Supreme Court of India Raptakos Brett And Co. Ltd vs Ganesh Property on 8 September, 1998 Bench: S.B Majmudar, M. Jagannadha Rao CASE NO.: Appeal (civil) 4657 of 1998

PETITIONER: RAPTAKOS BRETT AND CO. LTD.

RESPONDENT: GANESH PROPERTY

DATE OF JUDGMENT: 08/09/1998

BENCH: S.B MAJMUDAR & M. JAGANNADHA RAO

JUDGMENT: JUDGMENT 1998 Supp(1) SCR 485 The Judgment of the Court was delivered by S.B. MAJMUDAR, J. Leave granted. We have heard learned counsel for the parties Finally in this appeal. Hence, this appeal is being disposed of by this judgment. This appeal by special leave seeks to challenge the decision rendered by learned Single Judge of the High Court of Judicature at Calcutta confirming decree for possession passed against the appellant-defendant by the learned Judge, 7th Court of City Civil at Calcutta in Title Suit No. 1481 of 1986. In order to appreciate the grievance of the appellant-defendant, it is necessary to note a few relevant background facts. factual matrix : The respondent-plaintiff is the owner of suit premises consisting of ground floor of a building situated at Marquis Street, Calcutta. The said premises were rented to the appellant-defendant on a monthly rent of Rs. 2045 by a registered lease dated 16th March, 1964. This lease was for a period of 21 years commencing from 16th March, 1964 and ending on 15th March, 1985. On the expiry of the said period, the respondent-plaintiff alleging to be a registered partnership firm, filed the aforesaid suit praying for a decree for possession as well as damages @ Rs. 200 per day for illegal occupation of the premises by the appellant-defendant. The defence of the appellant- defendant was that after the expiry of the lease period, it had continued to be a tenant by acceptance of rent by the defendant-landlord and hence it had become a tenant by holding over under Section 116 of the Transfer of Property Act, 1882 (for short 'the Property Act'). Further defence was taken by the appellant-defendant by way of a separate application seeking dismissal of the suit under Order 7 Rule 11(d) of Code of Civil Procedure (for short 'CPC') on the ground that the suit for possession as filed by the plaintiff-respondent, which was an unregistered partnership firm, was not maintainable. Learned Trial Judge, framed relevant issues on the pleadings and came to the conclusion that the defendant-appellant was not a tenant holding over and was in unlawful possession of the premises after the expiry of the lease period. On the question of maintainability of the suit, the Trial Court held that the suit was not hit by Section 69 sub-section (2) of the Indian Partnership Act, 1932 (for short the Partnership Act'). Accordingly, a decree for possession was passed. The appellant-defendant carried the: matter in first appeal before the High Court. As noted earlier, the learned Single Judge who decided the said appeal, held against the appellant- defendant and dismissed the appeal. That is how the appellant-defendant is before us in the present case. RIVAL CONTENTIONS : Learned senior counsel, Shri R.F. Nariman for the appellant-

defen-dant, placed a solitary contention for our consideration. He submitted that on a proper reading of the plaint as filed by the respondent it has to be held that the respondent sought to enforce a right arising out of the contract of lease between the parties and as on the date of the suit, the respondent was not a registered partnership firm, the suit was ex-facie not maintainable and was required to be dismissed on this ground alone. However, he fairly stated that on merits, as the West Bengal Rent Act does not apply to a lease for 21 years and more and as the finding of the courts below that the appellant was not a tenant by holding over, he cannot urge any other contention save and except the aforesaid solitary one. In support of his contention he also submitted that it is a fact that even though pending the suit the respondent plaintiff's firm got registered, the said registration was of no avail to the respondent as the suit which was a still born one could not be revived on account of this subsequent event. In support of this contention Shri Nariman placed reliance on various decisions of this Court and High Courts to which we will make a reference at an appropriate stage in latter part of this judgment: Learned senior counsel Dr. A.M. Singhvi for the respondent-plaintiff contested the aforesaid contention and contended that only the averments made in the plaint have to be seen on demurer for deciding whether the suit was barred under Section 69 sub- section (2) of the Partnership Act, that on a conjoint reading of relevant clauses of the plaint it has to be held that the suit was not filed for enforcing any right arising from a contract which was already at an end by efflux of time and that the suit was not based on any of the contractual terms. Reference to the said contract or any of its clauses was purely for mentioning a historical event for supporting the plaintiff's case for decision and such factual narration of past events did not form the foundation of the plaint nor did they Form part of the cause of action. In the alternative, it was contended by Dr. Singhvi that even assuming that the suit could be said to have been partly based on any Of the terms of the contract so as to attract the bar of Section 69(2) of the Partnership Act, this Was in fact based on two causes of action; (i) on the covenant contained in the erstwhile contract; (ii) on the law of the land, namely, common law as well as Section 111(a) read with Section 108 (q) of the Property Act and so far as this latter cause of action is concerned, it cannot in any way be said to be arising out of the contract. Hence the said cause of action was not in any way hit by Section 69(2) of the Partnership Act, He lastly contended without prejudice to his aforesaid contentions that even if a view is taken that the suit as a whole was hit by Section 69(2) of the Partnership Act, as pending this suit before the decree could be passed, the plaintiff-respondent had put his house in order and got the firm registered the initial defect, if any, which made the suit dormant got cured and consequently it could not be said that the decree passed by the Trial Court was in any way erroneous in law. In support of his contentions, he also invited our attention to a number of decisions of this court and various High Courts to Which we will make a reference hereafter. In view of the aforesaid rival contentions, the following points arise for our consideration : (i) Whether the suit filed by the respondent was barred under Section 69 sub-section (2) of the Partnership Act either wholly or in part; (ii) If the suit

was so barred, whether subsequent registration of the plaintiff's firm under the Partnership Act could revive the suit or to make it competent at least from the date on which such registration pending the suit was obtained by the respondent firm; (iii) What final order? We shall deal with these points in the same sequence in which they are catalogued herein above. Point No. 1 : In Order to appreciate the rival contentions centering round this point, it will be necessary to note the relevant provision of the Partnership Act. Section 69 sub-section (2) reads as under ; "69. Effect of non-registration - (1) xxx xxx xxx (2) No suit to enforce a right arising from a contract shall be. Instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm". A mere look at the aforesaid provision shows that the suit filed by an un- registered firm against a third party for enforcement of any right arising from a contract with such third party would be barred at its very inception. To attract the aforesaid bar to the suit the following conditions must be satisfied: (i) That the plaintiff partnership firm on the date of the suit must not be registered under the provisions of the Partnership Act and consequently or even otherwise the persons suing are not shown in. the Register of Firms as partners of the firm, on the date of the suit. (ii) Such unregistered firm or the partners mentioned in the sub-section must be suing the defendant third party. (iii) Such a suit must be for enforcement of a right arising from a contract of the firm with such a third party. Chapter VII of the Partnership Act deals with registration of firms. As per Section 56 thereof the State Government of any State may, by notification in the Official Gazette, direct that the provisions of this Chapter shall not apply to that State or to any part thereof specified in the notification. It is not the case of any party that any such exemption has been granted so as not to make applicable the said Chapter to the pending controversy be-tween the parties. As per Section 57, the State Government may, by notification, appoint a Registrar of Firms for the purpose of the Act. As per Section 58, the registration of a firm can be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is Situated or proposed to be situated, for the purpose of getting the firm registered by furnishing relevant data as required by the said Section. As per Section 59, when the Registrar is satisfied that provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and then he has to file the statement furnished to him by the firm concerned. It is in the light of the aforesaid statutory provisions of Chapter VII that the effect of non-registration has to be considered as laid down by Section 69 in its various sub-clauses. We are concerned in the present case only with Section 69 sub-section (2) as extracted earlier. Coming back to the consideration of the requirements of Section 69 sub- section (2) under which bar to file such a suit would arise on the part of the unregistered firm it may be noted that on the facts of the present case it is not in dispute between the parties that when the suit was filed in 1986 the first condition for attracting this bar squarely got attracted namely, that the respondent firm was not a registered firm though it was wrongly mentioned in the plaint that it was a registered firm.

Second condition for attracting the bar was also found satisfied as the appellant was a third party being erstwhile tenant against whom the suit was filed. It is the third condition which is the bone of serious contention between the parties. Learned senior counsel Shri Nariman for the appellant submitted that the third condition was also satisfied on the facts of the present case as the suit filed by the respondent-plaintiff unregistered firm was for enforcement of the right of the respondent-plaintiff arising from the contract of lease which was entered into between the parties in 1964 for a period of 21 years and which had expired at the end of 15th March, 1985. It is this contention of learned senior counsel Shri Nariman that has been vehemently contested by learned senior counsel Dr. Singhvi for the respon-dent-plaintiff. At the outset he submitted that for deciding the question whether the suit is barred under Section 69 sub-section (2) of the Partner-ship Act or not only averments in the plaint as a whole will have to be seen. In this connection, he rightly invited Our attention to Order VII Rule 11 Clause (d) of the CPC which reads as under : "ORDER VII: xxx xxx xxx 11. Rejection of plaint- The plaint shall be rejected in the following cases : (a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) where the suit appears from the statement in the plaint to be barred by any law" : We have, therefore, to see the averments in the plaint for deciding whether on the averments in the plaint; the suit can be said to have been barred under Section 69 sub-section (2) of tie Partnership Act as that is the only bar which is relied upon by the learned senior counsel for the appellant for non-suiting the plaint. The plaint in the present case is a very short one consisting of five paragraphs. It would, therefore, be appropriate to reproduce these paragraphs. They are as under : "1. The defendant was a Lessee under the plaintiff in respect of ground floor of the main building (except the stair-case and common spaces) as premises No, 6, Marquis Street, Calcutta, butted and bounded as given in the schedule hereunder at a monthly rent of Rs. 2045 payable according to English Calendar month for a term of twenty one years commencing from 16th March, 1964 and ending on 15th March, 1985 under a Registered Lease dated 16th March, 1964. The said lease dated 16th March, 1964 in respect of the suit-premises terminated by efflux of time on the expiry of 15th March, 1985 but the defendant has failed and neglected to quit, vacate and deliver up peaceful possession of suit premises to the plaintiff as required under the covenant of the said lease and law of land. The plaintiff in this suit seeks to recover from the defendant khas possession of the suit premises which the defendant has failed to vacate and is in wrongful occupation thereof. The plaintiff also claims and seeks to recover mesne profits or damages @ Rs. 200 per day or at such rate as the learned Court may determine, from 16th March, 1985 till recovery of khas possession.

The cause of action for this suit arose at 6, Marquis Street, Calcutta, P.S. Taltola, within the jurisdiction of this Court on the expiry of 15th day of March, 1985 and subsequently.

5. For the purpose of jurisdiction and court fee the value of the suit has been assessed at Rs. 25,540 (monthly rent Rs 2045.00 x 12) for recovery of possession and tentatively valued at Rs. 10.00 for recovery of mesne profit Of damages. The plaintiff undertakes to pay further court fee as may be assessed." Based on these averments, the plaintiff has prayed for decree for khas possession and mesne profits (g) Rs, 200 per day or at such rate as the Court may determine from 16th March, 1985 till recovery of khas possession. Our attention was invited by learned senior counsel for the parties on the moot question as to how the averments in the plaint have to be construed, Shri Nariman invited our attention to a decision of this Court in Udhav Singh v. Madhav Rao Scindia, [1976] 2 SCR 246. In the said report at page 254, Sarkaria, J, speaking for the Court made the following pertinent observations : "We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal cannon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to can out a sentence or a passage and to read it out of the context; in isolation, Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or substraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole." On the other hand, Dr. Singhvi for the respondent, invited our attention to a decision of this Court in Ram Sarup Gupta (Dead) by Lrs. v. Bishun Narain Inter College & Ors., [1987] 2 SCC 555 at page 562, wherein it is observed that: "....The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.... Keeping in view this settled legal position, let us see what has the plaintiff alleged in the suit as the basis of its cause of action. This can be culled out on a conjoint reading of all the aforesaid paragraphs of the plaint. So far as the first paragraph is concerned, it is obvious that the plaintiff has relied on background facts for introducing its case against the defendant. It has traced the History of the relations between the parties and has tried to show how the defendant came to occupy the suit premises. Reference to registered lease of 16th March, 1964 in the first paragraph, therefore, cannot be said to be the foundation of the right to sue as tried to be got enforced by the plaintiff through the machinery of the court. It is not possible to agree with the contention of the learned senior counsel Shri Nariman for the appellant that the first paragraph shows the foundation of the right of the plaintiff for evicting the defendant. It is obvious that unless the history of the relationship

of the parties is traced the plaintiff cannot show how the defendant has continued to remain in possession after the expiry of the lease period. However, the subsequent paragraphs 2 to 5 have been relied upon by the counsel for both the parties for supporting their respective cases and, therefore, they require a closer scrutiny. So far as the second paragraph is concerned, it is clearly stated that despite the efflux of time permitting the lease, the defendant had failed to evict and deliver actual possession of the suit premises to the plaintiff on expiry of 15th March, 1985. It is also obvious that this averment is based on and expressly refers to the covenant in the lease which required the defendant On expiry of the lease to deliver vacant and peaceful possession to the plaintiff So far as the said covenant is concerned, when we turn to the lease deed we find mentioned therein at Clause 11, the following material recitals :"11. That the lessees shall quit and deliver peaceful and vacant possession of the said demised premises to the lessors or their agents on the expiry of the tenure of this lease and/or sooner determination thereof for any reason whatsoever." Similar recitals are found in Clause 14 of the lease deed which reads as under: "That on the expiry of the period of the terms of herein mentioned and/or sooner determination thereof for any reason whatsoever the lessee shall peacefully and quietly quit, yield and deliver vacant possession of the said demised premises to the lessors of their nominees and agents in good order, condition and tenantable repair with usual wear and tear and damages caused by other causes as mentioned in Item No. 6, above excepted." A conjoint reading of these clauses in the lease deed with the averments in paragraph 2 of the plaint, therefore, clearly indicate that the plaintiff had sought to enforce through court, amongst others its right to get restoration of the peaceful possession of the suit premises from the defen- dant arising from the alleged breach of these relevant covenants on the part of the defendant on the expiry of the lease period. If the averments in paragraph 2 had rested at this stage, Shri Nariman would have been perfectly justified in submitting that the plaintiff was trying to enforce solely its right arising out of the erstwhile contract. However, the very same paragraph proceeds further and states in the last line thereof that the defendant had not vacated the premises under the law of the land. This raises the moot question whether the plaint as framed is based on two causes of action or only on one solitary cause of action as submitted by Shri Nariman, learned senior counsel for the appellant-defendant. Dr. Singhvi, learned senior counsel for the plaintiff at the outset submitted that the recitals in paragraph 2 regarding the covenants was by way of a historical fact arid the suit is purely based on the law of the land, namely, the Common Law as well as Section 108(q) read with Section 111(a) of the Property Act. While Shri Nariman for the appellant took an entirely opposite stand by submitting that these very recitals in paragraph 2 show that the suit as based solely on the right arising from the alleged breach of covenant by defendant and the reference to law of the land is by way of abundant caution. As we shall see hereinafter, neither of these extreme

covenants can be countenanced. Turning to paragraph 3, it is no doubt true as submitted by Dr. Singhvi for the respondent that the plaintiff has clearly stated that it is seeking to recover possession from the defendant as the defendant failed to vacate and is in wrongful occupation of the premises. The words "wrongful occupation of the premises" according to Dr. Singhvi show that the plaintiff was alleging in clear terms that the defendant was in unauthorised occupation of the premises after the termination of the contract. Placing reliance on a number of decisions of this Court it was submitted by Dr. Singhvi that on the expiry of the period of tenancy the erstwhile tenant in the absence of any evidence of tenancy by holding over has to be treated as a tenant at sufferance akin to a trespasser and, therefore, the averments in paragraph 3 of the plaint clearly show that the suit was for enforcing the legal right arising from any law or under any relevant provision of the Property Act and the suit cannot be said to be based on any covenant of the erstwhile lease which was dead and gone by efflux of time. In this connection, strong reliance was placed by Dr. Singhvi in the latter part of paragraph which indicated that the plaintiff was seeking to recover mesne profits of damages @ Rs. 200 per day which had nothing to do with the erstwhile lease rent fixed under the contract. According to Dr. Singhvi this averment clearly indicated that the plaintiff treated the defendant to be in unlawful possession and hence the claim for damages. On the other hand, Shri Nariman learned senior counsel for the appellant submitted that the term "wrongful occupation" as found in paragraph 3 when read in the light of paragraph 2 would indicate that according to the plaintiff, defendant was in breach of covenant of handing over of peaceful possession on expiry of lease as enjoined on the defendant under the contract of lease and that "wrongful occupation" due to alleged breach of contract was different from "unlawful occupation". In our view, this hyper technical submission of Shri Nariman cannot be countenanced as there is no real distinction between the terms "wrongful occupation" and "unlawful occupation". Whatever is unlawful cannot be said to be rightful and would necessarily be wrongful In Concise Oxford Dictionary, 7th Edition, the term "wrongful" is defined at page 1240 as under: "characterised by unfairness or injustice; contrary to law; (of per-son) not entitled to position etc. occupied;" It is, therefore, obvious that recitals in paragraph 3 can support the case of the plaintiff both on the ground, if any, that the defendant had committed breach of the covenant and therefore, it was in wrongful occupation and also equally on the ground that under law of the land, the defendant was not entitled to continue in possession after the termination of the period of lease and, therefore, it was in unlawful or wrongful occupation. The words "wrongful occupation" cannot, therefore, be interpreted to mean only 'in breach of any of the terms and conditions of the contract' and can legitimately take in its sweep unlawful occupation after the lease expired on efflux of time as per Section 111 (a) of the Property Act read with Section 108(q) thereof. The restricted meaning of the term 'wrongful

occupation as tried to be suggested by Shri Nariman cannot be accepted. On the contrary, the claim of mesne profits @ Rs. 200 per day as found in paragraph 3 of the plaint clearly shows that the plaintiff treated the defendant to be in unauthorised and illegal occupation after the efflux of time of the lease and therefore, the demand was for mesne profits at the aforesaid rate per day. That had no nexus with the rental of the premises. Turning to the cause of action paragraph 4 it is seen that it is also in general terms and refers to the situation after the expiry of 15th March, 1985 when the lease period was over. It states that the cause of action for recovery of possession arose within the territorial jurisdiction of the court from that date and such cause of action continued subsequently thereafter. Consequently, paragraphs 3 and 4 of the plaint can be said to be equivocal and not necessarily confined to the breach of the covenant of the lease as mentioned in paragraph 2 of the plaint. They can as well support the case of the plaintiff for possession also under general law of the land as recited in last lines of paragraph 2. So far as paragraph 5 regarding the court is concerned, it is now well settled that if the plaintiff seeks possession of the demise premises from the erstwhile tenant, court fee payable would not be on the market Value of the suit property, but on the basis of the valuation of the premises computed on the basis of 12 months rent as it would not be a suit simpliciter on title against a rank trespasser. Only in the latter type of suits that the market value would be the valuation for the purpose of court fees. Having seen the aforesaid relevant averments in the plaint, now it is time for us to consider the rival contentions pressed for our consideration by learned senior counsel for both the parties. Shri Nariman, learned senior counsel appearing for the appellant vehemently contended that the phrase "arising from" or "arising out of a contract as employed by Section 69 sub- section (2) of the Partnership Act is of wider import as compared to the term"arising under". In support of his contention, he invited our attention to a decision of this court in Jagdish Chander Gupta v. Kajaria Traders (India) Ltd., [1964] 8 SCR 50 at page 51 In the said case, this court was concerned with the question whether the application moved by an unregistered partnership firm under Section 8 sub-section (2) of the Indian Arbitration Act, 1940 for appointment of an arbitrator in the light of the arbitration agreement between the parties was covered by Section 69 sub- section 3 of the Indian Partnership Act. In this connection this court observed that :"That since the arbitration clause formed a part of the agreement constituting the partnership it is obvious that the proceeding which is before the Court is to enforce a right which arises from a contract. Whether one views the contract between the parties as a whole or one views only the arbitration clause it is impossible to think that the right to proceed to arbitration is not one of the rights which are founded on the agreement of the parties." So far as the aforesaid decision is concerned, it has to be noted that when an application is moved under Section 8 sub-section (2) of the Arbitration Act for appointment of an arbitrator, such an application has necessarily

to be based on the arbitration clause which is a part of the main contract between the parties. Such an application was. therefore, rightly held to be having a direct nexus with the main contract between the parties which covered the arbitration clause. In the facts of the present case, we fail to appreciate how this decision can be of any assistance to Shri Nariman. In the present suit by erstwhile landlord against the erstwhile tenant the claim for possession by itself has nothing to do with the contract of tenancy which had already come to an end more than a year back. For such claim there is no question of the source of right to possession being its erstwhile contract which is dead and gone. It cannot necessarily be the foundation of the cause of action unless the plaint itself refers to such a cause of action arising out of the terms and conditions of the erstwhile contract which according to the plaint are still subsisting on the date of the suit. Thus, it Cannot be generalised that in every case when on the expiry of period of lease the landlord seeks to recover possession from the erstwhile tenant such a suit must necessarily be said to be one for enforcement of right arising from the contract of tenancy with third party ex-tenant. On the other hand, Dr. Singhvi appearing for the respondent rightly contended placing reliance on a catena of decisions of this court that on expiry of the period of lease, the erstwhile tenant who continues in possession, in the absence of being a tenant holding over, has to be treated as tenant at sufferance whose right of occupation arises not from the erstwhile contract which is dead and gone but which may arise under the general law of the land particularly against forcibly re-entry by ex-landlord or under any statutory law protecting the possession of statutory tenants under the relevant rent Act if applicable. In this connection, Dr. Singhvi invited our attention to a decision: of this court in Ganga Dutt Murarka v. Kartik Chandra Das & Ors., [1961] 3 SCR 813. Shah, J., speaking for a three Judge Bench of this Court in the aforesaid decision held at page 819 of the Report that after the expiry of the lease if the erstwhile tenant continues in possession against the wish of the landlord he cannot be said to have continued in possession pursuant to a contract which is already non-existent. The following pertinent observations in this connection were pressed in service by Dr. Singhvi: ". Of course, there is no prohibition against a landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation by virtue of the statutory immunity. Apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. Occupation of premises by a tenant whose tenancy is determined is by: virtue of the protection granted by the statute and not because of any right arising from the contract which is deter-mined. The statute protects his possession so long as the conditions which justify a lessor on obtaining an order of eviction against him do not exist. Once the

prohibition against the exercise of jurisdiction by the court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not unless the statute provides otherwise, be conditioned." (Emphasis supplied) He also invited our attention to another decision of this Court in M.C. Chockalingam & Ors. v. V. Manickayasagam & Ors., [1974] 1 SCC 48, wherein Goswami, J, speaking for the Court considered the question Whether a contractual tenant after the termination of the tenancy can be said to be in lawful possession of the cinema theatre and would be entitled to renewal of cinema licence as per Rule 13 of the relevant rules. Considering the status of the erstwhile tenant on the expiry of the lease to be that of a person in wrongful possession, the following observations were made in paragraph 16 of the Report : "16. Law in general prescribes and insists upon a specified conduct in human relationship or even otherwise. Within the limits of the law, courts strive to take note of the moral fabric of the law. In the instant case, under the terms of the lease, the property had to be handed over to the lessor. Besides under Section 108(q) of the Transfer of Property Act, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. Since the landlord has not assented to the lessee's continuance in possession of the property, the lessee will be liable to mesne profits which can again be recovered only in term of his wrongful possession. Under Section 5(1) of the Act, the licensing authority in deciding whether to grant or refuse a licence has regard, amongst others, to the interest of the public generally. Public interest is, therefore, also involved in granting or refusing a licence. That being the position, the expression 'lawful possession' in Rule 13 assumes a peculiar significance of its own in the context of the provisions of the Act. Hence in any view of the matter possession of the respondents on the expiry of the lease is not lawful possession within the meaning of rule 13." Dr. Singhvi in this connection also vehemently relied upon the decision of this court in the case of R.V. Bhupal Prasad v. State of A.P. & Ors. [1995] 5 SCC 698, wherein a two Judge bench of this Court, speaking through Ramaswamy, J., made the following pertinent observations in paragraph 8 of the Report : "8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it, by wrong after the termination of the term or expiry of the lease by efflux of lime. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him arid a trespasser In Mulla's Transfer of Property Act (7th Ed.) at page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely fiction to avoid continuance in possession operating as a trespass, It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does

not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus : The Act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression"holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until that rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical." (Emphasis supplied) On the same lines are the decisions of this Court in Smt. Shanti Devi v. Amal Kumar Banerjee, [1981] 2 SCC 199, Murlidhar Jalan (since deceased) through his Lrs. v. State of Meghalaya & Ors., [1997] 5 SCC 480 and D.H. Maniar & Ors. v. Woman Laxman Kudav, [1977] 1 SCR 403. In view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession. However, the aforesaid Conclusion will not clinch the matter one way or the other. The reason is obvious. While considering the question whether the suit as filed is hit by Section 69 sub-section (2) of the Partner-ship Act or not, we have to See what the plaintiff claims as his cause of action. It is obvious that if the suit is based solely on the ground that the erstwhile tenant defendant unlawfully remained in possession after the expiry of the lease and is required to hand over possession to the plaintiff, the suit can be said to be based on the sole cause of action for enforcement of a right arising at general law and under the Transfer of Property Act in favour of the plaintiff and against the defendant who was earlier protected by the contract between the parties. Shri Nariman in this connection was right when he contended that the aforesaid decisions of this Court only decide the status of such an erstwhile tenant and there can not be any dispute that the appellant on the expiry of the lease, especially when there was no evidence to show that

he was a tenant by holding over, had continued in occupation as a tenant at sufferance. However, the nature of the right sought to be enforced by the plaintiff has to be culled out from the recitals in the plaint even against such a tenant at sufferance. Once this stage is reached in the course of arguments of learned counsel for the parties, it becomes at once necessary to see as to whether the relevant recitals in the plaint as seen by us earlier can be said to have referred to the erstwhile contract between the parties purely by way of a historical event or Whether the plaintiff sought to base its cause of action for possession on any of the terms of the contract and or on provisions of general law simpliciter. Dr. Singhvi for the respondent-plaintiff in support of his case submitted that reference to the covenant of the lease as found in paragraph 2 was purely of a historical nature, and it only meant that after the expiry of 15th March, 1985 when the contract was determined by efflux of time on that date, the defendant had not acted according to the covenant of the contract on expiry of 15th March, 1985 but that was purely a historical event when the suit was filed in 1986. The cause of action of the present suit was, therefore based on the law of the land. In this connection he vehemently placed reliance on paragraphs 3 and 4 of the plaint noted by us earlier. As we have already seen, paragraphs 3 and 4 of the plaint are of general nature and can support the cause of action of the plaintiff both on the ground of breach of covenant by defendant to hand over vacant possession as agreed to by it as well as on the ground that under the common law of the land the defendant was liable to be evicted having not acted upon the statutory requirement of the provisions of Section 108(q) read with Section 111(a) of the Property Act. It is therefore, not possible for us to agree with Dr. Singhvi for the respondent that on a conjoint reading of paragraphs 2, 3 and 4 of the plaint, it has to be held that the plaintiff was not at all basing his case on the relevant clauses of the erstwhile contract. It is easy to visualise that convenant mentioned in paragraph 2 of the plaint regarding the appellant's liability to hand over vacant and peaceful possession of the suit property to the plaintiff lessor would come into operation only after the period of the lease is over; Therefore, it cannot be said that the said covenant would not remain effective and pending between the parties after the lease gets determined by efflux of time. To that extent the extreme contention of Dr. Singhvi that this part of the cause of action did not arise out of the contract of lease cannot be accepted. However, the aforesaid conclusion of ours cannot put an end to the controversy between the parties. Reason is obvious. The plaintiff in clearest terms has based its cause of action also on the law of the land as found in paragraph 2 of the plaint. So far as this part of the cause of action is concerned, it is a distinct cause of action apart from the cause of action emanating from the alleged breach of the covenant on the part of the defendant. So far as the law of the land is concerned, it is obviously the common law under which the erstwhile tenant on expiry of the lease has to hand over vacant possession to the erstwhile landlord. But that apart, the said obligation on the part of

the erstwhile tenant is statutorily recognised by Section 108(q) read with 111(a) of the Property Act Section 111 Clause (a) reads as under : “111. A lease of immovable property determines - by efflux of the time limited thereby. xxx xxx XXX

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xxx xxx xxx

(c) xxx xxx xxx

(d) XXX XXX XXX

(e) xxx xxx xxx In the present case we are not concerned with any of the other clauses of Section 111. We confine the present decision only on the aforesaid mode of determination of lease of immovable property by efflux of time. It is obvious that such a lease gets determined by efflux of time. The determination is automatic and does not depend upon any Act either on the part of the landlord or on the part of the tenant. When such automatic statutory determination of lease takes place, Section l08(q) gets simultaneously attracted against the erstwhile lessee. Section 108 of the Property Act deals with rights and liabilities of lessors and lessees. The said Section, reads as under: “108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased : A. Rights and Liabilities of the Lessor. xxx xxx xxx xxx xxx xxx xxx xxx xxx B. Rights and Liabilities of the Lessee. xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

XXX , XXX XXX

(h) xxx xxx xxx (i) xxx xxx xxx

(i) XXX XXX XXX

(j) xxx xxx xxx

:(l) xxx xxx xxx

(m) xxx xxx xxx

(n) xxx xxx xxx

(o) xxx xxx xxx

(p) on the determination of the lease, the lessee is bound to put the lessor into possession of the property". It is, therefore, obvious that a statutory obligation is foisted on the lessee on the determination of the lease which earlier existed in his favour. Therefore, on a conjoint reading of Section 108(q) read with Section 111(a) of the Property Act, it becomes obvious that under law the erstwhile landlord is entitled to base his cause of Action on the statutory obligation of the erstwhile lessee on determination of the lease to put the lessor in possession of the property. It is this statutory right of the lesser and the corresponding statutory obligation of the lessee that can be said to have been relied upon by the plaintiff for getting peaceful possession from the defendant as per the recitals in second part of paragraph 2 read with paragraphs 3 and 4 of the plaint. It is of course true that in paragraph 2 of the plaint reliance is also placed on the non-delivery of vacant and peaceful possession of the suit premises to the plaintiff by the defendant as per the covenants which as we have noted are covenants being clauses 14 and 17 of the lease. As they are express covenants relied on by the plaintiff, it is not necessary for us to examine the wider question whether there is any implied covenant on the part of the lessee to hand over possession to the lessor on the expiry of the lease as tried to be suggested by learned senior counsel Shri Nariman placing reliance on a decision of the Division Bench of the Travancore High Court in Sivjnanam Abraham & Anr. v. Mathevan Pillai Bhoothalingam Pillai & Ors., AIR (1952) Vol. 39 Travancore page 359 and also on the decision of the Karnataka High Court in the case of Mrs. Thayarammal v. People's Charity Fund, Banglore & Ors., AIR (1978) Karnataka 125, All the same we may briefly deal with them. In the case of Sivjnanam Abraham & Anr v. Mathevan Pillai Bhoothalingam Pillai & On, (supra), the court was not directly concerned with the interpretation of Section 69 sub-section (2) of the Partnership Act. The question before the court was whether on the determination of lease erstwhile tenant was liable to restore the possession of the property to the plaintiff. Analysing the landlord's claim for recovery of possession on determination of tenancy it was observed in paragraph 7 that :"7. The landlord's claim for recovery of possession of the properties from a tenant on the determination of tenancy need not be based on any contract expressly entered into that behalf. The right of the landlord to get and the liability of the tenant to surrender posses-sion of the properties leased, on the determination of the tenancy, is inherent in the very relationship of landlord and tenant and will be implied by the law. This is known as the rule in HENDERSON v. SQUIRE, (1869) LR 4 QB 170. "The duty of the tenant upon the determination of the tenancy ..... is simply to yield up peaceable and complete possession of the premises demised to him together with all fixtures except those which he is entitled to remove.... This duty will be implied in law if not expressed in the contract between the parties and the tenant

will not discharge the duty by merely going out of possession unless he restores possession to the landlord" For on the Relation-ship of Landlord and Tenant, 6th Ed. P 838: "A lease Usually contains a covenant on the part of the lessee to deliver up the premises on the determination of the term. In the absence of such a covenant or of any express stipulation, the tenant is under an implied contract to restore possession to the landlord". The complete Law of Landlord & Tenant by Redman, edited by Hill, 8th Ed. (1939) p. 459. See also "VENKATESH NARAYAN v, KR1SHNAJI ARJUN, 8 Bom. 160. Section 108(q) of the Transfer of Property Act has recognised this obligation on the part of the tenant. Indeed one does not come across an instance of this plea having been ever seriously put forward." We fail to appreciate how this decision can advance the case of the appellant. All that it says is that on determination of tenancy the tenant would be bound to restore the possession of the demised premises to the erstwhile landlord and if there is an express term/Convenant in the lease to that effect it would apply and if there is no express covenant the law will imply an obligation to that effect of the erstwhile tenant. As we have noted in the present case there is an express covenant in the lease which also was relied upon by the plaintiff. But in the absence of such an express covenant the law would imply a statutory obligation on the part of the ex-tenant to deliver and restore vacant possession of demised premises to the landlord on determination of the lease. That would obviously create a legal right in favour of the landlord and correspondent legal duty and obligation on the part of the ex-tenant. That is precisely what is being sought to be enforced by the plaintiff by basing its right to possession also on the law of the land. Similarly, the decision of the learned Single Judge, M. Rama Jois, in the case in Mrs. Thayarammal v. People's Charity Fund, Bangalore & Ors. (supra) also cannot be of any avail to learned senior counsel for the appellant. The learned Judge in the said decision has taken the view following this Court's decisions that on expiry of the lease, the erstwhile lessee cannot be said to be in lawful possession within the meaning of Rule 6 of the Karnataka Cinemas (Regulation) Act (23 of 1964). It is of course true that while referring to Section 108(q) of the Property Act it has been observed that on the expiry of the lease period the lessee was bound to put the lessor into possession of the property and that it would be an implied term of the contract. It imposes an obligation in law on the erstwhile tenant to restore possession to the landlord, It is difficult to see how these observations of the learned Judge can advance the case of the appellant. The obligation to restore possessions by the ex-lessee will flow from the statutory provisions and not from any term of the contract. It is easy to visualise that any term in contract which is parallel to the statutory obligation of the contracting party would be based on such legal obligation and cannot be said to be laying down any inconsistent but legally permissible contractual term. In this Connection Shri Nariman, learned senior counsel for the appellant also invited our attention to the observations in Foa's General Law of Landlord and Ten-

ant, 8th Edn., at page 711. It has been observed by the learned author in paragraph 1083 of Chapter 2 dealing with Rights and Remedies of the Landlord that : "Subject to the provisions of the Rent Restriction Acts and to any stipulation or local custom to the contrary (a), and to the right conferred upon him in lieu of emblements by statute (b), the duty of the tenant upon the determination of the tenancy is to yield up peaceable and complete (c) possession of the premises demised to him, together with all fixtures except those which he is entitled to remove; and after entry and demand of possession by the landlord, or any Act upon such entry showing an intention to resume possession, the tenant and all persons claiming under him are liable to be treated as trespassers (d). This duty will be implied in law if not expressed in the contract; between the parties, and the tenant will not discharge it by merely going out of possession, unless he restores possession to the landlord (e)." We fail to appreciate how these observations can change the complexion of the controversy in the present case. Even it there is no express covenant in the contract, law will imply duty on the tenant to hand over the possession on determination of lease. This will be a legal obligation covered by the express law of the land on which reliance is placed in paragraph 2 of the plaint. Similar observations are found in Hill & Redman on Landlord & Tenant, Seventeenth Edition, Chapter 6, paragraph 425 at page

520. Our attention was also invited by Shri Nariman to the observations in Mulla in "The Transfer of Property Act, 8th ED., at pages 843 and 844; Shri Nariman placed strong reliance on the observations of the learned author at page 844 to the following effect : Sec. 108 - This section, as said by Coutts Trotter, J., sets out in a convenient form the implied covenants usually subsisting in a lease (i). Nearly all the clauses were said by Rankin, C.J., to be expressions of well settled principles familiar to the law of England (j). The section has no application to a tenancy at will, for a tenancy at will is hot a lease as defined in the Act (k)." Even these observations do not in any way dilute the contention of learned senior counsel for the respondent that when the plaintiff has relied on law of the land, any implied covenant as contemplated by the statutory provisions of Section 108(q) would still remain in the domain of statutory obligation on the part of the appellant to hand over vacant possession to the respondent on determination of lease by efflux of time. Consequently, the decisions of Travancore and Karnataka High Courts which have taken the view that there is an implied term in the contract of lease that after the expiry of the lease period the lessee would put the lessor in possession would not be of any assistance to the appellant. It has to be noted that so long as this implied term runs parallel to the statutory obligation of such erstwhile lessee as per Section 108(q) it cannot be said that the said statutory obligation gets obliterated and repealed merely because such implied term can be culled out from the contract itself. Such an implied obligation or term in the contract cannot in any way reduce the legal efficacy of the

statutory obligation foisted upon such a lessee by the express provisions of Section 108(q) read with Section 111(a) of the Property Act. So far as the applicability of the bar of Section 69 sub-section (2) of the Partnership Act is concerned, it is true that it is a penal provision which deprives the plaintiff of its right to get its case examined on merits by the court and simultaneously deprives the court of its jurisdiction to adjudicate on the merits of the controversy between the parties. It will, therefore, have to be strictly construed. It is also true that once on such construction of this provision the bar under Section 69(2) of the Act gets attracted, then the logical corollary will be that the said provision being mandatory in nature would make the suit incompetent on the very threshold. Consequently, it is not necessary for us to examine various decisions of this court Tendered in connection with Section 80 of the CPC or Section 77 of the Indian Railways Act to which our attention was invited by learned senior counsel Shri Nariman. We my proceed on the basis that for sustaining a suit which falls within the sweep of Section 69 sub-section (2), the condition precedent is that the firm must be registered at the time of filing of the suit. If it is not registered the suit must be held to be incompetent from the inception. In this connection we may refer to a decision of the Division Bench of the Calcutta High Court in the case of M/s. Goraknath Champalal Pandey v. Hansraj Manot, (Calcutta Weekly Notes, Vol. 74 (1969-70) at page 269, which has confirmed the decision of the learned Single Judge of the same High Court in the case of Hansraj Manot v. M/s. Goraknath Champalal Pandey, (Calcutta Weekly Notes, Vol. 66 (1961-62) at page 262. It was held in the said decisions that the conditions of Section 69 sub-sec-tion (2) were mandatory in nature. However, it must be observed that the said decisions were rendered in an entirely different fact situation wherein during the subsistence of the contract of tenancy the tenant had failed to pay rent and consequently the landlord had filed the suit for possession on the ground that the tenant had committed breach of the term of tenancy about regular payment: of rent. The said suit obviously was a suit for enforcement of the right arising out of a contract of tenancy for regular payment of stipulated rent which was subsisting between the parties. The said suit filed by plaintiff unregistered firm was rightly held to be barred by Section 69 sub-section (2) of the Partnership Act. In this connection we may also refer to a decision of the Patna High Court in Padam Singh Jain v. ,M/s. Chandra Brothers & Ors., AIR (1990) Patna 95, wherein a learned Single Judge of the Patna High Court had taken the view that after the expiry of the contractual tenancy when the tenant had continued in occupation as a statutory tenant and when the landlord based his suit for posses-sion on any of the ground available under the Rent Act it cannot be said to be a suit for enforcement of a right arising from the contract of tenancy. The said decision rendered on its own facts cannot advance the case of either side. Similarly, the aforesaid decisions of the Calcutta High Court equally cannot advance the case of either side. In the present case we are concerned with the lease which has come to an end and the

erstwhile tenant has remained in occupation as a tenant at sufferance. Under law the erstwhile landlord is entitled to restoration of- possession by enforcement of statutory obligation of the erstwhile tenant as statutorily imposed on him under Section 108(q) read with Section 111(a) of the Property Act. The non-compliance of the statutory obligation by the defendant when made subject matter of corresponding legal right of the erstwhile landlord cannot be said to be giving rise to enforcement of any contractual right of the plaintiff arising from the expired contract of tenancy. As seen earlier, the controversy would have clearly ended in favour of the respondent and against the appellant if the plaint has referred to only the law of the land under which the defendant was required to be evicted on the expiry of the lease. But unfortunately for the plaintiff the suit is also based on the breach of the covenant of the lease as scen from paragraph 2 of the plaint. It is, therefore, not possible to interpret the averments with reference to the covenant of the lease only as referring to a historical fact as tried to be Submitted by Dr. Singhvi for the respondent. The net effect of this discussion, therefore, is that the plaint as framed by the plaintiff respondent is based on a composite cause of Action consisting of two parts. One part refers to the breach of the covenant on the part of the defendant when it failed to deliver vacant possession to the plaintiff lessor on the expiry of the lease after 15th March, 1985 and thereafter all through out and thus it was guilty of breach of covenants 14 and 17 of the lease. The second part of the cause of Action, however, is based on the statutory obligation of the defendant lessee when it failed to comply with its statutory obligation under Section 108(q) read with Section 111(a) of the Property Act. So far as this second part of the cause of Action is concerned it cannot certainly be said that it is arising out of the erstwhile contract. However, one contention of learned senior counsel for the appellant is required to be noted so far as this second part of the cause of Action is concerned. It was submitted that Section 108(q) of the Property Act itself provides that it is subject to the contract or local usage to the contrary and that Section 4 of the Property Act lays down that chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1972. Our attention, in this connection, also was invited to Section 1 of the Indian Contract Act, 1872 which provides that : "nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act". We fail to appreciate how these provisions are of any assistance to the learned senior counsel for the appellant. Section 108 of the Property Act lays down that in the absence of a contract to the contrary the rights and liabilities of the lessor and lessee would be those which are covered by the rules mentioned in that Section. Consequently it must be held that as compared to what is laid down by this Section by way of fights and liabilities to the lessor and lessee, if the contracting parties have not provided anything to 'the contrary to such statutory

rights and liabilities in their contract, then these statutory rights and liabilities would prevail. But if any contrary provision is mentioned in the contract qua such rights and liabilities then because of Section 4 of the Property Act such a contrary provision in the contract will get saved on the combined operation of Section 4 of the Property Act and Section 1 of the Indian Contract Act, 1872. But that would also be subject to the rider that such an inconsistent contract should not be inconsistent with the provisions of the Indian Contract Act. Thus in absence of any contrary provision in the contract, Section 108 will operate on its own. If there is any contrary provision in the contract it will prevail over the provision in Section 108, provided such contrary provision in the contract is not inconsistent with the main provision of the Indian Contract Act. The combined operation of Section 108 and Section 4 of the Property Act and Section 1 of the Indian Contract Act can be better visualised by illustrations. Clause (b) of Part A of Section 108 deals with statutory rights of lessor to put the lessee in possession of the property leased at the lessee's request That is the mandate of the aforesaid statutory provision. This statutory right of the lessee and Corresponding liability of the lessor can be subject to a contract to the contrary. If under the contract of lease the parties have agreed to a stipulation that the lessor will put the lessee in possession after a period, say, three or four months within which the lessor will effect necessary repairs to the premises by way of white wash etc., then the statutory right of the lessee to be put in possession on the extent of the lease as per the said sub-section (b) would get curtailed or superimposed by the contractual right of the lessor to wait for the aforesaid period of delay and it will simultaneously cut across the statutory right of the lessee to be put in possession on the later's request. Such contrary provision in the contract will in its turn be saved by Section 4 of the Property Act read with Section 1 of the Contract Act as it in its turn is not inconsistent with any of the provisions of the present Indian Contract Act. We may take another illustration. Part B of Section 108 deals with Rights and Liabilities of lessee. When we turn to Clause (q) thereof, we find that there is a statutory obligation of the lessee on determination of lease to put the lessor in possession of property. There can still be a contract between the parties at the time of entering into lease or even thereafter that on the determination of lease the lessee will be given six months time to remove his fixtures and to vacate the premises when such a locus poenetentiae is given to the lessee under the contract by the lessor, the statutory obligation of the lessee flowing from Section 108(q) to immediately put the lessor in possession of the property on determination of lease would get superseded and postponed by six months as stipulated in the contract. This will be a contract contrary to what is statutorily provided under Section 108(q). It is such a contract to the contrary which would be saved by Section 4 of the Property Act as such a contract to the contrary is expressly saved by Section 108 and it also cannot be said to be consistent with any of the provisions of the Indian Contract Act.

Hence section 1 of the Contract Act also will not hit the said contract to the contrary; Thus on a conjoint reading of the statutory scheme of Section 108 and Section 4 of the Property Act and Section 1 of the Contract Act it must be held that in absence of such contrary legally permissible contracts, the statutory rights and liabilities of lessors arid lessees is laid down under Section 108 of the Property Act, especially Section 108(q) in the present case would remain fully operative by force of the statute itself, it is not the contention of either side that there was any contract to the contrary which permitted the lessee to continue in possession after the determination of lease by efflux of time even for a day more. In this connection, we may usefully refer to a decision of this court While interpreting the phrase "contract to the contrary" as found in Section 108 of the Property Act, this court in the case of Madan Lal v. Bhai Anand Singh & Ors., [1973] 1 SCC 84, speaking through Shri Beg. J., held that if the tenant on determination of lease wants to show that he is not bound to hand over the vacant possession forthwith to the landlord as he has paid the market value of the construction put in by him on the leased premises, there should be an express term to the contrary in the contract of tenancy which would override Section 108(q) obligation and as in the case before this court there was no such express term to the contrary in the lease deed it was held that the obligation under Section 108(q) had to be complied with by the tenant. In this connection following pertinent observations were made in paragraph 4 of the Report as under: ". . . .If this had really been the intention of the parties, there was nothing to prevent them from inserting such a term in the deed so as to make that intention explicit, ft appears to us that the more natural construction of the clause is that rights of ownership, including the right to take possession of the building, would be-come vested in the lessor at the expiry of the period of the lease, and that 50% of the market-value of the building, which was to be paid in any case, became a condition attached to this ownership of the building when it vested in the lessee, The lessor was, in any case, to pay 50% of the market- value of the structure, and, in the event of a sale, the payment of this amount became a first charge on the proceeds of sale; It is also significant that it is not mentioned in the deed that a purchaser of the Cinema house, who would presumably prefer to obtain possession so as to be able to run it, could not get possession of it until the market-value was ascer-tained or 50% of it was paid. Possession of a Cinema house after the expiry of a building lease involving the passing of ownership of the building on such expiry is, after all, an important matter. In view of Section 108(q) of the Transfer of Property Act the burden of proving"a contract to the contrary" was on the lessee; and, something to indicate an agreement to the contrary should be there, on such a matter involving a valuable right before this burden could be held to have been duly discharged." On the facts of the present case it has to be held that there is no further locus poenetentiae given to the tenant to continue to remain in possession after the determination of lease by efflux of time on

the basis of any such contrary express term in the lease. Consequently, it is legal obligation flowing from Section 108(q) of the Act which would get squarely attracted on the facts of the present ease and once the suit is also for enforcement of such a legal right under the law of the land available to the landlord it cannot be said that enforcement of such right arises out of any of the express terms of the contract which would in turn get visited by the bar of Section 69 sub- section (2) of the Partner-ship Act, Consequently it has to be held that when paragraph 2 of the plaint in addition made a reference to right of the plaintiff to get :possession under the law of the land, the plaintiff was seeking enforce-ment of its legal right to possession against the erstwhile lessee following from the provisions of Section 108(q) read with Section 111 (a) of the Property Act which in turn also sought to enforce the corresponding statutory Obligation of the defendant under the very same statutory provisions. So far as this part of the cause of Action is concerned it stands completely outside the sweep of Section 69 sub- section (2) of the Partnership Act. The net result to this discussion is that the present suit Can be said to be partly barred by Section 69- sub- section (2) so far us it sought to enforce the obligation of the defendant under Clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in paragraph 2 of the plaint. But it was partly not barred by Section 69 sub -section (-2) in so far as the plaintiff based a part of its cause of Action also on the law of the land, namely, Transfer of Property Act where under the plaintiff had sought to enforce its statutory right under Section 108(q) read with Section 111 (a) of the Property Act. Enforcement of the right had nothing to do with the earlier contract which had stood determined by efflux of time. The first point for determination therefore, has accordingly, to be held partly in favour of the plaintiff and partly in favour of the defendant. As the decree for possession is passed on the basis of both parts of causes of Action, even if it is not supportable on the first part, it will remain well sustained on the second part of the very same cause of Action; In view of our conclusion on point No. 1, though the appellant partly succeeds thereon the ultimate decree for peaceful possession against the appellant would remain well sustained. Point No. 2. : In the light of our conclusion on Point No. 1, the alternative contention as to the effect of subsequent registration of the partnership on the suit would pale into insignificance and would become of academic interest. It is, therefore not necessary for us to closely examine this alternative contention. However, as both the learned senior counsel have pressed in service their respective contentions on this point for our consideration we may briefly refer to these contentions without expressing any final opinion thereon one way or the other, Shri Nariman, learned senior counsel for the appellant submitted that the suit filed was barred from inception under Section 69 sub-section (2) of the Partnership Act-I it was a still born one and therefore, there was no question of reviving it on account of subsequent registration of the plaintiff partnership firm. In support of this contention he invited our attention to the decisions

of various High Courts such as M/s. Jammu Cold Storage and General Mills Ltd. v. M/s. Khairati Lal and Sons, AIR (1960) Jammu & Kashmir page 101, Danmal Parshotam Dass (Firm) y. Babu Ram Chhote Lal' (Firm), AIR (1936) Allahabad page 3, Dwijendra Nath Singh & Anr. v. Govinda & Anr. AIR (1953) Calcutta page 497 and also to two decisions of this Court in the cases of The Commissioner of Income Tax, Andhra Pradesh, Hyderabad v. 'M/s. Jayalakshmi Rice and Oil Mills Contractor Co. [1971] 1 SCC 280, and in M/s. Shreeram Finance Corporation v.Yasin Khan & Ors., [1989] 3 SCC 476 and in the case of Sunderlal and Sons v. Yagendra Math Singh & Anr., AIR (1976) Calcutta 471. He submitted that almost all the High Courts were unanimous in their decisions that if the suit filed by an unregistered firm is incompetent from the inception as per Section 69 sub- section (2) subsequent registration of the plaintiff firm will be of no avail. On the other hand, learned senior counsel for the respondent Dr. Singhvi submitted that so far as the High Courts decisions are concerned, the Nagpur High Court in Jakiuddin Badruddin& Ors. v. Vithoba Jagannath Gadali & Anr., AIR (1939) Nagpur 301 and Lahore High Court in Nazir Ahmad & Ors. v. Peoples Bank of Northern India Lid., (in- liquidation) through Official Liquidator & Ors., AIR 29 (1942) Lahore 289 had taken a contrary view. However, Shri Narirnan for the appellant joined issue on this point and submitted that the aforesaid decision of the Nagpur High Court was not accepted by a latter decision of the same High Court in Abdul Karim v. Ramdas Narayandas Shop, ILR (1951) Nagpur page 31 and the aforesaid Lahore decision was expressly dissented to by two later decisions of the Punjab High Court in Des Raj Prem Chand & Anr. (Firm) v, Hira Lal Kali Ram & Anr. (Firm), AIR (1952) Punjab 415 and in Puran Mal Ganga Ram (Firm) v. The Central Bank of India Ltd., AIR (1953) Punjab 235. So far as this Court's decisions on this point were concerned Dr. Singhvi appearing for respondent submitted that in The Commissioner of Income Tax, Andhra Pradesh, Hyderabad v. M/s. Jayalakshmi Rice and Oil Mills Contractor Co., (supra) this court was not directly concerned with the question which is posed for our consideration. In the said decision the effect of registration of the firm in the subsequent assessment year as per Section 58 of the Partnership Act on the status of the erstwhile un-registered firm for the earlier assessment year fell for consideration of this court. It is of course true that Grover, J., speaking for this court in the said decision observed in passing that "even under Section 69 of the Partnership Act which deals with the effect of non-registration it has been consistently held that the registration of a firm subsequent to the filing of the suit did riot cure the defect" and that the observations of the Allahabad High Court in Danmal Parshotamdas (Firm) v. Babu Ram-Chhotelal (Finn), (supra) were mentioned with approval. Dr. Singhvi submitted that these observations were clearly obiter. In any case the High Court's decision on the point even if approved in general should not be treated to be a precedent while considering the scope and ambit of Section 69 sub- section (2) of

the Partnership Act and the effect of subsequent registration of an unregistered firm on the suit filed earlier when it was not so registered. For supporting this contention reliance was placed on a decision of this Court in Smt. Saiyada Mossarrat v, Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai (M.P.) & Ors., [1989] 1 SCC 272 paragraphs 4 and 5, The Mumbai Kamgar Sabha, Bombay v. M/s. Abdulbhai Faizullabhai & Ors., [1976] 3 SCC 832 at page 849 and Sreenivasa General Traders & Ors. v. State of Andhra Pradesh & Ors., [1983] 4 SCC 353 at page 378. Relying on these decisions it was submitted that the observations of this court in [1971] 1 SCC 280 (supra) which were purely obiter should not be treated to be of any binding effect for deciding the present controversy. So far as the two member Bench decision of this Court in [1989] 3 SCC 476 (supra) is concerned, it was submitted by Dr. Singhvi for the respondent that the said decision was directly concerned with second part of Section 69(2) of the Partnership Act and it held that subsequent amendment of the plaint filed by a firm whose reconstitution was not got registered under the Act earlier was of no avail and suit could not be saved. The said decision had no concern with the first part of Section 69(2). Even otherwise it had not taken into considera-tion various salient features of such litigations, According to Dr. Singhvi the salient features which were required to be considered were as under :

(i) Subsequent registration of the firm would serve the purpose of the Section namely, to enable only registered Firms to file such suits;

(ii) Even if subsequently registered the firm would get the suit revived from the date of such registration sufficient penalty would get imposed on the plaintiff firm as it would loose more than three years mesne profits from the date of registration and other financial benefits prior to such a reviving as such subsequent register would have no retrospective effect.

(iii) the overriding need for such a liberal view would be to avoid unnecessary multiplicity of proceedings based on mere technicalities'. In this connection it was submitted that even though the suit is found to be barred under Order 69 Rule (2) of the Partnership Act and, therefore, the plaint gets rejected under Order 7 Rule 11(d), as per Order 7 Rule 13 fresh suit can always be filed on the same cause of Action leaving aside the further question whether the said defective suit could be permitted to be withdrawn by the plaintiff under Order 23 Rule 1 sub-rule (3) of the GPC and even in such a contingency the benefit of Section 14 of the Limitation Act would be available for filing a fresh suit. If that happens all that a subsequently registered plaintiff partnership firm could do is to immediately file a second suit on the ground that it is now already registered and that could only result in giving a fresh number to the suit which would further delay the proceedings before the court as it would be a freshly filed suit having a new number referable to the year of its filing. Thus ad-judicatory process would be further delayed. That such a situation in the present days when the court dockets are heavily loaded and arrears are mounting should be

avoided and such a technical contention which does not advance the case of justice should be rejected. That the courts always lean in favour of curing such technical obstacles which have no bearing on the merits of the controversy between the parties. In this connection Dr. Singhvi pressed in service to two decisions of this Court. In Bansidhar Sankarlal v. Md. Ibrahim & Anr., AIR (1971) SC 1292, Shah, J., speaking for the two Judge Bench held in paragraph 8 of the report that even if a suit or proceeding is instituted by a liquidator without obtaining leave of the company court as per the provisions of Section 171 of the Companies Act, 1913, which even barred the commencement of such proceedings against a company without the leave of the Court, once the leave is granted subsequently, the proceedings would be treated as not barred on the date granting of leave. That the aforesaid observations of this Court relied on by Dr. Singhvi are quite relevant and apposite for deciding the present controversy as such an approach would avoid placing reliance on pure technicalities and would further the ends of justice by enabling the court to adjudicate the matter on merits between the parties and unnecessary proliferation of litigation will get avoided. In this connection Dr, Singhvi also invited our attention to another decision of this Court in Everest Coal Company Pvt. Ltd. v. State of Bihar & Ors„ AIR (1977) SC 2304, wherein Krishna Iyer, J, speaking for a two Judge Bench of this Court considered the effect of filing of a suit by a receiver appointed under Order 49 Rule 1 of the CPC without obtaining prior leave of the Court. It was held in the said decision that if such a suit was filed by a receiver and if subsequently leave was obtained it would validate the suit. Krishna Iyer, J., noted that filing of the suit without leave of the Court would amount to contempt of the court and still subsequently obtained leave would cure the defect and remove the sin. In paragraph 11 of the Report it was observed that ; " Once amends are made by later leave being obtained, the gravamen is gone and the suit can proceed. The pity is that sometimes even such points are expanded into important questions calculated to protract Indian litigation already suffering from un-healthy longevity." Placing reliance on these decisions of this Court, it was submitted by Dr. Singhvi that the decision of this Court in [1989] 3 SCC 476 (supra) requires to be reconsidered. We, prima fade, find substance in what is contended by Dr. Singhvi for the respondent. It is obvious that even if the suit is filed by an unregistered partnership firm, against a third party and is treated to be incompetent as per Section 69 sub-section (2) of the Partnership Act, if pending the suit before a decree is obtained the plaintiff puts its house in order and gets itself registered the defect in the earlier filing which even though may result in treating the original suit as still born, would no longer survive if the suit is treated to be deemed to be instituted on the date on which registration is obtained. If such an approach is adopted, no real harm would be caused to either side. As rightly submitted by Dr. Singhvi that, Order 7 Rule 13 of the CPC would permit the filing of a fresh suit on the same cause of Action and if the earlier suit is permitted to be continued it would continue in

the old number and the parties to the litigation would be able to get their claim adjudicated on merits earlier while on the other hand if such subsequent registration is not held to be of any avail, all that would happen is that a fresh suit can be filed immediately after such registration and then it will bear a new number of a subsequent year. That would further delay the adjudicatory process of the court as such a new suit would take years before it gets ready for trial and the parties will be further deprived of an opportunity to get their disputes adjudicated on merits at the earliest and the arrears of cases pending in the court would go oh mounting. It is axiomatic to say that as a result of protracted litigation spread over tiers and tiers of court proceedings in hierarchy, the ultimate result before the highest court would leave both the parties completely frustrated and financially drained Off. To borrow the analogy in an English poem with caption "death the leveller", with appropriate modification, the situation emerging in such cases can be visualised as under. "upon final court's purple alter see how victor victim bleed". All these considerations in an appropriate case may require a re-look at the decision of the two member Bench of this Court in [1989] 3 SCC 476 (supra). However, as we have noted earlier, on the facts of the present case, it is not necessary for us to express any final opinion on this question or to direct reference to a larger Bench for reconsidering the aforesaid decision. With these observations we bring down the curtains on this controversy. Point No. 2, therefore, is answered by observing that it is not necessary on the facts of the present Case in the light of our decision on the first point to decide this point one way or the other. Point No. 2 is, therefore, left undecided as not surviving for consideration. Point No. 3: As a result of the aforesaid discussion, it is held that the suit as filed by the respondent was partly barred under Section 69 sub-section (2) of the Partnership Act but was partly not barred and consequently the decree passed by the Trial Court as confirmed by the High Court is held to have remained well sustained and calls for no interference in the present appeal. In the result, this appeal fails and is dismissed. At the request of learned counsel for the appellant, time to vacate the suit premises is granted till 30.6.1999 on the appellant's filing usual undertaking in the Registry of this Court within four weeks from today and also on further condition that from 1.10.1998 till the premises are vacated or till 30.6.1999, whichever is earlier, the appellant will pay by way of occupation charges Rs. 50,000 per month. If any of the conditions of the aforesaid undertaking or the present order is committed breach of, exten- sion of time will stand recalled and the decree for possession will become executable forthwith. In the facts and circumstances of the case, there will be no order as to costs.