Karnataka High Court B. Vishwanatha Shetty vs P.N. Padmavathi on 6 July, 1992 Equivalent citations: ILR 1992 KAR 2424, 1992 (3) KarLJ 330 Author: N Bhat Bench: N Bhat ORDER N.D.V. Bhat, J. 1. These two Revision Petitions are directed against the common order on I ANos.III and VI in O.S.No.1061 of 1984 on the file of the City Civil Court, Bangalore. The facts leading to these two Petitions, briefly stated, are as under: 2. Plaintiffs and defendants-2 and 3 in O.S.No.1061/1984 before the City Civil Court, Bangalore are the legal heirs of late P.Narayana Hebbar. The suit property was the absolute property of Narayana Hebbar. It consists of three storeyed building where Narayana Hebbar was running a Hotel by name 'Eastern Lunch Home', Since his health deteriorated, he and his eldest son P.Parameshwara Hebbar -defendant-2 formed a partnership firm and the management of the Hotel was left to the latter. Since,-however, the business did not improve, the Hotel was leased to M/s.Elengikal Brothers, by a registered deed dated 25-3-1964. However, the same was subleased by the latter to defendant-1 - B.VishwanathaShetty, who is the petitioner in both these Revision Petitions. It appears that having regard to the said development, the partnership firm was not receiving the rents regularly. They, therefore, after discussion and due deliberation with M/s.Elengikal Brothers and defendant-1 - B.Vishwanatha Shetty struck a new deal according to which it was agreed by all the parties that defendant-1 should take the Hotel 'Eastern Lunch Home' on lease from the firm comprising of Narayana Hebbar and his son Parameshwara Hebbar. Accordingly, a registered Lease Deed dated 4-11-1968 came into existence, the lease being for a period of 10 years with a right of renewal subject to certain terms and conditions. Sometime in the year 1971, Narayana Hebbar died. After the expiration of the lease period plaintiffs who are the legal heirs of the deceased Narayana Hebbar, 1st plaintiff being his wife and the rest of the plaintiffs being his children, demanded vacant possession of the premises from defendant-1 since they wanted to re-start the hotel business. It is also the case of the plaintiffs that defendant-2 - Parameshwara Hebbar had by a Release Deed dated 7-7-1980 given up his right in the estate left by Narayana Hebbar. Defendaht-1 Vishwanatha Shetty, however, did not comply with the request of plaintiffs to quit. Even the quit notice issued to him on behalf of the plaintiffs did not yield any dividend. Under these circumstances, plaintiffs filed the aforesaid suit praying for a decree for possession and other reliefs like, mesne profits, damages etc., as enumerated in the relief column of the plaint. 3. Defendant-1 resisted the suit of the plaintiffs. He took up the contention that the lease was taken by him from the partnership firm comprising of Narayana Hebbar and Parameshwara Hebbar and since defendant-2, the surviving partner has given his consent in writing to renew the licence, plaintiffs cannot maintain the suit. He has also challenged the validity of the quit notice. He has denied the allegation made by the plaintiffs leading to the claim of mesne profits and damages. He prayed for the dismissal of the suit 4. Defendant-3 who is also one of the legal heirs of late Narayana Hebbar being his daughter has filed her separate written statement. It is not necessary at this stage to refer to the details of her written statement. 5. Plaintiffs in the course of the said suit, filed an IA (I.A.No.II) praying for a direction to defendant-1 to deposit a sum

of Rs. 3,60,000/-and to continue to deposit a sum of Rs. 10,000/- every month, thereafter, for the user of the plaint scheduled building. The same was resisted by defendant-1. The lower Court by its order dated 3-1-1986 on I.A.No.II, directed the 1st defendant to deposit in Court a sum of Rs. 84,000/-towards the arrears of rent at the rate of Rs. 2000/- p.m. from 1-7-1982 to 31-12-1985 within a period of 30 days therefrom with a further direction, to go on depositing Rs. 2000/- every month. 6. It appears that defendant-1 deposited the amount of Rs. 84,000/-well in time and also continued to deposit Rs. 2000/- p.m. for some months. However, he did not deposit the rent for subsequent months. Plaintiffs, therefore, filed I.A.III praying for striking off the defence of the 1st defendant on the allegation that defendant-1 deliberately disobeyed the order passed on I A.M. Defendant-1 resisted the same by filing his objections. 7. When the matter was pending at that stage, defendant-1 filed an application at I.A.VI, purporting to be one under Order VII Rule 11(d) CPC praying for dismissing the suit on the allegation that the suit for possession and damages is not maintainable in view of the striking down of Section 31 of the Karnataka Rent Control Act by this Court. The same was resisted by the plaintiffs contending, among other things, that the provisions of the Karnataka Rent Control Act are not applicable to the facts of the case since what was leased was a running hotel. Defendant-1 also filed an application at I.A.VII praying for refund of the rent in deposit as the proceeding initiated by the plaintiffs is vitiated in view of the striking off of Section 31 of the Karnataka Rent Control Act as being unconstitutional. The same was opposed by the plaintiffs. 8. The lower Court after hearing the submissions made on either side, by its common order dated 29-5-1984 on I.A.Nos.III, VI and VII took the view that the lease in question is a composite lease and that therefore, the provisions of the Rent Control Act do not apply to the facts of the case. It also took the view that defendant-1 is not entitled to the refund of the amount in deposit. On I.A.No.III, the lower Court took the view that the defence taken by defendant-1 in his written statement is liable to be struck off. In the result, I.A.No.III was allowed and I.A.Nos.VI and VII were rejected, 9. Being aggrieved by the order on I.A.No.VI, defendant-1 has preferred C.R.P. No. 4379 of 1989 and he has preferred C.R.P. No. 4419 of 1989 as against the order relating to I.A.No.III. 10. I have heard the arguments of the learned Counsels appearing on either side. 11. Sri Shekara Shetty, learned Counsel for the petitioners submitted that the lower Court has erred in taking the view that the provisions of the Karnataka Rent Control Act are not applicable to the facts of the case. Dilating on this aspect, it was argued by the learned Counsel that the view taken by the lower Court that the lease in question was a composite lease is wholly unwarranted, having regard to the circumstances leading to the execution of the lease, the contents of the . Lease Deed dated 4-11-1980 and the allegations reflected in the plaint. It was argued at the Bar by the learned Counsel that the Decisions pressed into service by the other side and relied on by the lower Court to reach the conclusion which it did in this behalf are not at all applicable to the facts of the case. It was also argued that the lower Court has erred in deciding the question relating to the maintainability of the suit regarding possession without recording any evidence. The learned

Counsel submitted that the lower Court has wrongly struck down the defence taken by defendant-1 in his written statement, contrary to law and the facts relevant for consideration in that behalf. He has also cited certain Decisions in support of his submissions made hereinabove which would be considered little later. 12. On the other hand, Sri B.P.Holla, learned Counsel for the contesting respondents submitted that the allegations made in the plaint will have to be read as a whole to have a correct perspective with reference to the case made out by the plaintiffs. The learned Counsel also contended that the Lease Deed executed in favour of defendant-1 will have to be read as a part and parcel of the plaint and in fact, it is stated so in para-3 of the plaint. Dilating on this aspect, the learned Counsel submitted that the true nature and the complexion of the lease wilt have to be gathered from the contents of the lease deed itself and the pleadings of the parties cannot and will not change the nature of the transaction. Placing reliance on certain Decisions referred to hereinbelow, the learned Counsel contended that the lease in question is a composite lease and what was leased was a running hotel with its paraphernalia. He invited the attention of this Court to several clauses of the Lease Deed dated 4-11-1968 to contend that the lease in question is a composite lease and not a lease of the building with the meaning of that expression as defined in the Karnataka Rent Control Act, It was argued by Sri Holla that the maintainability or otherwise of the suit in question did not depend upon the pleadings or other evidence in the case, but depended solely on the construction of the Lease Deed dated 4-11-1968 and that therefore, the question of leading any evidence with reference to the question raised on I.A.No.VI did not arise at all. The learned Counsel has also pointed out that the circumstances of the case would unmistakably go to show that there was a deliberate disobedience on the part of defendant-1 to comply with the direction of the Court in its order on I.A. No. II to make the deposit and to continue to make the deposit and that therefore, the order directing the striking down the defence of defendant-1 cannot be found fault with. The learned Counsel also submitted that this is a case where a further direction to defendant-1 to deposit reasonable amount deserves to be given. On these grounds, in substance, the learned Counsel argued that the Revision Petitions are liable to be rejected and further direction to deposit the enhanced amount deserves to be given. 14. Having regard to the submissions made at the Bar which are succinctly referred to hereinabove, it would be indeed convenient to formulate the following points for consideration: 1) Whether the lower Court was right in disposing of the issue relating to the maintainability of the suit by way of a preliminary point? 2) Whether the lower Court has erred in reaching the conclusion that the provisions of the K.R.C.Act are not applicable to the facts of the case? 3) Whether the finding of the lower Court that the defence in the written statement of defendant-1 is liable to be struck off is justified? 15. POINT NO.1 At the very outset it is necessary to point out that the issue regarding the maintainability of the suit, impliedly involving the jurisdiction of the Court did arise on account of an application at I.A. VI filed by the instant Revision Petitioner, purporting to be one under Order VII Rule 11(d) CPC. The grounds on which I.A.No.VI is founded are already referred to earlier. The gist

of the contention taken in that behalf is that having regard to the striking down of Section 31 of the Karnataka Rent Control Act (for short the K.R.C.Act), the provisions of Part-V of the K.R.C.Act are applicable to the lease in question, with the result, a suit for possession and/or damages in the ordinary Civil Court is not maintainable. Sri Shekhar Shetty, learned Counsel for the petitioner submitted that this aspect involves a mixed question of fact and law and that therefore, it was not permissible for the learned Additional City Civil Judge to try the point relating to this aspect by way of a preliminary issue. In this connection, the learned Counsel invited the attention of this Court to the provisions of Order 14 Rule 2(2) CPC. Dilating on this aspect, the learned Counsel pointed out that even the earlier portion of the impugned order discloses that the point in question requires some evidence though in the concluding portion of his order the learned Additional City Civil Judge had taken the view that the provisions of the K.R.C.Act do not apply to the facts of this case. Making his submissions on these lines, the learned Counsel submitted that the order passed by the lower Court is bad in law on this count also. 16. On the other hand, it is submitted by Sri B.P.Holla, the learned Counsel for respondents 1 to 3 that this is not a case where it can be said that the maintainability or otherwise of the suit with reference to the grounds pressed into service by the defendant - Revision petitioner is such as cannot be disposed of on the basis of the contents of the Lease Deed and that no oral evidence as such is necessary in that behalf. Dilating on this aspect, the learned Counsel Sri Holla submitted that the question as to whether the lease created by a Deed dated 4-11-1968 is a composite lease or not is a matter which will have to be decided purely on the basis of the contents of the Lease Deed. In this connection, the learned Counsel placed reliance on the Decision in Smt. SHANTI DEVI v. AMAL KUMAR BANERJEE, . 17. I have given my anxious consideration to the submissions made on either side on this aspect. 18. It is necessary to remember here that the point raised by the defendant - Revision petitioner Vishwanatha Shetty is a point, in substance, touching the jurisdiction of the Court and/or the point relating to a bar to the suit created by any law for the time being in force. The affidavit accompanying the application at I.A.No.VI unmistakably goes to show that the jurisdiction challenged is the jurisdiction in relation to the delivery of possession as also in relation to the award of damages. Further, it is also seen that the said ground is mainly based on the contention that the jurisdiction to award possession and/or to award damages is that of the 'Court' within the meaning of that expression under Section 3(d) of the K.R.C.Act. In this view of the matter, it is obvious that the point raised in I.A.No.VI, is a point touching upon the jurisdiction of the Court and/or the point relating to a bar to the suit created by any law for the time being in force. Under these circumstances, it is clear that the provisions which will have to be looked into with reference to the question under consideration, are the provisions reflected under Order 14 Rule 2 CPC. Order 14 Rule 2 CPC reads as under: "Court to pronounce judgment on all issues: (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues. (2) Where issues both of law

and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to- (a)the jurisdiction of the Court, or (b)a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue." A perusal of the aforesaid provisions would go to show that it is permissible for the Court to try a particular issue as a preliminary issue if the Court is of the opinion that the case, or any part thereof may be disposed of on an issue of law only and that the issue in question relates to the jurisdiction of the Court or a bar to the suit created by any law. 19. It will have to be seen as to whether the controversy in question can be construed as a question of law. The crux of the question which arose for consideration in the context of I.A.No.VI is as to whether the lease dated 4-11-1968 attracts the provisions of the K.R.C. Act, consequent on the striking down of Section 31 of the K.R.C.Act. It is necessary to state here that if the applicability or otherwise of K.R.C. Act depended only on account of the striking down of Section 31 of the K.R.C.Act, the question would have been indeed rendered simple. However, the contention raised by the instant respondents with reference to the application at I.A.No.VI filed before the lower Court by the Revision petitioner is that the lease in question does not attract the K.R.C.Act since the lease is a composite lease. It is not in dispute that the provisions of K.R.C.Act would apply to a situation where there is a lease of 'building' only, the expression 'building' being understood within the meaning of its definition in the Rent Control Act. 20. In substance. Therefore, the question for consideration would be as to whether the lease is a lease of 'building' only or whether the lease is a composite lease. 21. The lease in the instant case is embodied in a Deed dated 4-11-1968. There is no dispute on this aspect. In fact, both the parties swear by the said Lease Deed. If, therefore, the nature of the lease will have to be adjudged on a fair construction of the lease deed, it is clear that the same in essence partakes the nature of law. The Supreme Court has, in the Decision in Smt. Shanti Devi v. Amal Kumar Banerjee among other things, held that the parties cannot by their pleading alter the intrinsic character of the lease or bring about a change of the rights and obligations flowing therefrom. It would be indeed refreshing to cull out para-4 in the said Judgment, which reads as under; "The Courts below have apparently been misled by the averments in paragraph-3 of the plaint that because the defendant could not fulfil the condition regarding obtaining of a licence, the grant made by the indenture of lease did not and could not take effect, as also that in paragraph 7 that the tenancy of lease was from month to month. The parties could not by their pleadings alter the intrinsic character of the lease or bring about a change of the rights and obligations flowing therefrom. The lease was a lease for a definite term and, therefore, expired by efflux of time by reason of Section 111(a) of the Transfer of Property Act. That being so, the service of a notice under Section 106 of the Transfer of Property Act was not necessary." 22. I hasten to add here that it is not as if that oral evidence is shut out under all circumstances in connection with the interpretation of a

deed. As pointed out by the Supreme Court in the Decision in CHUNCHUN JHA v. EBADAT All AND ANR., whenever a document has to be construed, the intention must be gathered, in the first place, from the document itself. It is further pointed out that if the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. It is further held in the said case that the real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. It is also pointed out that if however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended. I may point out here that it is not the contention of either party in this case that there is any ambiguity in the Lease Deed dated 4-11-1968. In this view of the matter, it is clear that the answer to the question as to what is the nature of the lease will depend upon the interpretation of the different clauses, in the Lease Deed. If on an interpretation of the different clauses, the nature of the lease will have to be determined the same, in substance, will partake the nature of law. It is also clear that part of a suit can certainly be disposed of by answering the said issue which has a bearing on the jurisdiction of the Court before which the suit is filed. Under these circumstances, I have no hesitation whatsoever to hold that the issue in question can be construed as a question of law and the modus operandi adopted by the lower Court with reference to the same cannot be found fault with. Point No. 1 is answered accordingly. 23. POINT NO. 2: Under this point it is required to be seen as to whether the lower Court has erred in reaching the conclusion that the provisions of the K.R.C.Act are not applicable to the lease executed in favour of the defendant - Revision petitioner. 24. As pointed out earlier, while dealing with Point No. 1, what is required to be decided is as to whether the Lease Deed dated 4-11-1968 created a lease of the 'building' only or whether the lease in question is a composite lease. If it is held that what was leased was only a 'building', the expression 'building' being understood within the meaning of its definition under Section 3(a) of the K.R.C.Act, it would follow as a matter of logical corollary that the lease under consideration would attract the provisions of K.R.C.Act. This proposition of law is too well settled to need any authority. It will suffice if it is observed that the Decision in UTTAMCHAND v. S.M. LALWANI, throws ample light on the concept of composite lease. The Division Bench of this Court in SHRI KRISHNAKANT C.DESAI v. THE ADDITIONAL COMMISSIONER, WEALTH TAX, W.P. No. 1467 of 1973 etc., DD 11-4-1980 has also thrown adequate light on the said aspect. 25. At this juncture it would be indeed necessary to see as to how 'building' is defined in Karnataka Rent Control Act. Section 3(a) of the K.R.C.Act defines 'building' as under; " 'building' means any building or hut or part of a building or hut other than a farm house, let or to be let separately for residential or non-residential purposes and includes - (i) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut or part of building or hut; (ii) any furniture supplied by the landlord for the use in such building or hut or part of a building or hut; (iii) any fittings affixed to such

building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or a lodging house;" 26. It is also necessary at this juncture, incidentally, to see as to what premises means under the definition given in Section 3(n) of the K.R.C.Act. Section 3(n) reads as under: " 'premises' means - (i) a building as defined in Clause (a); (ii) any land not used for agricultural purposes;" 27. The scope of the expression 'building' as defined in our Act as also in the similar Legislative Rent Control enactments has been the subject matter of authoritative Decisions both by the Supreme Court and by this Court which will be adverted to little later. 28. Sri Shekhara Shetty, learned Counsel for the petitioner contended that the plaintiffs have not even remotely alleged in their plaint that the lease in question is a composite lease, but on the other hand, it is stated in the plaint that what is leased out is 'premises'. The learned Counsel invited the attention of this Court in particular, to the relief column as also to the schedule to the plaint in support of his submission. The relief column reads as under: "The plaintiffs therefore humbly pray for a decree and judgment in their favour and also in favour of the third defendant: (a) Directing the first defendant to put the plaintiffs and the third defendant in possession of the premises fully described in 'A' schedule; (b) xxx xxx xxx (c) xxx xxx xxx (d) directing the first defendant to pay future mesne profits at the rate of Rs. 40,000/- (Rs. forty thousand) per month from this date till the date of delivery of possession of the premises described in A schedule and also interest at 20% (twenty per cent) per annum on the claim of mesne profits for each month from the first of each month till payment; (e) to (g) xxx xxx xxx" It is also necessary to see as to how the Schedule 'A' is described. It is described as under: "Premises bearing Municipal No. 107/115 in Police Road, Bangalore- 2 and No. 3, Venkatachalaiah Lane, Bangalore-2 bounded in the East by premises belonging to Lankappa and others, West by premises belonging to the third parties, North by Police Road and in the South by Venkatachalaiah Lane. The entire premises within the boundaries connecting the ground floor with cellars, the upper stories with all vacant space attached to it, with well etc., excluding of the two shops in the ground floor facing the Police Road, which have been leased to two different tenants, the Godowns to the west of passage from the Police Road near the main entrance also leased to tenants and portion of the building in the rear facing Venkatachalaiah Lane which has been leased to Coffee Works and portion leased to Naidu's Eating House and a portion of the first floor leased to G.Krishnaiah for Bar." Placing reliance on the expression 'premises' and the description of the property in the plaint, the learned Counsel Sri Shekhara Shetty submitted that it was not permissible for the plaintiffs to contend that the lease is a composite lease and is not of a 'building'. The learned Counsel submitted that a party cannot be allowed to prove what is not pleaded in the plaint. 29. On the other hand, Sri Holla, learned Counsel for respondents-1 to 3 contended that the plaint will have to be read as a whole and cannot be read in piecemeal. The learned Counsel invited the attention of this Court to para-3 of the plaint wherein there is an allegation that Hotel was leased to M/s.Elengical Brothers as per registered term 'lease deed' dated 25-3-1964. My attention is also invited to the allega-

tion in the same para wherein, among other things, it is alleged that the first defendant was to take on lease the Hotel “Eastern Lunch Home” and that a fresh registered Lease Deed was to be entered into. The learned Counsel further invited the attention of this Court to an allegation in para-3 wherein it is stated that the copy of the Lease Deed produced with the plaint be read as a part of the plaint. 30. I have given my anxious consideration to the submissions made on either side. 31. In my view, this aspect does not really assume significance in this case having regard to the fact that there is a written instrument viz., a Lease Deed and the nature of the lease will have to be decided on the basis of the recitals in the deed. Even at the risk of repetition, it is necessary to recall the observation of the Supreme Court at this juncture. As pointed out earlier, the Supreme Court has held that the parties cannot by their pleadings alter the intrinsic character of the lease or bring about a change of the rights and obligations flowing therefrom. 32. If that be so, the complexion of the lease will have to be discerned from the several clauses relevant for consideration. 33. The preamble portion of the Lease Deed reads as under: “Whereas the said lessor under a registered lease deed dated 8-5-1964 demised the premises in which the business of Boarding and Lodging was carried on in the name and style”EASTERN LUNCH HOME" to M/s. Elengical Brothers for a period of five years whereas the said M/s.Elengical Brothers sub-leased the scheduled premises to the lessee, B.Vishwanatha Shetty. Whereas the said M/s.Elengical Brothers the main tenant surrendered the entire premises to the lessee in terms of the , settlement agreement of settlement dated 14-10-1968 and in furtherance of the terms of that agreement, the lessor agreed to continue the tenancy, of Sri B.Vishwanatha Shetty the sub-lessee who is already in possession of the premises, under the following terms and conditions witnesses as follows:" After the preamble portion, the next para in the lease deed which is also relevant for consideration reads as under: “In pursuance of the aforesaid agreement and in consideration of the sum of Rs. 50,000/- (Rupees fifty thousand only) paid as deposit which will be security for the due fulfillment of the terms of this DEED by the lessee, before execution of these presents (the receipt of which the lessor hereby acknowledges) and the rent hereinafter reserved and the covenants on the part of the lessee hereinafter contained the lessor hereby demises to the lessee all the premises, with building for the purpose of running a Restaurant and boarding and lodging with all the fitting, fixtures, furnitures, etc., more fully described in the schedule and the list annexed to this, to hold the said premises to the lessee from the 1st day of November 1968 for a term of 10 years paying therefor during the said term the monthly rental of Rs. 2000/- to the lessor, the first of such payment is to be made on 1st December 1968. The deposit of Rs. 50,000/- (Fifty thousand) is returnable after the termination of the lease.” The conditions of the lease are enumerated under different clauses. Clause (1) stipulates the rental and the commencement of tenancy. Clause (2) refers to the duration of tenancy, the right of renewal and the conditions under which renewal can be had. Clause (3) assumes to significance and as such it is desirable to cull out the same. It reads as under: “It is agreed between the parties that in case the lessor requires the premises to carry on the Restaurant, boarding and

lodging business by himself after the expiry of the tenancy period of 10 years, the lessor is not under obligation to renew the lease, and the lessee is. bound to deliver possession of the premises, provided lessor intimates his intention before 14-4-1978." Clause (4) stipulates that the lessor is not entitled to enhance the rent and the lessee is not entitled to ask for a reduction. Clause (5) puts a restriction on the lessee to request the lessor to appropriate the deposit towards the rent. Clause (6) stipulates that all repairs, white washing etc., to the leased building are to be carried out by the lessee at his cost. Clause (7) contains more than one stipulation and it is necessary to cull out the same. It reads as under: "The lessee agrees to make such structural alterations and modifications and improvements as required within a period of six months from this day, and amount so spent shall be certified by the lessor. It is agreed that in the event of the lessor not renewing the lease for further period of ten years on the ground that the lessor himself would carry on the business, the lessor shall pay half the amount, certified by him, spent within six months for effecting alterations and modifications and improvement for the purpose of running a restaurant and boarding and lodging section as well as to safeguard the building. However, the lessor is not bound to pay any amount towards repairs, alterations, modifications carried out by the lessee after six months from this day and during the rest of the lease period." Clause (8) contains certain recitals which are also relevant for consideration and it reads as under: "The lessor is at liberty to effect further improvements alterations and additions to the buildings suitable for the purpose of the business of restaurant, boarding and lodging in the schedule premises without causing any injury to the existing structure leased out to the lessee or in any manner diminishing the floor space and value of the building." Clause (9) provides that the lessee shall be at liberty transfer or underlet the schedule premises with certain conditions. Clause (10) refers to the liability to pay tax etc., and the same needs to be culled out, It reads as under: "The lessee shall pay all the taxes and other charges payable in respect of the schedule premises and the lessee shall also pay the charges of electricity and telephone and water consumption in the premises and such other taxes or charges as may be payable in connection with the use of the premises as restaurant, Boarding and lodging. However, the lessor shall pay only the property taxes levied by the Corporation of the City of Bangalore," Clause (11) provides for the payment of the deposit after the expiration of tenancy. Clause (12) imposes liability on the lessor to indemnify the lessee of the latter's peaceful possession is affected by defective title etc. Clause (13) speaks about the obligation of the lessee after the expiration of the lease. It reads as under: "It is also agreed between the parties that at the expiration of the lease period, subject to the renewal clause mentioned hereinabove, the lessee is at liberty to take moveables belonging to him and the lessee shall give possession of the premises with all moveables belonging to the lessor as well as the fixtures attached to the building." Clause (14) provides that a lessor is entitled to determine the lease in the event of the lessee failing or neglecting to pay the rent. Clause (15) imposes a liability on the lessee to make good, at his cost towards breakages etc. Clause (16) authorise the lessee to change the name and style of the Restaurant and it reads as under: "It is

also agreed between the parties that the lessee is at liberty to change the name and style of the Restaurant, Boarding and Lodging from the"Eastern Lunch Home" to that of any other name." Clause (17) recites that the original Lease Deed be kept with the lessee and a true copy thereof with the lessor. 34. After mentioning the several clauses referred to hereinabove, the lease deed proceeds to describe the schedule of the property which reads as under: SCHEDULE Premises bearing Municipal No. 107/115 in Police Road, Bangalore-2 and No. 3, Venkatachalaiah Lane, Bangalore-2, bounded in the East by premises belonging to Lankappa and others, West by premises belonging to the third parties, North by Police Road and in the South by Venkatachalaiah Lane. The entire premises within the boundaries connecting the ground floor with cellars, the Upper stories with all vacant space attached to it, with well etc., excluding of the two shops in the ground floor facing the Police Road which have been leased to two different tenants, the godowns to the West of passage from the Police Road near the main entrance also leased to tenants and portion of the building in the rear facing Venkatachalaiah Lane, which has been leased to Coffee Works and portions leased to Naidu's Eating House, and a portion of the first floor leased to C.Krishnaiah for Bar. IN WITNESS WHEREOF the parties hereto have signed the lease deed on the date mentioned against the respective signatures in the present of - WITNESSES: 1. Sd/-K.J.Shetty, Sd/- P.N. Hebbar, Advocate, P.N. Parameshwara Hebbar Bangalore-3. LESSOR

2. Sd/- V.Srinivasa, Sd/- B. Vishwanatha Shetty, Malleswaram, LESSEE Bangalore-3.

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S.No.

Particulars

Nos.

1.

Wooden cots

2.

Tables

3.

Refrigerator (bottle cooler)

4.

Cash Table

5.

Paste grinding machine

6.

Water pump

7.

Iron cots

8.

Grinder without motor

1"

35. The different clauses incorporated in the deed dated 4-11-1968, some of which are succinctly referred to and some culled out in greater detail will have to be interpreted in a proper perspective, with a view to see as to whether the lease in question is a lease of the 'building' or 'premises', the said expressions being understood as they are defined in the Karnataka Rent Control Act. At this juncture, it is indeed necessary to state as to what exactly is the connotation of the term 'composite lease'. The expressions 'building' and 'premises' are matters of definition. However, the expression 'composite lease' is not an expression defined in the K.R.C.Act The meaning of the term 'building' as defined in Section 3(a) of the K.R.C.Act is already alluded to earlier by culling out the said provision. It is also necessary to see as to how the expression 'premises' is defined in K.R.C.Act. Section 3(n) of the K.R.C.Act defines 'premises' as (i) a building as defined in Clause (a); (ii) any land not used for agricultural purposes. It is therefore clear that the expression 'premises' includes a 'building' also which term, of course, is separately defined. The term 'composite lease' among other things, refers to a situation where the dominant object of the lease is to lease some thing else apart from the 'bare' building. It is not necessary at this juncture, to dilate on this aspect since this aspect will have to be necessarily adverted to while considering the Decisions pressed into service by the learned Counsels appearing on either side.

36. It is well settled that the intention of the parties to an instrument has to be gathered from the words used by the parties themselves. In doing so, the parties must be presumed to have used the words in their strict grammatical sense. In this behalf, the Decision in MD.KAMGARH SHAH v. JAGADISH CHANDRA, deserves to be noted. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was intended is ruled out. The true character which a document intrinscially bears cannot be altered by the misconception of the parties as to its character. In this connection the Decision of the Privy Council in AHMED v. ALI EBRAHIM, AIR 1925 PC 177 throws ample light. Sri Holla, learned Counsel for the plaintiffs - respondents-1 to 3 submitted that the totality of the clauses of the Lease Deed under consideration if read as a whole and read in conjunction with each other the same would unmistakably go to show that the lease in question is not a lease of 'building' as such of or 'premises' but is a 'composite lease'. In particular, the learned Counsel has placed reliance on the para following the preamble portion wherein it is stated that the lessor 'hereby demises to the lessee all the premises, with building for the purpose of running a Restaurant and Boarding and Lodging with all the fittings, fixtures, furnitures, etc.. more fully described in the schedule.... The para containing this portion is already culled out in para-33 of this Judgment Sri Holla has also put his finger on Clause Nos. 13, 14, 15, and 16. Clause No. 13 as seen earlier stipulates that at the expiration of the lease period, the lessee is at liberty to take moveables belonging to him and the lessee shall give possession of the premises with all the moveables belonging to the lessor as well as the fixtures attached to the building. Similarly emphasis is placed on clause No. 3 of the lease deed wherein it is stipulated that in case, the lessor requires the premises to carry on the Restaurant. Boarding and Lodging business by himself after the expiry of the tenancy period of 10 years, the lessor is not under obligation to renew the lease.... In the same way, the learned Counsel also placed his reliance on Clause No. 16 wherein it is stated that the lessee is at liberty to change the name and style of the Restaurant, Boarding and Lodging from the "Eastern Lunch Home" to that of any other name. It is argued by the learned Counsel that the Eastern Lunch Home was leased to M/s Elengical Brothers in the first instance and in furtherance of the tripartite agreement, the same has been subsequently leased to the instant defendant - Revision petitioner under the circumstances mentioned in the plaint. The learned Counsel particularly emphasised that if it was a case of lease of building simplicitor all the different Clauses particularly emphasised hereinabove would not assume any relevance. It is also argued by the learned Counsel, Sri Holla that the fact that number of furnitures which have got relevance only in the context of Boarding and Lodging and which are mentioned in the lease deed has also been a subject matter of lease would give an idea as regards the dominant intention of the parties. The learned Counsel in this connection, has placed reliance mainly on three Decisions, viz„ the Decision

in Uttamchand v. S.M. Lalwani; the Decision in DWARKA PRASAD v. DWARKA DAS SARAF, ; and the Decision of the Division Bench of this Court in Sri Krishna Kant C.Desai v. The Additional Commissioner of Wealth Tax. On the other hand, Sri, Shekhara Shetty, learned Counsel for the petitioner submitted that none of the Decisions pressed into service by the learned Counsel for respondents-1 to 3 has a bearing on the construction of the lease deed in this case. It is pointed out by the learned Counsel that in two of the aforesaid Decisions viz., in Dwarka Prasad's case and in Sri Krishna Kant C. Desai's case, the lease was a lease of a running Cinema Theatre with projectors, fixtures etc., and in Uttamchand's case, the lease was that of a Dal Mill building with machineries erected on premises for the purpose of running the Mill. It is pointed out by Sri Shekhara Shetty that such is not the situation here. The learned Counsel submitted that, on the other hand, the Decision in MOHAMMAD JAFFER ALI v. S. RAJESWARA RAO AND ORS., AIR 1971 SC 156, would apply to the facts of this case. It is pointed out by the learned Counsel that in Mohammad Jaffer Ali's case, the cinema theatre equipped with projector and sound equipment was leased, and in that context, the Full Bench of the Andhra Pradesh High Court held that the same would be governed by the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act. It is emphasised by Sri Shekhara Shetty that the provisions relevant for consideration contained in the Rent Control Act of State of Andhra Pradesh and our Act are similar and that therefore, the said Decision of Andhra Pradesh High Court would support, the submission that the lease in the instant case cannot be construed anything other than a lease of a 'premises' or 'building'. The learned Counsel has also placed reliance on certain other Decisions in support of his submission which would be alluded to later if necessary.

37. In Uttamchand's case, a Dal Mill building with fixed machinery in sound working order and accessories was leased out on an annual rent. The intention of the lease in accepting the lease was to use the building as a Dal mill. The question was whether the Dal Mill was an accommodation within the meaning of Section 3(a) of M.P. Accomodation Control Act, 1955, and whether the Rent Control authority had jurisdiction to determine the standard rent. In the said case, the Supreme Court after a consideration of the lease deed, among other things, has held that the fittings of the machinery in the said case could not be said to be fittings which had been fixed for the more beneficial enjoyment of the building. It is also pointed out that the fittings to which Section 3(a)(y)(3) (of the M.P. Accommodation Control Act) refers are obviously fittings made in the building to afford incidental amenities for the person occupying the building and that being so, it was clear that the fittings in question, in the said case, did not fall under the aforesaid provisions. Further on a consideration of the several clauses in the said document, the Supreme Court at para-12 of its Judgment has held as under: "What then was the dominant intention of the parties when they entered into the present transaction?

We have already set out the material terms of the lease and it seems to us plain that the dominant intention of the appellant in accepting the lease from the respondent was to use the building as a Dal Mill. It is true that the document purports to be a lease in respect of the Dal Mill building, but the said description is not decisive of the matter because even if the intention of the parties was to let out the Milt to the appellant, the building would still have to be described as the Dal Mill building. It is not a case where the subject-matter of the lease is the building and along with the leased building incidentally passes the fixture of the machinery in regard to the Mill; in truth, it is the Mill which is the subject-matter of the lease, and it was because the Mill was intended to be let out that the building had inevitably to be let out along with the Mill. The fact that the appellant contends that the machinery which was transferred to him under the lease was found to be not very serviceable and that he had to bring in his own machinery, would not alter the character of the transaction. This is not a lease under which the appellant entered into possession for the purpose of residing in the building at all; this is a case where the appellant entered into the lease for the purpose of running the Dal Mill which was located in the building. It is obvious that a Mill of this kind will have to be located in some building or another, and so, the mere fact that the lease purports to be in respect of the building will not make it a lease in respect of an accommodation as defined by Section 3(a)(y)(3). The fixtures described in the schedule to the lease are in no sense intended for the more beneficial enjoyment of the building. The fixtures are the primary object which the lease was intended to cover and the building in which the fixtures are located comes in incidentally, That is why we think the High Court was right in coming to the conclusion that the rent which the appellant had agreed to pay to the respondent under the document in question cannot be said to be rent payable for any accommodation to which the Act applies."

38. In Dwarka Prasad's case, the Supreme Court has pointed out that a lease of lucrative Theatre with expensive cinema equipment, which latter pressed the lessee to go into the transaction, cannot reasonably be reduced into a mere tenancy of a building together with fittings which but make the user more enforceable. It is pointed out in the said case that when the last renewed lease of 1959 was executed, there was a running cinema business and further the rent apportioned for the building qua building was only a fraction of the rent 'for the costly fixtures intended for the cinema business.' In that context, and with reference to the provisions of U.P. (Temporary) Control of Rent and Eviction Act, the Supreme Court held that the provisions of the said Act have no application to the facts of the said case.
39. In the Decision in Sri Krishna Kant C.Desai's case, the facts are more or less similar to those of Dwarka Prasad's case and the conclusion reached by the Division Bench of this Court also was obviously similar.
40. I have carefully considered the contentions raised by the learned Counsels

and the Decisions pressed into service by them. On a perspicacious consideration of the different Clauses of the Lease Deed and the Decisions cited at the Bar and adverted to immediately hereinabove, I find that none of the said Decisions has a direct bearing, so far as the facts of this case are concerned. It is indeed necessary to remember that in the instant case, the lease admittedly was a lease of premises where the business of restaurant, boarding and lodging was carried on. The Lease Deed clearly recites the same. The lessors, in the first instance, by a Deed dated 8-5-1964 demised the premises in which the business of Boarding and lodging was carried out to M/s.Elengical Brothers. M/s.Elengical Brothers had subleased the same to the defendant Revision petitioner. Thereafter in view of the tripartite settlement, the Lease Deed dated 4-11-1968 was executed. By the said Lease Deed the lessors demised the 'premises' for the purpose of running a Restaurant. Boarding and Lodging. This is what the Lease Deed itself recites. Plaintiffs have also stated in para-3(3) of the plaint that "ultimately it was agreed among all the parties that the first defendant was to take on lease, the Hotel 'Eastern Lunch Home'. At this juncture, it is necessary to mention here that plaint para-11 also throws adequate light on this aspect. It is averred therein as under:"The building taken on lease is 'L' shaped and contains two wings. The wing facing Police Road contains Cellars, a ground floor three storeys for the major portion of the length and the other wing contains ground floor and 2 storeys. On the date of the lease there were 72 (seventy two) rooms in the premises leased to the first defendant. A part of the ground floor is used by the first defendant as a restaurant. The first defendant's lease does not comprise or include two shops facing Police Road and space let out to Naidu's Hotel facing Venkatachalaiah lane, and part of the first floor facing Police Road let out by plaintiffs to Messers Arvind Enterprises. The ground floor of the building facing Venkatachalaiah Lane is in fact, not included in the first defendant's lease. Since there is dispute a suit is pending. The upper floors are used by the first defendant as a "Lodging House". During the last ten years, the room rents for daily boarders have gone on steeply increasing. The first defendant has constructed additional rooms in both the wings. The plaintiffs learn that there are now 95 (ninety five) rooms, which are left out to daily boarders. The rental varies from Rs. 8/- (eight) to Rs. 35/-(thirty five) per diem. There are "Single occupation", "double occupation" and "treble occupation" rooms. According to the information of the plaintiffs, the daily collection is not less than Rs. 1,500/- {Rupees one thousand five hundred). The area of the ground floor wherein the restaurant is run is not less than 2000 (Two thousand) sq. feet. The monthly rental for the ground floor alone is not less than Rs. 8000/- (Rupees eight thousand). This is at the rate of Rs. 4/- (four) per sq.feet. Even earlier the rental for the ground floor was not less than Rs. 1.50 (Rs.one and paise fifty) per sq.foot. So the total monthly rental for the entire building will not be less than Rs. 50,000/- (Rupees fifty thousand) per month. The plaintiffs learn that more than 90 (ninety) per cent of the rooms are

occupied daily. Hence the first defendant is easily getting an income of not less than Rs. 40,000/- (Rs. forty thousand) both on account of rental of the rooms which are let out and the ground floor which the first defendant is occupying himself for his restaurant. Since the first defendant's possession is wholly unlawful the first defendant is liable to pay mesne profits to the plaintiffs and the third defendant at the rate of Rs. 40,000/-(Rupees forty thousand) per month. The first defendant has unauthorisedly and without the concurrence/ permission of the plaintiffs converted a portion of the restaurant into a wine shop about ten years back and the defendant has been running the said wine shop, and is earning a minimum of Rs. 10,000 - 15,000/-(Rupees ten thousand - fifteen thousand) per month. The first defendant is liable to pay mesne profits at least from 31-8-1982 (date of termination of tenancy) (thirty first day of August nineteen eighty two). As regards past mesne profits, since the rate will be hotly contested by the first defendant, past mesne profits are tentatively claimed at the rate of Rs. 10,000/- (ten thousand) per month, If on a proper enquiry this Court is pleased to fix the mesne profits at a higher rate, the plaintiffs and the third defendant may be awarded past mesne profits at a higher rate and the plaintiffs and the third defendant are willing to pay additional Court fee on the same, future mesne profits are claimed at the rate of Rs. 40,000/- (Rupees forty thousand) per month." Thus, from what is stated hereinabove, it appears that what was leased was a Hotel or a lodging house. This aspect deserves to be considered deeply and in greater detail. It needs to be stated that the terms 'hotel' and 'lodging house' are the terms defined in the Karnataka Rent Control Act. Section 3(g) defines the same as under: "Hotel' or 'lodging house' means a building or a part of a building where lodging with or without board or other service is by way of business provided for a monetary consideration;"

41. It would also be convenient to mention here that the owner of a lodging house is also a matter of definition. Section 3(1) of the K.R.C.Act states that "owner of a lodging house" includes any person who receives or is entitled to receive, whether on his own account or on behalf of himself and others or as an agent or trustee, any monetary consideration from any person on account of board, lodging or other service."
42. The definitions of 'building' and 'premises' in K.R.C.Act are already culled out at paras 25 and 26 of this Order. The term 'premises' is a genus of which the term 'building' is species. As can be seen from the definition of the term building that a 'building' means a part of the building also. The said Section 3 enumerates as to what all are included in the definition of 'building'. However, Section 3(a)(iii) specifically makes it clear that the expression 'building' does not include a room or other accommodation in a hotel or a lodging house.
43. It is significant to notice here that the legislators in their wisdom have thought it necessary to exclude a room or other accommodation in a hotel or lodging house, from the purview of the definition of 'building', but at the same time they have not thought it fit to exclude, wholesale, the

hotel or lodging house. It is not for a Court of law to further probe into the matter and ask the question as to why it is so, However, one thing is clear that if the Legislators wanted to exempt 'hotel' and lodging house' from the purview of the provisions of the K.R.C.Act they would have said so in so many words. The fact that it is not enacted that way would go to show by an inevitable inference that the legislators did not want the 'hotel' or 'lodging house', taken as a whole, as distinct from its 'rooms' or 'accommodation' to be exempted from the provisions of the K.R.C.Act. In fact, this Court had an occasion to consider this aspect in the Decision in MANIKCHAND JOSHI v. SPECIAL DEPUTY COMMISSIONER, . In the said case, this Court in para-9 of its order has held as under: "The question as to whether the application under Section 37 of the Act is maintainable will mainly hinge upon the answer to the question as to whether respondents-3 to 6 could be construed as the managers of the hotel or the 'owners' of the lodging house. In this context, the definition of the term 'building', the definition of the term 'lodging house' and the definition of the term 'owner of a lodging house' will have to be understood in a correct perspective. The definition of these terms incorporated in the Act are already alluded to earlier. It can be seen that the essential element of a hotel or a lodging house as defined consists of providing lodging for a monetary consideration and this should be by way of business. It is also significant to note that the term 'building' excludes from its connotation a room or other accommodation in a hotel or a lodging house. This is clear from the definition of the term 'building', in Section 3(a)(iii) of the Act. At the same time, it is indeed significant to notice that a hotel or a lodging house is also a building or a part of the building, where lodging with or without other services by way of business is provided for monetary consideration. This is clear from Section 3(g) of the Act. Though it may appear that there is an element of contradiction with reference to the definition of 'building' and the definition of a 'hotel' or a 'lodging house', when juxtaposed with each other, a little reflection should resolve this contradiction. On a perspicacious examination of the aforesaid terms it appears to me that although a room or other accommodation in a hotel or lodging house is excluded from the definition of 'building', 'hotel' or a 'lodging house' taken as a whole, as distinct from its rooms or accommodation provided from the lodgers, will be a building or a premises as between the owner of the hotel and his landlord. In fact, such a view gains support from the decision in JHAMANDAS RAMCHAND v. STATE OF BOMBAY (57 Bombay Law Reports 938). I hasten to add here that the decision in the said case was given in the context of the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short 'the Bombay Rent Act 8). However, it is necessary to mention here that in the Bombay Rent Act, 'premises' includes any building or part of a building including any fittings-affixed to such building or part of a building, but does not include a room or other accommodation in a hotel or lodging house. In our Act also the 'building' does not include a room or other

accommodation in a hotel or lodging house. In this view of the matter, the ratio of the decision in the aforesaid case would apply equally to the cases arising under the Karnataka Rent Control Act also with reference to this aspect. I am in respectful agreement with the view expressed by the Bombay High Court in the aforesaid case. Under these circumstances, I have no hesitation to hold that though a room or other accommodation in a hotel or a lodging house is excluded from the definition of a 'building', 'hotel' or 'lodging house' taken as a whole, as distinct from room or accommodation provided for lodgers will be premises within the meaning of that expression in Section 3(n) of the Act (which expression also includes a building as defined in Section 3(a) of the Act), as between the owner of the hotel and his landlord."

44. It would be indeed in fitness of things, to extract a portion of the observation made by the Bombay High Court in Jhamandas Ramchand's case referred to in the aforesaid Decision of this Court. Bombay High Court was considering the provisions of Section 4(3) of the Bombay Land Requisition Act, 1948 and Section 5(8)(b) of the Bombay Rent Control Act. In that context, the High Court has, among other things, observed as under: "No, the relevant definition is to be found in Section 4(3) and is as follows;"Premises' means any building or part of a building let or intended to be let separately including -

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such buildings, or part of a building.

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house." Now, on the one hand it is contended by Mr.Gupte that what is taken out of the definition of "premises" is not only "a room or other accommodation in a hotel or a 'lodging house' but even the whole hotel or lodging house, whilst what is contended by Mr.Mistree is that the whole hotel or a lodging house falls within the definition, and all that is taken out is"a room or other accommodation in such hotel or lodging house". It seems to me that the contention of Mr.Mistree is well founded. In the first instance in defining"premises" in the earlier part of the definition the Legislature has mentioned "a building" in contradistinction to "a part of a building", and therefore the Legislature clearly had in mind the distinction between a whole and its part, and where it desired that both the whole and/or the part should fall within the definition, they clearly enumerate both the whole and the part separately. When we come to the exclusion clause, following the same analogy, if the Legislature intended that what should be excluded is a hotel or a lodging house or a room or other accommodation in a hotel or lodging house, one would have expected the Legislature to use the language "but does not include a hotel or lodging house or a room or other accommodation in a hotel or lodging house". It is true to say that if a single room or other accommodation cannot be requisitioned, it seems somewhat odd that the Legislature should

authorise the requisition of an entire set of rooms or the entire accommodation in a hotel or a lodging house; but that is a question of policy of the Legislature with which I am not concerned. The emphasis laid in the first part of the definition on "a building or part of a building" and the absence of similar phraseology in the exclusion clause leads me to the conclusion that an entire hotel or lodging house is within the definition of the word "premises" in the Bombay Land Requisition Act, 1948. In this connection one may usefully look at the analogous provisions of the Bombay Rent Control Act, 1947. The definition of "premises" given in Section 5(8)(b) of the Bombay Rent Control Act, 1947, is in all essential particulars the same as under the Bombay Requisition Act, 1948, except that there is included in the definition of the word "premises" in the Rent Act "Any furniture supplied by the landlord for use in a building or part of a building." The distinction is not material for the purpose of construction of the words "but does not include a room or other accommodation in a hotel or lodging house". One may well turn to the Bombay Rent Control Act, 1947, to consider what those words mean in that statute. Now, for the purpose of controlling rents in Bombay the Legislature enacted the Bombay Rents, Hotel and Lodging House Rents Control Act, 1947, the Act having been published after receiving the assent of the Governor General in the Bombay Government Gazette on January 19, 1948. The scheme of the Act is that the rents of rooms or other accommodation in a hotel are controlled under the provisions of Part III of the Act, while rents of all other premises are controlled by Part-11 which deals with tenants of "premises". Part-Ill does not include within its scope the entire hotel or lodging house; and there can be no doubt that if such a hotel or lodging house was run in premises which were taken on lease by the proprietor of the hotel or lodging house the entire hotel or lodging house would be "premises" within the meaning of the Bombay Rent Control Act, 1947 and were never intended to be excluded from the definition of the word "premises" in that Act so as to deprive the tenant thereof of the benefits of the Act. The words, therefore, in Section 5(8)(b) in the definition of "premises" in the Bombay Rent Control Act, viz., "but does not include a room or other accommodation in a hotel or lodging house" quite clearly and without question refer not to the entire hotel or lodging house but to only a room or any other accommodation in it separately. There is no reason, therefore, why identical words used in the Bombay Land Requisition Act by the Legislature which must be deemed to know the use of these words in a prior Act should not be taken to mean the same thing. I am, therefore, of the opinion that an entire hotel or lodging house is not excluded from the definition of "premises" under the Bombay Land Requisition Act, and therefore whatever may be the merits in the other contentions of the petitioner, they do not arise for determination . on this petition. The declaration of vacancy made by the State of Bombay with regard to the premises is final and conclusive and the flat being "premises" within the definition of the Bombay Land Requisition Act, it

has been properly requisitioned."

45. It is relevant to note here that the definition of 'building' in our Act, is almost similar to that of the definition of the 'premises' in the aforesaid Bombay Rent Control Act. Section 5(8) of the Bombay Rent Act reads as under: " 'premises' means -

(a) any land not being used for agricultural purposes,
(b) any building or part of a building let separately (other than a farm building) including -
(c) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,
(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house;"

46. It would therefore go to show that the definition of 'building' in our Act and the definition of the word 'premises' in the Bombay Rent Act and the definition of the term 'premises' in the Bombay Land Requisition Act are similar in all essential features. This Court respectfully agrees with the view taken in Jhamandas Ramchand's case and has, in fact on the earlier occasion followed the same in Manikchand Joshi's case. Under these circumstances, I have no hesitation whatsoever in holding that the provisions of the Karnataka Rent Control Act shall apply to the lease of a lodging house or a hotel.
47. The essential features of a hotel or a lodging house as defined in Section 3{g) of the K.R.C.Act consists of providing for monetary consideration and that this should be done by way of business. The addition of the word by way of business, indicates that the Legislature has intended that the provision for lodging although for monetary consideration should be by way of business. The carrying on of business, implies repetition of acts and excludes an isolated transaction which is not to be repeated. In other words, it must have a regularity and continuity of transactions or acts. It is also necessary to remember that aboarding house which does not provide lodging, is not covered by the definition. Whether the provision for lodging is the principal object or the supplementary object or as necessary to the supply of board, if lodging is provided it is a lodging house as defined. 'To provide a lodging' means 'to provide a temporary abode or residence or a sleeping place.'
48. In the instant case, as pointed out earlier, the different clauses in the Lease Deed do not admit of any ambiguity that what was leased was a premises where the business of boarding or lodging under the name

and style of "Eastern Lunch Home" was run. Further, in view of the tripartite agreement, "ultimately it was agreed among all the parties that the first defendant was to take on lease the hotel"Eastern Lunch Home." This undisputed position flows from the contents of the Lease Deed itself. Further, para-11 of the plaint unmistakably goes to show that on the date of lease there were 72 rooms in the premises leased to the first defendant. It further goes to show that a part of the ground floor is used by the first defendant as a restaurant. It is also stated that the upper floors are used by the first defendant as a "lodging house". It is also stated that "during the last 10 years the room rents for daily boarders have gone on steadily increasing." Further allegations in the plaint are there as they are and since the said para-11 is culled out earlier in toto, it is not necessary to refer to all of them here again. However, it is necessary to notice here that it is not as if the lessors have got any say in the business of boarding and lodging run by defendant - Revision petitioner in the building described in the schedule to the plaint and the Lease Deed. As pointed out earlier, the right of the lessors was to take Rs. 2000/- per month as rent. Further the lessee was allowed to effect alterations, modifications, improvements within a period of six months, from the date of Lease Deed and the same was required to be certified by the lessor. It is further provided that if the lessor does not renew the lease for a further period of 10 years, on the ground that the lessor himself would like to run the business, the lessor shall pay half the amount certified by him (vide Clause-7). It is further seen from Clause-10 that the lessee was mulcted with the liability to pay all taxes except the property tax levied by the Corporation. Further, the lessee was even at liberty to sublease the subject matter of lease or even transfer the same. He is at liberty even to change the name and style of the restaurant, boarding and lodging from the 'Eastern Lunch Home', to that of any other name. Further, the plaintiffs - respondents-1 to 4 have in their counter to I.A.No.Vl (by way of an affidavit filed by plaintiff-2) have contended that "since it is a composite lease, the moveables form a part of the immoveable property and the entire hotel was leased as such at a particular rate of rent." If all these facts which flow from the contents of the Lease Deed dated 4-11-1968 and the admissions in the plaint and the contention taken to the application at I.A.VI are if appreciated together, they would unmistakably go to show that what was leased was a hotel or a lodging house, I hasten to add here that this is also a specific contention raised by the plaintiffs to the application at I.A.No.VI.

49. If that be so, it is possible to say that in this case what was leased was not a 'bare' building with four walls but what was leased was a building where the business of boarding, lodging and restaurant was run. Technically speaking Sri Holla, learned Counsel for respondents-1 to 3 is right in his contention that the lease partakes at the nature of a composite lease. However, the concept of composite lease relevant in the context of, say, the lease of a building where a Dal Mill is being run or where a Cinema Theatre is run or where a factory is run cannot be introduced in the context of the

lease of a 'hotel' or a 'lodging house' in view of the definition of 'building' in K.R.C.Act. I have already pointed out earlier, that the definition of 'building' in Section 3(a) of the K.R.C, Act, though does not take within its sweep a room or other accommodation in a hotel or lodging house, would embrace the 'hotel and lodging house' taken as a whole, as distinct from its rooms or accommodation provided for the lodgers. If such is not the interpretation, I am afraid that the provisions of Section 3(a)(iii) of the K.R.C.Act would be rendered absurd. I n my view, once, when a lodging house or a hotel is leased, the lessor not retaining any control on business, the lessee becomes 'the owner of a lodging house' because, it is he who receives or is entitled to receive any monetary consideration from any person on account of Board, lodging or other service. Under these circumstances, I have no hesitation whatsoever in holding that the concept of 'composite lease' adverted to either by the Supreme Court or by the Division Bench of this Court in the Decisions referred to earlier cannot be called in aid at all in a situation like the one in hand having regard to the scheme of the Karnataka Rent Control Act in relation to the lodging house and the hotel. It is therefore clear that the said concept is not at all germane to the point under consideration. The learned Counsel is wrong in contending that the lease in question does not attract the provisions of the Karnataka Rent Control Act, because his submission is made without reference to the provisions relating to hotels and lodging house.

50. In fact, this aspect relating to the lease of the lodging house was not touched upon by the learned Counsels on either side. In fairness therefore, it was felt just and necessary to allow them to address their arguments, particularly with reference to the Decisions of the Bombay High Court and this Court alluded to earlier. Accordingly, the matter was posted before the Court and the learned Counsels on either side were heard on 2-7-1992.

51. Sri B.P.Holla, learned Counsel for the plaintiffs - respondents-1 to 3 arguing for himself and for his Junior, Sri Vittal Rao, who has represented respondent-4, submitted that the Decision in Jhamandas Ramachand's case does not appear to hold good in view of the Decision of the Supreme Court in Uttamchand's case, the Decision in Dwarka Prasad's case and the Decision of this Court in Sri Krishna Kant C.Desai's case. Dilating on this aspect, it was argued by the learned Counsel that in Jhamandas Ramachand's case, the Bombay High Court has taken note of only a part of the definition of the expression 'premises', which excludes rooms in a lodging house or a hotel, but the said Court has failed to take note of the other parts particularly the earlier part of Section 5(8)(b)(iii) of the Bombay Rent Act, with the result, according to the learned Counsel, the Decision is rendered erroneous. The learned Counsel argued that the test laid down in paras-11 and 12 in Uttamchand's case3 and the one laid down in paras-8, 11, 12, 13 and 14 in Dwarka Prasad's case should be followed even in respect of lodging house. It was also argued by the learned Counsel that adistinction is required to be made between 'a bare lodging house' and 'a lodging house with business equipment' and in the later case, the concept

of composite lease will necessarily assume importance, thereby rendering inapplicable the provisions of Section 5(8)(b) of the Bombay Rent Act and Section 3{a) of the K.R.C.Act. The learned Counsel took me again to the preamble portion of the Lease Deed and some other clauses therein. On the other hand, Sri Shekhara Shetty, learned Counsel for the petitioner submitted that the Decision in Jhamandas's case and the Decision of this Court in Manikchand Joshi's case would apply on all fours to the facts of this case. The learned Counsel also reiterated that plaintiffs cannot be allowed to have variance between the pleadings and proof.

52. On a careful consideration of the submissions referred to hereinabove, I am unable to agree with the contentions of Sri B.P.Holla, the learned Counsel for respondents-1 to 3. It is relevant to notice that the Supreme Court had no occasion in the cases dealt with by it and cited at the Bar, to consider the question as to whether lodging house would be a 'building' or 'premises' within the meaning of their expressions respectively in the K.R.C.Act and the Bombay Rent Act. The Decision in Jhamandas Ramachand's case is founded on a sound reasoning. The reasoning adopted is that if the Legislature wanted to exclude 'lodging house' or 'hotel' from the definition of 'building' or 'premises', it would have said so clearly; but, the Legislature has not only not said so, but has chosen in its wisdom to exclude from the purview of the definition only 'rooms' in a hotel or lodging house as distinct from the lodging house or hotel taker, as a whole, I n that context, an irresistible inference that the 'lodging house' and 'the hotel' are not at all excluded from the definition of the expression 'premises' and 'building' have to be necessarily drawn. In fact, this Court in Manikchand Joshi's case persuaded itself to follow the Decision in Jhamandas Ramachand's case on account of the sound reasoning reflected in the said Decision, The epitome of the reasoning adopted by the Bombay High Court and the one that has been reflected in Manikchand Joshi's case by this Court has already been alluded to earlier and it is not necessary to risk a repetition. In my view, the distinction sought to be made out by Sri B.P.Holla, learned Counsel for respondents-1 to 3 between 'a bare lodging house' and 'a lodging house equipped with machinery' is a distinction which cannot be countenanced. The lodging house is a matter of definition in our Act, 'Lodging house' means what is said to be a lodging house in Section 3{g) of the K.R.C.Act and if a particular building or premises satisfies the said definition that will have to be concluded as 'a lodging house1. Under these circumstances, the ingenious efforts made by the learned Counsel to get over this difficulty cannot enure to the advantage of the plaintiffs - respondents-1 to 4.

53. In the view that I have taken it is not necessary to make a reference to the various other Decisions having a bearing on composite lease.

54. It is seen that the suit was filed at a time before Section 31 of K.R.C.Act was struck down in the case of PADMANABHA RAO v. STATE OF KARNATAKA, on 1 -7-1986. It is held by the Division Bench of this Court in WEST COAST PAPER MILLS LTD. v. INDIRA RAO, ILR

1991 KAR 25, 6 that Section 21 of the K.R.C.Act would be applicable to pending proceedings. In view of this settled position of law it is not necessary to dilate any further in this behalf.

55. Therefore, I hold under this point that the lower Court has erred in reaching the conclusion that the provisions of the K.R.C.Act are not applicable to the facts of the case. In reversal of the said finding, I hold that the provisions of the K.R.C.Act are applicable to the lease in question.

56. POINT NO. 3: Under this point it is required to be seen as to whether the lower Court is right in striking down the defence of defendant in the suit in question. It is seen that the point under consideration has arisen out of an application at I.A.No.III filed on behalf of the plaintiffs. It is further seen that the lower Court by its order dated 3-1-1986 directed the 1st defendant - Revision petitioner to deposit a sum of Rs. 84,000/-which is the arrears of rent at the rate of Rs. 2000/- p.m. from 1-7-1982 to 31-12-1985 within a period of 30 days from the date of the order with a further direction that he should go on depositing Rs. 2000/- every month in Court until further orders. It appears that defendant-1 deposited the amount of Rs. 84,000/- as also the amount towards the rent for some months thereafter. However, he did not deposit the amount towards subsequent months. Plaintiffs therefore filed an application at I.A.No.III under Section 151 CPC praying for striking out the defence of the 1st defendant in the suit and to decree the suit as prayed for. In the affidavit accompanying the application at I.A.No.III, among other things, it is averred that defendant-1 deposited a sum of Rs. 90,000/- pursuant to the order passed by the Court which included a sum of Rs. 84,000/- and 'damages' at the rate of Rs. 2000/- p.m. (for three months) upto 31-3-1986 and that defendant-1 has not deposited the amount of Rs. 2000/- p.m. from April 1986 upto the date of I.A.No.III (4-9-1987) and that defendant-1 has deliberately disobeyed the order passed by the Court. On these allegations, in substance, the plaintiffs prayed for striking off the defence.

57. The defendant - Revision petitioner by his objection resisted the application at I.A.No. III. Among other things, he contended that plaintiffs are not his landlords and that they cannot claim any damages. It was also contended in the objection that Section 31 of K.R.C.Act was struck down and that therefore, the prayer for ejectment is not maintainable and plaintiffs themselves 'agreed' before Court when the written statement was amended. It was also contended that plaintiffs are entitled only to the amount for which they paid Court fee. Defendant-1 also raised a contention that since Section 31 of K.R.C.Act is struck down the prayer for ejectment "is rejected" and that the suit for damages is misconceived and only a suit for arrears of rent is maintainable and that plaintiffs have not filed any suit for rent. He has also stated that the 1st defendant deposited all the rental arrears liable to be paid by him. He has further stated that upto date rents have been paid. On these grounds, in substance, defendant-1 prayed for the dismissal of the application.

58. The lower Court relying on the Decision of this Court in BANGALORE

BUILDERS v. P.P.ANTHONY AND ORS., ILR (Karnataka) 1978, 782 took the view that in a case where there is a direction by the Court to the defendant to deposit in Court certain amount from month to month and if there is a wilful disobedience on the part of the defendant in complying with the said order, the Court is competent to strike out the defence under Section 151 CPC. The lower Court, came to the conclusion that defendant-1 stopped the deposit of the amount after a particular period and having regard to the fact that there was no merit in his contention that the suit for ejectment and for damages would abate ordered that the defence to the suit be struck down.

59. Sri Shekhara Shetty, learned Counsel for the petitioner submitted that by a Memo dated 11-4-1988 defendant-1 had supplied the particulars for having paid the rent (Memo is seen at page-146 of the file). It is pointed out by the learned Counsel that the last deposit was made on 7-10-1987 under R.O.No.50136 and Section 31 was struck down on 1-7-1986, and that till then there was no default in depositing the amount as per the direction of the Court, ft is further submitted that having regard to the fact that the provisions of the Karnataka Rent Control Act would apply to the lease in question, and that the suit for ejectment and for damages would abate the defendant stopped the deposit of the amount, but on 18-11-1988 he again made the deposit by way of abundant caution he has been depositing the amount subsequently also. It is further submitted by the learned Counsel that the plaintiffs are having an amount of Rs. 50,000/- by way of deposit and that having regard to the fact that the provisions of the K.R.C.Act would apply the defendant is entitled to adjust the same towards the rent in the context of the provisions of Section 18 of K.R.C.Act. He has placed reliance on the Decision in , Modern Hotel, Gudur v. K. Radhakrishnaiah and Ors.

60. On the other hand, Sri B.P.Hotla, the learned Counsel for respondents-1 to 3 submitted that the stand taken by the defendant Revision petitioner, in his objection to the application at I.A.No.III is wholly untenable and smacks of absolute want of bonafides. The learned Counsel also submitted that atleast 18 months' rent was in arrears, when the defence was ordered to be struck down. It is pointed out by Sri Holla that even the amount that was deposited was not deposited month to month. It is pointed out that the Decision in Bangalore Builders v. P.P.Anthony and Ors. completely supports the view taken by the lower Court and the order passed by it. In sum, the learned Counsel contended that the order striking down the defence deserves to be confirmed.

61. I have considered the submissions made by the learned Counsels on either side. The power of the Court to strike out the defence of the defendant in the event of deliberate disobedience of the order of the Court to go on depositing from month to month the rent payable to a property in respect of which a suit for ejectment is filed, cannot be questioned. It is well established that the Court has got the undoubted power to strike out the defence in that behalf. In fact, as rightly pointed out by Sri Holla, learned

Counsel for respondents-1 to 3 this Court in the case of M/s.Bangalore Builders has made this position clear beyond a pale of doubt. However, the question for consideration is as to whether the facts and circumstances of this case were such as did warrant the striking down of the defence. In the instant case, the defendant - Revision petitioner has paid the amount after the order was passed on IANo.II, as mentioned in detail in the memo. The Memo reads as under: " Memo for R.O.Particulars The defendant in the above case herewith furnishes the particulars having paid the rents. R.O.No. Date Amounts

62. 43500 22-03-1986 90,000.00
63. 45042 31-05-1986 6,000.00
64. 45740 13-08-1986 4,000.00
65. 46378 25-10-1986 6,000.00
66. 47287 19-02-1987 6,000.00
67. 48377 27-05-1987 8,000,00
68. 50136 07-10-1987 10,000.00 1 ,30,000-00 Bangalore. Dated: 11-4-1988 sd/- Advocate for 1st defendant" I hasten to add here that the amount was paid consolidating the rents for some months. In other words, the amount was not paid at regular intervals. However, the hard fact remains that the amount was being paid till the end of September 1987. Further, it is stated at the Bar that there-after the next deposit was made on 18-11-1988. It is a hard fact that on 1-7-1987 Section 31 of the K.R.C.Act was struck down in Padmanabha Rao's case. !t is also necessary to remember here that as pointed by a Division Bench of this Court in ZAHIRA BEGUM v. VISALAKSHI, a security deposit or even advance can be got adjusted at the option of the tenant, when an application is made under Section 29 of the K.R.C.Act. I hasten to add here that this is not a case where an application under Section 29 of the K.R.C.Act is made. However, I have only pointed out the right of the tenant. Further, it is necessary to remember here that plaintiffs were not allowed to withdraw the amount deposited by the defendant Revision petitioner, though an application to that effect was made by plaintiffs before the lower Court. It is also not in dispute that the Civil Revision Petition preferred against the order of refusal to withdraw the amount was also dismissed by this Court. Further, it is seen that one of the important considerations that has weighed with the lower Court, while allowing the application at I.A.No.III, was that, according to the lower Court, the contention of the defendant - petitioner that he was not liable to deposit the rent because the suit for possession and damages would abate, consequent on the Decision in Padmanabha Rao's case, was not tenable. However, it is seen that the provisions of the K.R.C.Act are applicable to the facts of the case, consequent on the decision in Padmanabha Rao's case. In my view, having regard to the totality of the circumstances marshalled immediately hereinabove, the order directing the striking down of the defence is not correct. Point No. 3 is answered accordingly.
69. From what is stated hereinabove, it is clear that the provisions of the

K.R.C.Act are applicable to the facts of the case. It would therefore follow that the bar under Section 21 of K.R.C.Act (restrictions reflected therein) would operate, thereby rendering the suit for ejection in the ordinary Civil Court [other than the Court as defined in Section 3(d) of the K.R.C.Act] not maintainable. It would also follow that a suit for damages will also be not maintainable. However, a suit for rent will have to be proceeded in the ordinary Civil Court only. This aspect is made clear by a Division Bench of this Court in the Decision in K.GANGASETTY v. S.MUNISWAMI, ILR 1991 KAR 3165. It is no doubt true that plaintiffs have not prayed for a decree for rent as such. However, plaintiffs have claimed for a decree for mesne profits. The said relief was on the assumption that the K.R.C.Act would not apply. Now that it is held that the K.R.C.Act would apply to the facts of the case it is clear that what the lessors are entitled to, is only a decree for arrears of rent, if they are otherwise entitled to the same. It is necessary to notice here that the 1st defendant - Revision petitioner has asserted that he continues to the a tenant of the suit property. If, therefore, on the said admitted position, a decree for rent can be awarded subject, of course, to be proof of arrears of rent and resolving of the interse disputes between plaintiffs on the one hand and defendants-2 and 3 on the other, incidentally, there should not be any impediment to pass a decree for arrears of rent. In this connection, the ratio in the Decision of the Supreme Court in FIRM SRINIVAS RAM KUMAR v. MAHABIR PRASAD AND ORS., would throw ample light.

70. Further, though I have held that the order on I.A.No.III passed by the lower Court is liable to be set at naught, the same will have to be made, subject to the condition that defendant-1 deposits in the lower Court all arrears in terms of the order passed by the lower Court on I.A.No.II and continues to deposit the rent from month to month as ordered by the lower Court on I.A.No.II. Such a conditional order is necessary since the order on I.A.No.II is intact and the same is not challenged before this Court. The liability of defendant-1 to deposit the rent as ordered on I.A.No.II will continue as long as as the said order is not set aside or modified or annulled independently or along with the termination of the suit.

71. For the reasons stated hereinabove, both the Civil Revision Petitions are allowed by hereby setting aside the order dated 29- 5-1989 passed by the XVII Additional City Civil Judge, Bangalore on I.A.Nos.III and VI in O.S.No. 1061 of 1984 and this Court orders as under;

1) The provisions of the Karnataka Rent Control Act are applicable to the facts of the case and therefore, the suit for possession in the ordinary Civil Court is barred by the provisions of Section 21 of the K.R.C.Act; consequently, the suit for damages also will not be maintainable. However, the suit in so far as it relates to the arrears of rent is concerned is maintainable and the suit will have to continue in that behalf before the lower Court.
2) The order striking down the defence of defendant-1 by the lower Court is set aside subject to the condition that defendant-1 - Revision petitioner

deposits all the arrears as ordered by the lower Court on I.A.No.II and continues to deposit the same during the continuance of the order dated 3-1-1986 on I.A.No.II.

65. In the facts and circumstances of the case, I order both the parties to bear their own costs in these two Revision Petitions.
66. The original Order shall be kept in C.R.P.No. 4419/1989 and a copy thereof shall be kept in C.R.P.No. 4370/1989.