2 to the suit premises. In the suit also it is R-1 against whom ground for eviction on the ground of non-payment of rent under Section 12 of the Act is advanced. The first Appellate Court rightly held that a money decree for non-payment of rent cannot be passed against R-2 when it was R-1 who was in arrears of rent as

claimed by the appellants and that R-2 becomes liable to pay rent of the premises only from the date tenancy of R-1 is determined. [503-C, D, E, F] A

1.3. Clause (f) of sub-section (1) of Section 13 of the Act provides that a landlord is entitled to recover possession of the premises if the court is satisfied that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the coming into operation of this Act, to be in such service or employment. When eviction is sought on this ground as given in clause (f) it is difficult to see how a sub-tenant can become a direct tenant of the landlord when the tenancy of the main tenant is determined. [513-C] B C

1.4. When Section 14 of the Act uses the expression "subject to the provisions of this Act" it does not merely mean that sub-tenant would become subject to the provisions of the Act after he becomes direct tenant under the landlord on the determination of the tenancy of the main tenant. What this expression means is that a sub-tenant cannot become a direct tenant in all circumstances, i.e., on all grounds of eviction against the main tenant but that would depend upon the nature of the ground of eviction as may be advanced and proved by the landlord. [513-E-F] D

Mangharam Chubarmal v. B.C. Patel, (1971) 73 BLR 140 and *Birdhichand Hiralal Bhandari v. Sadashiv Maruti Borhade*, (1971) 73 BLR 887, affirmed. E

The Indian Coffee Workers Cooperative Stores Ltd. v. Mrs. Bachoobai Cowasjee Dhanjeeshaw, (1964) 66 Bom. L.R. 338, referred to.

1.5. Interest of a sub-tenant who satisfies the conditions of Section 14 ripens into that of tenant when interest of the main tenant (who inducted him as a sub-tenant) is determined by an order of eviction passed against him. [508-C] F

Hiralal Vallabhram v. Kastorbhai Lalbhai & Ors., [1967] 3 SCR 343, relied on. G

2. Notice terminating the tenancy was given on January 16, 1975. Courts have returned the finding that though there is subletting by R-1 to R-2 but it was before 1959. That being so, Section 14 of the Act comes into play and saves R-2 from eviction. High Court has held that the tenancy of R-1 stood H

A determined w.e.f. April 17, 1982 on the date when the first Appellate Court delivered judgment holding that R-1 was liable to eviction on the ground under Section 12 of the Act. Now from this date it is R-2 who becomes direct tenant under the appellants. [499-G, H; 500-A, B]

B *Arjun Khiamal Makhijani v. Jamnadas C. Tuliani and Ors.*, [1989] 4 SCC 612, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 12849-50 of 1996.

C From the Judgment and Order dated 22.12.95 of the Bombay High Court in W.P. Nos. 3181/89 and 149 of 1983.

Gopal Jain, R.N. Karanjawala, Ms. Nandini Gore, and Ms. Manik Karanjawala for the Appellants.

D Nikhil Sakhardande, Ms. Meenakshi Sakhardande and A.M. Khanwilkar for the Respondents.

The Judgment of the Court was delivered by

D.P. WADHWA, J. This is landlord's appeal. There are two appellants. They filed a suit for eviction against the respondents, numbering three, under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, the 'Act'). There were four grounds of eviction: (1) non-payment of rent; (2) subletting; (3) damage to the premises; and (4) *bona fide* need of the appellants themselves. Suit of the appellants was dismissed by the trial court on all the grounds. Appellants appealed against that order. The appellate Court, however, held that the first respondent, the tenant, defaulted in payment of rent and was liable to eviction on that ground but since the second respondent was a lawful sub-tenant, no decree or order for eviction could be passed against second respondent. Other grounds of eviction were again held against the appellants. Appellants then filed a writ petition in the Bombay High Court which was dismissed by the impugned judgment dated December 22, 1995 by a learned single Judge of the High Court with only modification holding that the tenancy of the first respondent stood determined on April 17, 1982 and not on March 1, 1975 as was held by the lower appellate Court. While the High Court in the writ petition fixed the date determining the tenancy of the first respondent on which date appeal of the appellants was dismissed, the first appellate Court had fixed the date determining the tenancy of the first respondent when

notice issued by the appellants determined the tenancy of the first respondent. A

Suit premises is a shop in the city of Ahmad Nagar within the jurisdiction of the Bombay High Court. Appellants said that they had let out the shop premises to the respondent who unauthorisedly sublet the same to the second and third respondents. It has been held that the third respondent was an employee of the second respondent and this finding has not been challenged before us by the appellants. In the notice dated January 16, 1975 sent by the appellants demanding arrears of rent, it was not mentioned as to when there was subletting by the first respondent to the second respondent. Admittedly both the respondents are brothers. It was stated that the first respondent had inducted the second respondent to the shop premises by taking a substantial amount of "pagri". In the suit, however, it was mentioned that subletting was in the year 1972 and 1973 and the rent was stated to be in arrears from February 1, 1971 till the date of the filing the suit which was September 9, 1975. Respondents denied that there was any subletting. Their plea was in the alternative - one, that both the respondents were brothers and were joint tenants and were working as partners and second, that the first respondent left the premises in late 50's and all through thereafter rent had been paid by the second respondent even though the rent receipts were issued in the name of the first respondent. It was the second respondent who signed on the counterfoils of the rent receipts. First plea that the respondents were joint tenants was negatived. It was held that the second respondent became sub-tenant in 50's and was, thus, protected from being evicted even though the ground of eviction of the first respondent, the tenant-in-chief being in arrears of rent, succeeded. First appellate Court came quite heavily on the appellants holding that they raised a false plea of subletting from the year 1972 and 1973. A presumption was drawn against the appellants, and in our view rightly, as they failed to produce the counterfoils of the rent receipts. Only two grounds have been pressed before us in the present appeals: (1) that since the first respondent was in arrears of rent and there was default in not complying with the provisions of Section 12 of the Act in order to save himself from eviction, not only the first respondent but the second respondent, assuming he is sub-tenant, would also be liable to eviction; and (2) there has been unlawful subletting by the first respondent to the second respondent. B C D E F G

As far as the second ground of subletting is concerned, we find that the appellants came to the court with a specific plea that the suit premises were sublet by the first respondent to the second respondent in 1972 and 1973. Notice terminating the tenancy was given on January 16, 1975. Courts H

A have returned the finding that though there is subletting by the first respondent to the second respondent but that subletting was before 1959. That being so, Section 14 of the Act comes into play and saves the second respondent from eviction. As noted above, High Court has held that the tenancy of the first respondent stood determined w.e.f. April 17, 1982 on the date when the first Appellate Court delivered judgment holding that the first respondent was liable to eviction on the ground under Section 12 of the Act. Now from this date it is the second respondent who becomes direct tenant under the appellants.

C Section 15 of the Act, as it now stands, provides that it shall not be lawful for the tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. After the commencement of the amending Act of 1973, a tenant is barred even to give on licence the whole or any part of the premises let to him. Sub-section (2) of Section 15 validates any sub-tenancy created before the first day of February 1973 and in that case a tenant is not liable to eviction under clause D (e) of sub-section (1) of Section 13 of the Act.

We may at this stage refer to the relevant provisions of law under the Act. Section 5(11) of the Act defines 'tenant' which is as under:

E "5 (11) "Tenant" means any person by whom or on whose account rent is payable for any premises and includes:-

(a) such sub-tenants and other persons as have derived title under a tenant before the 1st day of February 1973;

F (aa) any person to whom interest in premises has been assigned or transferred as permitted or deemed to be permitted, under section 15;

G (b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the 1st day of February 1973;

(bb) such licensees as are deemed to be tenants for the purposes of this Act by section 15A;

H (bba) the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (1A), deemed to be a tenant, for the purposes of this Act by section 15B;

- (c) (i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court; A B
- (ii) in relation to any premises let for the purposes of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education or carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court. C D

Explanation.- The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply, and shall be deemed always to have applied, even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant." E

Section 12 deals with the ground of eviction when tenant is in arrears of rent and is as under: -

"12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard permitted increases. (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act. F

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in manner provided in section 106 of the Transfer of Property Act, 1882." G H

A Sub-section (3) of Section 12 as it stood before its amendment in 1986 was as follows:-

B “3(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession.

C (b) In any other case no decree for eviction shall be passed in any such suit if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.”

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After its amendment as aforesaid, it reads:

E “(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court;

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Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.”

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Section 13 of the Act gives various other grounds for eviction of the tenant. This Section in relevant part is as under:-

H “13. When landlord may recover possession. (1) Notwithstanding anything contained in this Act but subject to the provisions of Sections 15 and 15A, a landlord shall be entitled to recover possession of any

premises if the Court is satisfied.-

(a) to (d)

(e) that the tenant has, since the coming into operation of this Act, unlawfully sublet, or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein;

(f) to (l)"

Section 14 contains provision as to when a sub-tenant becomes a tenant, which is as under: -

"14. Certain sub-tenants and licensees to become tenant on determination of tenancy. (1) When the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before the 1st day of February 1973 shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

(2) Where the interest of a licensor, who is a tenant of any premises is determined for any reason, the licensee, who by section 15A is deemed to be a tenant, shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord, on the terms and conditions of the agreement consistent with the provisions of this Act."

When the Act was enacted a sub-tenant was saved from the eviction if sub-tenancy had been created prior to February 13, 1948. Under the Ordinance of 1959, which was subsequently replaced by the Bombay Act 49 of 1959, a lawful sub-tenancy created prior to May 21, 1959 was also saved. Again by the amending Act (Bombay Act 18 of 1987) lawful sub-tenancies created prior to February 1, 1973 were saved. Thus a sub-tenant is protected if sub-tenancy, which is lawful, is created prior to February 1, 1973.

Section 15 in relevant part is as under:-

"15. In absence of contract to the contrary tenant not to sub-let or transfer or to give on licence—(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be

A lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises:

B Provided that the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and to such extent as may be specified in the notification."

C As noted above, the fact is now a tenant is barred from even giving on licence any premises or any part thereof after February 1, 1973 unless of course contract between him and the landlord so provided. Proviso to the Section, however, removes the bar in the circumstances mentioned therein.

D Section 28 of the Act deals with jurisdiction of the Courts.

Mr. Gopal Jain, learned counsel for the appellants realised the weakness of his case for eviction on the ground of sub-tenancy as provided in clause (e) of sub-section (1) of Section 13 of the Act. Creation of sub-tenancy in favour of the second respondent by the first respondent has been proved to be lawful from the date much earlier to the year 1959. Under Section 14 of the Act second respondent is deemed to have become tenant of the appellants on the same terms and conditions as they would have held from the tenant if the tenancy had continued. Mr. Jain then contended that since the tenant had contravened the provisions of Section 12 of the Act he was liable to eviction and since the second respondent, the sub-tenant claims through him, he is also liable to eviction inasmuch under clause (11) of Section 5 of the Act tenant includes sub-tenant. We do not think that is the correct interpretation to be given to clause (11) of Section 5 of the Act. Under Section 14 of the Act sub-tenant becomes tenant only after the tenancy of the tenant is determined. In the notice dated January 16, 1975, the appellants have claimed rent only from the first respondent. It is his tenancy which is determined and the allegation is that the first respondent inducted the second respondent to the suit premises. In the suit also it is the first respondent against whom ground for eviction on the ground of non-payment of rent under Section 12 of the Act is advanced. The first Appellate Court rightly held that a money decree for non-payment of rent cannot be passed against the second respondent when it was the first respondent who was in arrears of rent as claimed by the

appellants and that the second respondent becomes liable to pay rent of the premises only from the date of tenancy of the first respondent is determined. Then Mr. Jain wanted to invoke the doctrine of privity of estate and in that connection he referred to a decision of this Court in *Surendra Kumar Jain v. Royce Perira*, [1997] 8 SCC 759. In this case the Court said that findings as arrived at by the appellate court are findings of fact and were not liable to be interfered with by the High Court under Article 226 of the Constitution. In that case while the respondent-owner had filed a suit against the appellant for possession and for the arrears of paying guest charges, appellant had contended that he was not a paying guest but was a tenant and in support of his plea he relied on a letter written by the owner to the Bombay Municipal Corporation in tax proceedings where he said that the appellant was paying rent of Rs. 200 per month. The respondent-owner, however, produced a letter of the appellant wherein he admitted that he was a paying guest. On this finding the Court dealt with the question of the doctrine of privity of estate as under :-

“8. So far as the contention of the appellant that the respondent informed the Corporation in tax proceedings that the appellant was paying rent of Rs.200 p.m., we may state that the said statement even if true stood rebutted by the appellant’s letter dated 31.1.1974 admitting he was in possession as a “paying guest”. Apart from that as pointed out by the Privy Council in *Alluri Venkatapathi Raju v. Dantuluri Venkatanarasimha Raju*, AIR (1936) PC 264: 63 IA 397, (AIR at pp. 268-269):

“it sometimes happens that persons make statements which serve their purpose or proceed upon ignorance of the true position; and it is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue.”

The above observations were followed and applied by Subba Rao, J. (as he then was) in *Rukhmabai v. Lala Laxminarayan*, AIR (1960) SC 335: (1960) 2 SCR 253.

We, however, fail to see as to how the appellants can take advantage of the doctrine put forth is applicable in the present case in view of the specific provisions of law and facts of the case. Assertion of Mr. Jain was that when rent is in arrears, it is qua the premises and the sub-tenant who is occupying the premises would also be liable for default in payment of rent

- A of the premises and thus could be evicted along with the main tenant. This argument overlooks the relationship of sub-tenant with the main tenant when he would be paying the rent of the premises under his sub-tenancy and the requirement of notice under Section 12 of the Act. Definition of tenant under clause (11) of Section 5 of the Act does include also a sub-tenant inducted before February 1, 1973 and it means when the sub-tenant becomes tenant on the determination of the tenancy of the main tenant. Reference was also made by Mr. Jain to another decision of this Court in *Arjun Khiamal Makhijani v. Jamnadas C. Tuliani and Ors.*, (1989) 4 SCC 612 to contend that it is not necessary for us to lean in favour of the tenant. We do not think this Court in any way said to that effect in that case for Mr. Jain to advance such a plea.
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- C That case was also under the Act where the Court was concerned with the effect of sub-section (3) of Section 12 of the Act before its amendment in 1986 as the decree in that suit for eviction had been executed when that provision was in force. The appeal before this Court was by the tenant and reliance was placed on sub-section (3) of Section 12 after its amendment in 1986. In that context this Court observed as under:-
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- E “7. Faced with this difficulty, learned counsel for the tenants urged that since the Act was a beneficial legislation the tenants having deposited the arrears of rent within the time granted by the Trial Court and having continued to deposit future rent thereafter the decree for their eviction deserves to be reversed by this Court. In so far as this submission is concerned, it may be pointed out that in *Ganpat Ram Sharma and others v. Gayatri Devi*, [1987] 3 SCC page 576, while dealing with almost a similar Rent Control Legislation it was held:
- F “But quite apart from the suit being barred by lapse of time, this is a beneficial legislation, beneficial to both the landlord and the tenant. It protects the tenant against unreasonable eviction and exorbitant rent. It also ensures certain limited rights to the landlord to recover possession on stated contingencies.”
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- H “9. When the Act contains provisions, some of which fall under the category of beneficial legislation with regard to the tenant and the others with regard to the landlord, the assertion that even with regard to such provisions of the Act which fall under the purview of beneficial legislation for the landlord an effort should be made to interpret them also in favour of the tenant is a negation of the very principle of interpretation of a beneficial legislation on which reliance is placed on

behalf of the tenants. The argument indeed is self-defeating and only justifies the cynical proverb—Heads I win tails you lose. It is difficult to countenance the sentimental approach made by learned counsel for the tenants, for the simple reason that as pointed out in *Latham v. R. Johnson and Nephew Ltd.*, [1913] 1 KB 398 (408) sentiment is a dangerous will-o'-the-wisp to take as a guide in the search for legal principles.”

Mr. Nikhil Sakhardande, learned counsel appearing for the second respondent, contended that when the interest of tenant is determined either under Section 12 or Section 13 a sub-tenant would step into the shoes of the tenant and would become direct tenant of the landlord from that date. In support of his submissions he referred to a decision of this Court in *Hiralal Vallabhram v. Kastorbhai Lalbhai and Ors.*, [1967] 3 SCR 343 and also to a decision of the Bombay High Court in *Birdichand Hiralal Bhandari v. Sadashiv Maruti Borhade*, (1971) 73 Bom. L.R. 887.

In *Hiralal Vallabhram v. Kastorbhai Lalbhai and Ors.*, [1967] 3 SCR 343 landlord had filed a suit for eviction under Section 28 of the Act on two grounds namely: (1) that the rent was in arrears for six months and (2) that there was unlawful subletting by the three original tenants to the appellant, who was impleaded as fourth respondent. It is not necessary to refer to various pleadings of the parties and how the matter reached this Court. The argument which this Court was considering was that Section 14 of the Act related to contractual tenancy and the interest of a tenant is determined as soon as notice determining the tenancy is given and, therefore, immediately the period fixed in the notice expires, the contractual tenancy comes to an end, and if there is a sub-tenant he becomes the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. This Court observed as under:-

“We are of opinion that in the context of the Act this is not the meaning to be given to the words “is determined for any reason”. These words in the context of the Act mean that where the interest of a tenant comes to an end completely, the pre-existing sub-tenant may, if the conditions of s. 14 are satisfied be deemed to be a tenant of the landlord. The interest of a tenant who for purposes of s.14 is a contractual tenant comes to an end completely only when he is not only no longer a contractual tenant but also when he has lost the right to remain in possession which s. 12 has given to him and is no

- A longer even a statutory tenant. In other words s. 14 would come into play in favour of the sub-tenant only after the tenancy of the contractual tenant has been determined by notice and the contractual tenant has been ordered to be ejected under s.28 on any of the grounds in s.12 or s.13. Till that event happens or till he gives up the tenancy himself the interest of a tenant who may be a contractual tenant for purposes of s. 14 cannot be said to have determined i.e., come to an end completely in order to give rise to a tenancy between the pre-existing sub-tenant and the landlord.”
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- It will be thus seen that interest of a sub-tenant who satisfies the conditions of Section 14 ripens into that of tenant when interest of the main tenant (who inducted him as sub-tenant) is determined by an order of eviction passed against him. It was relying on this judgment that High Court in the impugned judgment held that the second respondent became tenant of the appellants with effect from April 17, 1982, the date when the appellate court passed order of eviction against the first respondent. In *Birdichand Hirallal Bhandari v. Sadashiv Maruti Borhade*, (1971) 73 Bom. L.R. 887) the plaintiff landlord had filed a suit for ejectment against the two defendants. He pleaded that the first defendant, who was his tenant, failed to pay arrears of rent for more than six months after notice under Section 12(2) of the Act and that he had sub-let the premises to the second defendant in contravention of the provisions of the said Act. While the first defendant did not contest the suit the second defendant contended he was a lawful sub-tenant of the first defendant inasmuch as his sub-lease was created before the date of the Bombay Ordinance of 1959 and, therefore, he could not be evicted for breach of Section 12(3) by the first defendant. The Court held that the possession of the second defendant was protected by the Bombay Rent Act and he could not, therefore, be evicted for failure of the first defendant to comply with the provisions of sub-section (3) to Section 12 of the Act. A single Judge of the High Court, who delivered the judgment, repelled the contention of the landlord wherein he said even if it was assumed that the second defendant was a lawful sub-tenant, he was still liable to be evicted along with the main tenant, once the main tenant was found liable to eviction under Section 12(3) of the Bombay Rent Act due to his failure to pay the arrears of rent. High Court said:
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- “Now, it would have been so under the ordinary law of landlord and tenant under which the sub-tenant cannot possess or claim any better or independent rights apart from the one that can be claimed through the main tenant. He has to sink or swim with the main tenant. But not
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so under the Rent Act. Defendant No. 2 is proved to have been a lawful sub-tenant. Sub-lease in his favour is proved to have been created before 1957. Definition of the word 'tenant', in s. 5(11)(a) includes sub-tenant inducted lawfully before the amendment of s. 15(2) of the Rent Act by Ordinance No. III of 1959. It will not make any difference as to whether sub-tenant is in possession of the whole or only a part of the premises leased to the tenant. Implication of this inclusive definition is that protection afforded to any tenant against his landlord under any provisions of the Rent Act, is also available to the sub-tenant against his lessor, the main tenant, in the same manner and to the same effect, as any other main tenant himself can claim against the landlord. By creating sub-lease before the date of Ordinance No. III of 1959, the tenant ceases to furnish his landlord any cause of action for eviction under s. 13(1)(e) of the Rent Act. Such sub-leases are rendered now lawful even though these were not so when the same were created. The landlord has to suffer such sub-leases and put up with the possession of the premises or portion thereof by the sub-tenants without any privity of contract with them. Section 14 then confers a right on the sub-tenant to claim the status of tenants on the determination of the interest of the tenants in the premises. This right is again available to the sub-tenants, whether the landlords like to or not and in spite of them.

It is thus clear that the protection available to sub-tenants under the Rent Act is not the creation of the contract but is statutory. It does not depend upon will or pleasure of the landlord or the main tenant and also cannot depend on their act or omission. This protection of the Rent Act is made available independently of the rights, and acts, or omission of the main tenant.

Section 12 of the Rent Act affords a sort of guarantee of the continuance of the tenancy and, secondly of the possession of premises to the tenants against his landlord as long as he is ready and willing to pay rent and to abide by the term of the tenancy. Any sub-tenant also is entitled to claim the same guarantee and protection, in regard to the premises or portion in his possession as against his lessor i.e. the main tenant. This can be denied to him only on his failure to pay rent to his lessor i.e. tenant, or on his non-compliance with the terms of the tenancy. This protection obviously cannot be denied to him on failure to pay rent by the tenant to the landlord or breach of any

- A terms of the tenancy by the tenant. Such act or omission of the tenant may result in the loss of protection of the Act to him in regard to the portion in possession of the tenant. This may, however, result in the determination of tenant's interest in the portion of the premises in possession of the sub-tenant and confer the status of a tenant on him. But mere non-payment of rent by the main tenant to the landlord
- B cannot result in the liability of the sub-tenant for eviction. This militates against the guarantees and protection afforded by this very section to the sub-tenant under s. 14 which contemplates reversion of tenant's rights in such contingency on the sub-tenant and not on the landlord. No sub-tenant ever will be able to either claim tenant's
- C rights under s. 14 if his rights in the premises are to determine along with the tenant, for the landlord's act or omission without his own any such failure, act, or omission. It shall also have to be borne in mind that s. 12(3) of the Rent Act, does not appear to aim so much at landlord's right of resumption of the premises as at ensuring the receipt of the rent by him. Possession by the landlord in such
- D contingency is more the result than the object."

We may also refer to two more decisions of the Bombay High Court — one rendered by the Division Bench in *The Indian Coffee Workers Cooperative Stores Ltd. v. Mrs. Bachoobai Cowasjee Dhanjeeshaw*, (1964) 66 Bom.L.R. 338, and another by single Judge in *Mangharam Chubarmal v. B.C. Patel*, (1971) 73 Bom.L.R. 140.

In *The Indian Coffee Workers Cooperative Stores Ltd. v. Mrs. Bachoobai Cowasjee Dhanjeeshaw*, (1964) 66 BLR 338 a Division Bench considered the scope of Section 14 of the Act and observed as under:-

- F "There is another aspect from which s. 14 must be considered. The right of the sub-tenant is subject to the provisions of the Act and not an absolute right. The section, therefore, is controlled by the other sections of the Act, and if they entitle the landlord in a given case to obtain possession, s. 14 cannot come in the way. Section 12
- G entitles the landlord to obtain possession for non-payment of rent and s. 13 for other reasons. If, therefore, the landlord is entitled to obtain possession under any of these sections s. 14 must give way. It would be preposterous to suggest that a tenant who has destroyed the value of the property by unauthorized alterations should be able
- H to successfully prevent the landlord from obtaining possession by

parting it to a sub-tenant or who has not paid rent for years should prevent the landlord from obtaining possession by inducting a sub-tenant when notice is given. Again in a case where a landlord has sued both the tenant and sub-tenant for possession on the ground that he wants the premises for his personal use it could not be intended that he must thereafter start another litigation against the sub-tenant. For if s. 14 is allowed to have uncontrolled effect after the termination of the tenant's tenancy the sub-tenant would become the tenant, and then he could claim a fresh notice for eviction. The section, we think, means that the sub-tenant would be deemed to have become a tenant, if the landlord is otherwise not entitled to possession. Since by s. 15 as amended, sub-tenancy and assignment in the case of specified sub-tenants or assignees is rendered legal, landlord's right to recover possession on the ground of sub-letting or assignment in such a case is taken away, the sub-tenant or assignee would be entitled to retain possession."

In *Mangharam Chubarmal v. B.C. Patel*, (1971) 73 BLR 140 a single Judge Bench of the Bombay High Court, however, did not wholly agree with the interpretation put by the Division Bench in the case of *The Indian Coffee Workers Cooperative Stores Ltd. v. Mrs. Bachoobai Cowasjee Dhanjeeshaw* (1964) 66 BLR 338. According to the learned single Judge the interpretation put on Section 14 of the Act by the Division Bench would render the Section wholly nugatory. He said as under:-

"A landlord has no privity of contract with the sub-tenants of his tenant. Sub-tenants are answerable for performing the various conditions of sub-tenancy only to the tenant who is their landlord for the time being. It is only when the tenant's tenancy is determined either by surrender or by a decree in ejectment passed against him that the sub-tenants become the lawful tenants of the landlord by virtue of s. 14 of the Rent Act. Once they get that legal status or character, then they are to hold the premises on the same terms and conditions as they held before subject to the other provisions of the Rent Act. But the words "subject to the other provisions of the Rent Act" will have to be understood as giving them the same rights and privileges as are conferred on the statutory tenants whose contractual tenancy for one reason or the other has come to an end.

Then the learned single Judge referred to various grounds of eviction as given in Section 13(1) of the Act and sought to draw a distinction between

A the grounds which are concerned mainly with the premises and those, which are personal to the tenant. We need not, however, go into this question as to which grounds are personal to the tenant and which are mainly concerned with the premises and what are the grounds of eviction where tenant cannot get the protection. Learned single Judge in *Mangharam Chubarmal's* case (1971) 73 BLR 140 then proceeded further to make the following observations:-

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"If in a suit against the tenant other persons are joined on the allegation that they are sub-tenants and if an eviction is sought only on the grounds which are personal to the tenant, then a decree in ejectment against him will result in conferring direct tenancy rights on the lawful sub-tenants. They cannot be ejected in that suit on those grounds. On the other hand, if the landlord seeks possession on the grounds which are not personal to the tenant and which concern the premises themselves, then it is open to the landlord in the same suit to plead and prove those grounds not only against the tenants but against the other persons impleaded in the suit and who are ultimately held to be lawful sub-tenants. In such a case the issues would be heard and decided between the landlord on the one side and the tenants and sub-tenants on the other. If the sub-tenants are not impleaded even in such a suit then the landlord, after obtaining a decree against the tenant, will have to file a fresh suit against the sub-tenants, who by then had become his direct deemed tenants by virtue of s. 14 of the Rent Act. In my opinion this would be the proper interpretation of s. 14 of the Rent Act when that section is read along with the other relevant provisions of the Rent Act. The construction indicated by the Division Bench will make s. 14 wholly meaningless. I will give only one illustration to indicate the fallacy which is inherent in that interpretation. The tenant may commit rent defaults for more than six months. He may not have any defence to an action founded on rent defaults. Under s.12 (3)(a) the Court has no option but to pass a decree against him. But the sub-tenants may have regularly paid the rent to the tenant and their only fault will be that during the term of their sub-tenancy they have not forced or compelled the tenant to pass on the money received by him to the landlord. It will be wholly unreasonable to expect the sub-tenants to perform such an onerous duty. In my opinion it is one of those grounds which is personal to the tenant and if his tenancy comes to an end on that ground, the sub-tenants become the direct tenants by virtue of the provisions of s. 14 of the Rent Act and they will be protected under the Rent Act."

Though the learned single Judge disagreed with the Division Bench, he, however, left the matter at that and proceeded to decide the matter before him on other points and therefore, did not think it necessary to refer the matter to a larger Bench. We generally agree with the observations of the learned single Judge and may add one more illustration to one given by him. Clause (f) of sub-section (1) of Section 13 of the Act provides that a landlord is entitled to recover possession of the premises if the court is satisfied that the premises were let to the tenant for use as a residence by reasons of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the coming into operation of this Act, to be in such service or employment. When eviction is sought on this ground as given in clause (f) it is difficult to see how a sub-tenant can become a direct tenant of the landlord when the tenancy of the main tenant is determined.

The exposition of law in the two aforesaid judgments of the Bombay High Court in *Mangharam Chubarmal v. B.C. Patel*, (1971) 73 BLR 140 and in *Birdichand Hiralal Bhandari v. Sadashiv Maruti Borhade*, (1972) 73 Bom. L.R. 887, which held the field for the last more than 25 years, is correct and there is nothing for this Court to take a different view of the matter. When Section 14 of the Act uses the expression "subject to the provisions of this Act" it does not merely mean that sub-tenant would become subject to the provisions of the Act after he becomes direct tenant under the landlord on the determination of the tenancy of the main tenant. What this expression means is that a sub-tenant cannot become a direct tenant in all circumstances, i.e., on all grounds of eviction against the main tenant but that would depend upon the nature of the ground of eviction as may be advanced and proved by the landlord.

We, therefore, do not find any merit in these appeals and we dismiss the same with costs.

R.C.K.

Appeals dismissed.