East India Hotels Ltd. vs Syndicate Bank on 12 September, 1991

Equivalent citations: I(1992)BC1(SC), 45(1991)DLT476(SC), JT1991(6)SC112, 1991(2)SCALE638, 1992SUPP(2)SCC29, AIRONLINE 1991 SC 230

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Bench: N.M. Kasliwal, K. Ramaswamy

JUDGMENT

N.M. Kasliwal, J.

1. Special Leave granted.

2. This appeal is directed against the judgment of the Bombay High Court dated 6th November, 1990 whereby a suit filed by the Syndicate Bank under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') has been decreed.

3. The East India Hotels Ltd. (hereinafter referred to as 'the Company') took a loan of Rs. 30 lacs from the Syndicate Bank. By an agreement dated 27th December, 1974 the amount of Rs. 30 lacs was advanced to the company on interest at the rate of 12.5 per cent per annum and the amount was repayable in ten years. The Syndicate Bank executed a leave and licence agreement in favour of the company in respect of 15,000 sq. ft. on the mezzanine to the ground floor of the hotel Oberoi Towers situated at Nariman Point, Bombay on a monthly compensation of Rs. 60,0007- per month, belonging to the company, for a period of 12 years. The leave and licence agreement inter alia provided that at the end of the said period of 12 years, the company shall, on the application of the licensee in writing, renew the licence for another period of 12 years if the company so deems fit on the terms and conditions to be mutually agreed upon. Admittedly the company repaid the entire loan and interest within the schedule period. The company by a letter dated 17th September, 1984 reminded the bank that the agreement was going to expire on 31st December, 1986. The company also stated that as they were cramped for space, the bank should vacate the premises at the end of the term. The company by another letter dated 18th April, 1986 again requested the bank to vacate the premises by the end of December, 1986. The bank by its letter dated 8th July, 1986 requested the company that the period of license may be renewed for a further period of 12 years. The company by its letter dated 9th August, 1986 informed the bank that the request for renewal of licence was not acceptable and again requested the bank to handover vacant possession on the expiry of the term. The bank did not handover vacant possession of the premises even after December, 1986 and sent the monthly compensation to the bank. The company did not accept the

amount nor acquiesced in the continuance of possession of the bank after the expiry of the period of licence which came to an end on 31st December, 1986. Some correspondence went on between the parties but the company did not agree for the extension of the period of licence. The company ultimately served a legal notice through their advocate on 22nd January, 1990 calling upon the bank to handover vacant possession. The bank through their advocates sent a reply dated 12th February, 1990 stating as under:

> I am gathering necessary instructions in the matter and shall revert to you with my clients' reply within a reasonable time.
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> In the meantime, I am instructed to state that my clients' did not admit any of the contentions raised by your clients in your letter.

5. On 12th April, 1990 a fire broke out in Oberoi Towers and as a result of which not only the bank but all the other shop owners had to vacate the premises. Thereafter, again some correspondence took place between the parties but the only circumstance necessary to be mentioned is that the bank started functioning its business at another place but its papers, furniture, fixtures etc. continued to remain in the premises. Initially the company permitted the staff of the bank to visit the premises on three days in a week but subsequently with effect from July, 1990 the company did not permit them to enter the premises at all. In the above circumstances the bank filed a suit under Section 6 of the Act on 29th August, 1990 on the original side of the Bombay High Court. The company filed a written statement and contested the suit. A notice of motion was issued for interim reliefs and it reached for hearing on 1st November, 1990. On that date after the arguments of Mr. Tulzapurkar, learned Counsel for the plaintiff bank were over, Mr. Nariman appearing for the defendant company made a "without prejudice offer" that he was prepared to treat the hearing of the notice of motion as a trial of the suit. He further stated that for the purposes of the suit the defendants were willing to proceed on the footing that the plaintiffs had been dispossessed as alleged in the plaint. In view of this statement, it was agreed between the parties that the hearing of the notice of motion be treated as the hearing of the suit. Thereafter, the arguments were heard and the suit was decreed by judgment dated 6th November, 1990. Aggrieved against the judgment the defendant company has come in appeal to this Court.

6. The High Court framed the following two issues.

(1) Whether the suit by the plaintiffs under Section 6 of the Specific Relief Act, is not maintainable?

(2) If issue No. 1 is answered in favour of the plaintiffs, whether the plaintiff is entitled to any relief, if so what?

The High Court after considering the various authorities held that the plaintiff bank was no doubt a licensee but even after the expiry of the licence period it can not be dispossessed otherwise than in due course of law and the plaintiff being in settled possession for a long time, was entitled to file a suit under Section 6 of the Act. However, it would be important to note that though the High Court decreed the suit but looking to the facts and circumstances of the case observed as under:

> However, before I Decree the Suit, in my view, it is necessary to state that, in my view it is time that Courts take note of the reality existing today, unfortunately litigation takes an inordinately long time. A large number of people are taking advantage of this inordinate delay by remaining in possession without any right, title or interest. The law being what is set out hereinabove, the true owners who are entitled to the properties, and who should by all rights get back the properties, are though no fault of their deprived of their property during the period that it takes for cases to be decided. In cases of private citizens, questions do arise as to whether they were compelled (may be by circumstances beyond their control) to enter into Agreements, which do not reflect the true nature of transaction. However, this would not be so in cases of big Corporations and/or Public Bodies who have no financial constraints; who have proper legal advice and who enter into Agreements knowing fully well what the purpose of the Agreement is. It is therefore most unfortunate that Big Corporations and Public Bodies who should be setting examples to others, are taking advantage of delays of litigation and not abiding by their commitments, entered into with full knowledge of what the commitments were. Whilst I am bound to uphold the law as it stands today, this reality cannot be ignored.
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> In the present case, it is admitted that the Agreement dated 27th December, 1974 is a Licence Agreement. Plaintiffs claim is that they by their letter dated 8th July, 1986 they had applied for renewal of the licence. Voluminous correspondence has been exchanged between the parties. At no stage in the correspondence have the Plaintiffs claimed that the licence has continued and/or that they have any right to remain in the property. In fact as seen from the minutes of the meeting held on 5th July, 1988 all that the Plaintiffs requested was that they be allowed to retain 1/3rd of the premises i.e. 5000 sq. ft. The Plaintiffs have continued to occupy the premises and it is only for the first time in this Suit that they have claimed that the licence had been renewed by their letter dated 8th July, 1986. As set out earlier it is not for this Court, trying a Suit under Section 6 to decide merits. However, prima-facie at least, the conduct of a Public Body like the Plaintiffs appears unsupportable.
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> Section 6 of the Specific Reliefs Act itself provides that a person having title in the land can file a suit for possession based on his title. In my view, this is the course which the Defendants must adopt. Therefore, whilst relief cannot be denied to the Plaintiffs, some opportunity must be given to the Defendants to obtain such Orders as they may be advised to protect their rights in the property.

Under these circumstances, there will be a Decree in favour of the Plaintiffs and against the Defendants in terms of prayers (a) and (b) of the Plaint. However, the Decree in so far as it relates to handing over to the plaintiffs possession of the suit premises viz. the mezzanine floor of Hotel "Oberoi Towers", Nariman Point, will be stayed for a period of 1.0 (ten) weeks from today. There will be no Order as to costs of the suit.

I clarify that the observations which I have made above regarding the conduct of the Plaintiffs are mere prima-facie observations. I have not considered the merits of the rival claims between the parties. The Court which will be considering the Defendants case will undoubtedly ignore these observations for the purpose of considering what reliefs should be granted to the Defendants.

7. We have heard learned Counsel for both the parties and have perused the record thoroughly. There can be no manner of. doubt that Section 6 of the Act provides for a summary remedy to any person dispossessed without consent, otherwise than in due course of law and such person is entitled to recover possession by filing a suit before the expiry of six months from the elate of dispossession. The Court in a suit filed under Section 6 of the Act will not go into the question of title. However, in a case where the title is not in dispute and the position of the plaintiff who brings such suit is also admitted as that of a licensee continuing in possession after the expiry of period of license, then the Court is certainly entitled to decide as to whether plaintiff is entitled to a decree for possession or not. If the plaintiff disputes any agreement between the parties or raises a dispute that he was a lessee under the terms of the agreement then the Court will find out the intention of the parties and which would be a question of fact depending upon the various factors and circumstances of the case. However, so far as the present case is concerned it is an admitted case of the plaintiff that the agreement dated 27th December, 1974 was an agreement of leave and licence and in the plaint also it came with a definite case of licensee and not lessee. The question of finding out the intention of the parties does not arise in the present case inasmuch as it is an admitted case in the plaint itself that the plaintiff bank was in occupation of the premises as a licensee. It is well settled that the plaintiff cannot be allowed to go against its own pleadings and the case as set up in the plaint. The agreement which is an admitted document also shows in unmistakable terms that it was an agreement of leave and licence. The High Court also has held that the plaintiff was a licensee in the premises and the period of licence had expired on 31st December, 1986 and thereafter the company had not allowed any extension of the period of licence. It is also an admitted position in the case that the period of licence though had come to an end on 31st December, 1986 but the company never took law into its own hands much less used any force in order to dispossess the bank from the premises. The company in a lawful manner served a legal notice asking the bank to vacate the premises on or before 31st December, 1986. The company acted in a lawful manner and the bank though bound to handover possession of the premises to the company before 31st December, 1986, continued to

remain in unlawful possession as a trespasser. A fire then broke out on 12th April, 1990 without any fault of any party and which compelled the bank to close its business and to vacate the premises for all practical purposes and to start the business elsewhere. The case of the bank as set up in para 8 of the plaint reads as under :

The Plaintiffs submit that there was a fire in the Oberoi Towers on 12th April, 1990 as a result whereof some of the equipment, furniture; and records etc. of the Plaintiffs were partially damaged. After the fire on 12th April, 1990, the Defendants gave permission to the Plaintiffs and other shop keepers in the Shopping Arcade to enter their respective premises two or three times in a week. However, since about the 3rd week of May 1990 the Defendants permitted the Plaintiffs' representatives to enter their premises on every Monday, Wednesday and Friday of the week.

Thus according to plaintiffs' own showing as a result of fire in the Oberoi Towers on 12th April, 1990 some of the equipment, furniture and records of the plaintiffs were partially damaged. After this fire the plaintiffs as well as other shopkeepers in shopping arcade were permitted to enter the premises on every Monday, Wednesday and Friday of the week. This clearly goes to show that the bank was not doing any business in the premises on or after 12th April, 1990 and in this manner had to vacate the suit premises on account of fire as the premises were no longer fit for continuing any business by the Bank, Thereafter, according to the plaintiffs a new lock was fixed by the company on the main entrance in July, 1990 and thereafter did not permit the officials of the bank to enter the premises. The plaintiff bank wrote a letter to the Company on 26th May, 1990. The aforesaid letter is reproduced in extenso.

As you are aware due to the fire which took place in the ground floor of your building on 12.04.1990 at 10 p.m., we had also to vacate our premises in the first floor of the building where our International Division is housed. During fire fighting operations, our office premises including furniture, fixtures, computer system, files and records have also been damaged by splashing of water, smoke and carbon soot. We have drawn up contingency plan and our various departments are not temporarily housed in different premises at Nariman Point and Cuffe Parade.

This plan for immediate functioning of our departments has been drawn up for a period of three months. As we have to take necessary action for our re-functioning our office, we request you to give us possession of our premises at the first floor at the earliest. In case it takes some more time to give possession please indicate us the probable time by which you can give the premises to us so that we can draw necessary programme accordingly.

In the meantime, as our documents and records are kept in premises and we require verification of these records on a day to day basis, we would like to post a few of our staff members on a permanent basis at our office premises with immediate effect. As

such, we request you to give power connection and other facilities to the premises on atleast temporary basis.

We request you to inform us in the matter at the earliest.

Thus the contents of the above letter clearly go to show that on account of fire which took place on 12th April, 1990 the bank had itself vacated the premises and had lost possession of the suit premises.

8. There is a controversy between the parties as to how the key was given by the plaintiff bank to the company but it is an admitted position that no force was applied in doing so. On the above admitted facts of the case, the important question which calls for consideration in the present case is whether in the circumstances mentioned above the plaintiff is entitled to get any decree for possession under Section 6 of the Act. We have no hesitation in holding that the purpose behind Section 6 of the Act is to restrain a person from using force and to dispossess a person without his consent otherwise than in due course of law. In the present case in our view the plaintiff has not been dispossessed by using any force. Admittedly the bank is a licensee and the period of such licence came to an end on 31st December, 1986 and thereafter its possession was that of a trespasser. On account of fire having broken out on 12th April, 1990 the bank had to stop its business and in fact it has started its business at some other place. In case the intention of the company would have been to dispossess the bank by force, it could have done so soon after the expiry of the period of licence, but admittedly nothing was done for more than three years till the fire broke out on 12th April, 1990. The question now is whether the plaintiff bank who is admittedly a licensee and having become a trespasser after 31st December, 1986 could claim recovery of possession against the owner.

9. The only prohibition under the provisions of Section 6 of the Act is not to use force and not to use any unlawful means for dispossessing a person. Both these circumstances are lacking in the present case. The ratio of the decided cases is that the Court in trying a suit under Section 6 of the Act will not go into the question of title. There cannot be any dispute with this settled proposition. However, in the present case the title of the company as well as the position of the plaintiff bank that its possession was as a licensee is an admitted case.

10. Our answer in these circumstances is that the plaintiff being a licensee and having become a trespasser after 31st December, 1986 has no right to claim possession from the company who is admittedly the owner of the premises.

11. Even otherwise to grant or not to grant relief under the Specific Relief Act lies in the judicial discretion of the Court. I am thus clearly of the view that in the facts and circumstances of the case which are admitted, the plaintiff bank is not entitled to any decree under Section 6 of the Act.

12. If we look the matter from another angle, the High Court itself has made the observations that it was most unfortunate that big corporations and public bodies (the syndicate bank here) who should be setting example to others, are taking advantage of delays of litigation and not abiding by their commitments, entered into with full knowledge of what the commitments were. Not only that the High Court indirectly suggested the defendant company to file a suit for possession based on title and in the view of the High Court this was the course which the defendants must adopt. The High Court further observed that while relief cannot be denied to the plaintiffs, some opportunity must be given to the defendants to obtain such orders as they may be advised to protect their rights in the property. We are told that after the decision of the High Court the company has already filed a suit for permanent injunction on the basis of title restraining the bank from obtaining possession and an application for temporary injunction has also been filed for an interim relief. That being the position the result of granting any decree in this litigation under Section 6 of the Act would not serve the ends of justice and at the same time it would unnecessarily prolong litigation between the parties which would be a waste of public money as well as the valuable time of the Courts. We cannot lose sight of the fact that the plaintiff bank is an instrumentality of the State and it should honour its commitments and not to indulge in futile litigation at the cost of public money.

13. The cases cited at the Bar do not deal with the situation and circumstances as arising in the case in hand before us. Those cases deal with tenants holding over after the expiry of the term of lease and such possession after holding over is entirely different from the case of a licensee remaining in occupation after the expiry of the term of licence. The position of such licensee is no better than a trespasser and if the true owner comes into possession of the premises without using any force or on account of fire or other act of vis major, in my view it would not be in the interest of justice to grant a decree for possession in favour of such licensee under Section 6 of the Act.

14. The criminal cases dealing with the question of right of private defence allowed to a trespasser dispossessed by force will not lend any assistance in deciding the present case.

15. In Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors. this Court cited with approval the following observations made by Chagla, C.J. in K. K. Verma v. Naraindas C, Malkani.

Under the Indian law 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 judicial and that possession is protected by statute. Under Section 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court under Section 9 and claim possession against the

true owner.

In the above passage it has been clearly observed that a trespasser who has been thrown out of possession cannot go to Court under Section 9 of the Specific Relief Act (now Section 6 of the Specific Relief Act, 1963) and claim possession against the true owner.

16. Another case, very near to the facts of the case in hand, decided by a Bench of three Judges of this Court is D.H, Maniar and Ors. v. Wanian Laxman Kudav . It was held in the above case that a person continuing in possession of the premises after termination, withdrawal or revocation of the licence continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such a person cannot be called a licensee at all.

17. Thus in my view the plaintiff bank in the facts and circumstances of the present case is not entitled to any decree under Section 6 of the Act. In the result I allow this appeal, set aside the judgment of the High Court dated 6th November, 1990 and dismiss the suit. In the facts and circumstances of the case parties shall bear their own costs.

K. Ramaswamy, J. :

18. Statute law would change the course of justice over night. But the judiciary, lay brick by brick, precedents, to march forward as an instrument of rule of law, for smooth social order. Modus operandi adopted, to get into possession, in other words, to dispossess the person in occupation should not camouflage the consequences that would flow from the action. The resultant effect must be considered in their proper perspectives and the law should be put on rails preventing deflection of the course of justice, in particular under Article 141 of the Constitution. Lest the people lose faith in the efficacy of the rule of law. The conduct of the litigant, be it a corporate personality or an ordinary citizen whether would be relevant to diffuse the effect of law made me to have anxious reflections on the questions raised reminding myself that perceptual or attitudinal slant, however small it may appears to be, would give birth to immense consequences. This made me, despite my profound and personal respect to my learned brother, with all humility at my command to express my inability to agree with his proposed draft judgment.

19. I preface with an observation that an interesting but ticklish question of law of far reaching consequences has arisen for decision from the material facts set out in the judgment of my brother. But to have coherence, I set out few material facts. The appellant, the owner of the Hotel Oberoi Towers, situated at Nariman Point, Bombay, negotiated with the respondent and took a loan for its construction. As an integral part of the bargain, the appellant agreed to and the respondent executed leave and licence, to lease out 15,000 sq. ft. on the Mezzanine to the ground floor of the said hotel, for a period of 12 years on payment of Rs. 60.000/- (Rupees sixty thousands) per month. The loan was duly repaid. On construction, the appellant put the respondent in possession of the demised property. The material terms of the agreement are that the respondent "shall carry on its business of banking for a period of 12 years commencing from December 27, 1974". At the end of the said period the appellant "shall on an application of the licensee in writing, renew the license for another period of 12 years, if the company so deems fit on terms and conditions to be mutually agreed upon". The

respondent shall keep the interior of the licensed premises in good state of repairs with liberty to the appellant to inspect the same from time to time and. to ensure that the premises are always kept in a first class condition and furnished with elegant furniture. The rest of the covenants are omitted being irrelevant.

20. The appellant by notices dated September 17-18, 1984 and April, 1986 requested the respondent to Vacate the demised premises by December 27, 1986 who in turn requested by letter dated July 8, 1986 to renew the licence for a further period of 12 years. On August 9, 1986 the appellant informed the respondent that they are not agreeable for renewal. On January 22, 1990 the appellant gave notice to the respondent to vacate the premises but the respondent did not vacate. On April 12, 1990 fire broke out in the Oberoi Hotel and a part of the demised premises was also disfigured due to splashing of water and smoke of carbons. Consequently, in terms of the Fire Brigade direction and at the request of the appellant, the respondent had to vacate a portion of the building on the ground floor and shifted his part of the business elsewhere and the appellant had undertaken to renovate it and redeliver the property. The respondent kept the furniture and other items in a portion of the demised premises. The duplicate key which was with the respondent was handed over, on request, to the appellant. As per Annexure 'R' dated June 15, 1990, the respondent claimed that the appellant had promised to hand-over the premises to the respondent within three or four months on carrying out the repairs and renovation work. Despite the respondent's asking the appellant to hand over possession to it, the appellant did not do the same. On the other hand by a letter dated June 19, 1990, the appellant asked the respondent to remove all its belongings which necessitated the respondent to lay suit No.2735 of 1990 for possession, on the Original Side of the High Court at Bombay on August 29, 1990, under Section 6 of the Specific Relief Act 47 of 1963 for short 'the Act' and took out notice of motion on August 29, 1990 for appointment of a receiver and injunction. In terms of the undertaking given by the appellant the Court passed an order on August 30, 1990 which was upheld in Appeal No.961 of 1990 dated September 12, 1990. While the Receiver petition was being argued, Shri Nadman made "with prejudice offer" that he was prepared to treat the hearing as a trial of the suit and that the affidavits, evidence and documents would be the base to decide the suit. It was also stated as narrated in the High Court judgment, that "defendants are willing to proceed on the footing that the plaintiff had been dispossessed as alleged in the plaint"..... The defendants are proceeding on the basis that the plaintiff has been dispossessed as alleged. The defendants are not pressing their case that the plaintiff had earlier expressed an intention to vacate and that it had voluntarily vacated in pursuance of that intention". On this understanding two issues were raised and the case was argued. The High Court by judgment dated November 6, 1990 held that for the purpose of the suit it is admitted that the plaintiff was dispossessed on July 19, 1990. The suit was filed within a period of six months from the date of dispossession. The respondent could not have been dispossessed except by due process of law. After the expiry of licence they have animus possidendi. The moment the licence was terminated their possession was that of a trespasser but it was a settled possession. The appellant cannot be allowed to take the law into its hands. They must acquire possession only through a court of law. Therefore, the suit is maintainable. Accordingly, the High Court granted a decree directing the appellant to hand over possession of the suit premises, to the respondent. However, its implementation was stayed for a period of 10 weeks from that day. Thereafter, the appellant laid the suit No.4000 of 1990 in December, 1990 and also the Special Leave Petition.

21. Shri Nariman, learned Senior Counsel contended that Section 6 of the Act would be applicable only if a person is dispossessed without his consent of immovable property otherwise than in due course of law. The appellant had not dispossessed the respondent; on the other hand the respondent, due to vis major, had handed over possession to the appellant and repossession asked for was refused. In this factual backdrop, Section 6 is not attracted. Even otherwise it was contended that admittedly fire broke out on April 12, 1990 in the Oberoi Hotel. The respondent had handed over possession of the premises. They admitted in their letter dated May 26, 1990 that they had vacated the premises on April 12, 1990 and requested ,to redeliver possession of the premises to the respondents. These facts clearly establish that the respondent had voluntarily vacated the premises and was not dispossessed. Even otherwise the possession of the Bank must be juridical possession and the Bank must be illegally dispossessed and then only the suit under Section 6 would lie. The appellants committed no illegality in taking possession of the demised premises. Alternatively it was contended that after expiry of the period of licence on December 12, 1986, the respondent is a trespasser, and a trespasser thrown out of possession cannot claim pos-session under Section 6 against the true owner. Even on that premise also the decree for possession is illegal. The High Court having found that the respondent had vacated the premises due to fire having been broken, went wrong in holding that the suit is maintainable.

22. Shri Ganesh, learned Counsel for the respondent contended that as Shri Nariman conceded in the High Court that the respondent had been dispossessed from the suit premises, it is no longer open to the appellant to contend that the respondent has not been dispossessed. This Court has to proceed on the finding recorded by the High Court that the respondent had been dispossessed and from that date the suit was admittedly filed within 6 months. The respondent claimed renewal in terms of the contract. The possession of the respondent is not that of a trespasser but is a legal, juridical or settled possession. Possession was not obtained in due course of law and that, therefore, the decree for possession is legal. The right of appeal and a review of decree under Section 6 are expressly barred. Therefore, this Court while exercising its plenary power under Article 136 would not review the decree of the High Court.

23. The first question that emerges is whether the respondent had been dispossessed except in due course of law. Section 6 of the Act reads thus:

> 6(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.
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> (2) No suit under this section shall be brought:
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> (a) after the expiry of six months from the date of dispossession; or
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> (b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such properly and to recovery possession thereof.

24. A reading thereof manifests the legislative intent that if any person is dispossessed from immovable property without his consent otherwise than in due course of law, the person dispossessed or any person claiming through him, is empowered to lay the suit to recover possession thereof, notwithstanding any other title that may be set up in such a suit. But it shall be laid before expiry of six months from the date of dispossession. Such suit shall not lie against the Government. The decree or any order passed in that suit shall not be subject to any appeal or review. But it is no bar to any person to sue to establish his title to such property and to recover possession thereof under Section 5, in the manner provided in the CPC, 1908. The question, therefore, is whether the respondent has been dispossessed without his consent. It is clear that the respondent had handed over a part of the premises, to the appellant, due to vis major occurred on April 12, 1990 in the hotel and pursuant to a request made by the appellant that too to comply with the conditions laid by Fire Brigade. It was asserted by the respondent that the appellant had promised to re-deliver possession. It also claimed that it had a right to renewal under the contract. Since civil suit is pending, it is not necessary to consider whether it is a lease or licence. Suffice to proceed as pleaded that it is a licence. Sri Nariman conceded in the High Court as extracted hereinbefore, that without prejudice to their right and for the purpose of the suit, the respondent was dispossessed in the manner spoken to in the plaint. The High Court also proceeded on this footing. The counsel for the respondent therein, though objected to and insisted upon the trial of the suit, he agreed to argue, due to the concession made by the counsel for the appellant. In fairness to Shri Nariman, he reiterated before us that he made the concession as extracted by the High Court. In my considered view, it is not open to the appellant to contend now that the respondent had not been dispossessed from the suit premises. As stated in the pleadings and is clear from the documents filed in support thereof that the respondent claimed that it delivered possession to the appellants only to effect renovation and refurnishing of the suit premises with an undertaking to redeliver possession. They retained animus possedendie. It is clear from the fact that part of the furniture is still in part of the demised premises. It must be concluded that they have been dispossessed without their consent.

25. The crucial question is whether the respondent is entitled to recover possession under Section 6 of the Act. Shri Nariman contended that the appellant had terminated the licence by a notice and thereafter the possession of the Bank is that of a trespasser. At no point of time, after determination of the licence, the appellant acquiesced to the possession of the respondent. Therefore, its possession is not juridical. Unless the respondent remains and continues to remain in juridical and settled possession, the discretion under Section 6 would not he exercised in favour of such trespasser, in particular, as against the true owner. Respondent being an instrumentality of the state as a model person should not retain possession after the expiry of the period of licence. The judicial discretion given to the court under Section 6 must be exercised only in favour of the person in lawful possession on date of dispossession with proven right to retain possession as on the date of the suit. The respondent lost its right to specific performance of the contract of renewal in 1989, since the

appellant had expressly refused in 1986 to renew licence. The respondent had no enforceable remedy for possession and it continued to remain a trespasser.

26. In support thereof he placed strong reliance on Amirudin v. Mohamad Jamal I.L.R. (15) Bombay 685; Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors. ; Yar Muhammad and Anr. v. Lakshmi Das and Ors. ; Maganlal Radia v. State of Maharashtra 1970 (72) Bombay Law Reporter 734; D.H. Maniar and Ors. v. Waman Laxman Kudav ; Puran Singh Sahni v. Smt. Sundari Shagwandas Kriplani and Ors. ; Brigadier K.K. Verma and Anr. v. Naraindas C. Malkhani ILR 1954 Bombay 950; Neyveli Lignite Corpn. Ltd. and Ors. v. K.S. Narayana lyer ; Chandu Lal v. Municipal Corpn. of Delhi ; and Harshadkumar Sundarlal Dalal and Ors. v. Hasmukhben and Ors. 1983 (1) Gujarat Law Reporter 383.

27. The contention of Sri Nariman that dispossession by any means, fair or foul unless it is visited with breach of peace and is not amenable to exercise of power under Section 6, would be fraught with insidious and pernicious effects on the efficacy of the rule of law as it germinates, generates or inculcates disbelief and apathy therein and drives the people to extra legal remedies. In my considered view, therefore, that possession obtained either by violence, misrepresentation, fraud, coercion, undue influence, seemingly innocuous but hidden with oblique motive or any other mode or method unlawful or otherwise except in due course of law attracts Section 6. Law frowns upon such conduct. The court accords legitimacy and legality only to possession taken in due course of law. In Section 6 proceedings the consideration of the right, title or interest in immovable property either of the person claiming possession as an owner or under colour of title or person dispossessed or threatened to be dispossessed are irrelevant. It concerns itself whether the person was dispossessed without his consent and in due course of law and whether the suit was laid within six months from the date of the suit. The claim based on title or possessing title, after six months, would be gone into in a suit under Section 5 of the Act. Therein all relevant considerations would enter into the area of consideration.

28. Section 52 of the Indian Easements Act defines licence thus:

> Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

29. It would be apparent from the definition that the permission by one person to another or a body of persons to do or continue to do upon an immovable property of the grantor is an authority or power to do one or series of acts, without which it is illegal or unlawful. The legal possession is always with the licensor and it does not create any interest or an estate in the licensee. A licensee is a person, who is neither a servant nor a "rank trespasser", but had come into possession with an authority. A rank trespasser is one who does not stand in any contractual relationship with the owner of the premises, A trespasser is also one who lawfully enters into but unlawfully remains in possession of the property without the consent or acquiescence of the owner. If one goes into possession of the property of another with invitation or permission for instance to a shop or cinema

theater, or marriage hall to celebrate a marriage his initial entry is lawful but if he refuses to leave that place and unlawfully squats on it, he becomes a trespasser of a transient origin with no vestige of right. The initial entry into possession is obviously for short duration with a specified purpose. But if he enters upon the land under a contract and uses the land or premises and docs continuous business therein for well over a long period peacefully and uninterruptedly and continues to do the same even after the expiry or termination of licence, the important question arises whether he is a rank trespasser without any protection of law.

30. In Midnapur Zamindary Co. Ltd. v, Naresh Narayan Roy and Ors. 51 Indian Appeals 293 (P.C.), the Privy Council held that in India persons are not permitted to take forcible possession. They must obtain such possession as they are entitled to by proper course. In our jurisprudence governed by rule of law even an unauthorized occupant can be ejected only in the manner provided by law. The remedy under Section 6 is summary and its object is to prevent self help and to discourage people to adopt any means fair or foul to dispossess a person unless dispossession was in due course of law or with consent.

31. What is meant by due course of law? Due course of law in each particular case means such an exercise of the powers by duly constituted Tribunal or Court in accordance with the procedure established by law under such safeguards for the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a Tribunal competent by its constitution, that is bylaw of its creation, to pass upon the subject-matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the Tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense.

32. In Rudrappa v. Narsingrao (1905) I.L.R. 29 Bombay 213, a Division Bench consisting of Sir Jcnkins, Chief Justice, as he then was and Batchelor, J. held that the word "due course of law" in Section 9 of the Specific Relief Act (Old Act), as merely equivalent to the word 'legally' is, we think, to deprive them of a force and a significance which they carry on their very face. For a thing, which in perfectly legal, may still be by no means a thing done 'in due course of law'. To enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law, and the 'due course of law' means, we lake it, the regular normal process and effect of the law operating on a matter which has been laid before it for adjudication". In that case when the owner unilaterally dispossessed the tenant holding over the court upheld the decree for possession under Section 9. The court further held that "this, in our opinion, is the primary and natural meaning of the phrase, <>in strict compliance of law though it may be applied in a derivative or secondary sense to other proceedings held under the direct authority of the law; in this sense it may be said, for instance, that revenue or taxes are collected in

due course of law. A Full Bench of five Judges per majority of four in Tamizuddin v. Ashrub Ali ILR (31) Calcutta 647, Ghosh, J. (one of concurring Judges) held that when tenancy was not put an end to as the law requires, he remains upon the land as a tenant and necessarily if he is legal he is entitled to claim possession as a tenant. His possession is different from that of a person who enters into the land as a trespasser but if he is evicted illegally, he is entitled to put back in possession according to provision of Section 9 of the Specific Relief Act though he has no title to the land. It is to be noted that the case relates to the tenant who is entitled to remain in possession as tenant holding over after the expiry of his lease but the ratio is significant that on expiry of the lease or licence no one can take possession unilaterally except in due course of law, though the respondent had no legal title. In Jeewanmal and Ors. v. Dr. Dharamchand Khatri and Ors. , the court discountenanced the incompetent Mandi Development Officer taking over possession of the land from the petitioners. Even the modicum of procedure followed by the Board to take possession was held to be "not in regular normal process". In Neyveli Lignite Corporation's case (supra), the respondent, a tenant holding over who was given on lease to run a canteen, on expiry of the lease, did not vacate it, though asked for. The security officer with the assistance of the police made an inventory of the articles and kept the furniture in a room therein and had taken possession. Though he was present, the tenant did not object to taking possession but later on issued a legal notice claiming damages from the Corporation. Thereafter the lock was removed and the goods were thrown out and the respondent filed a suit under Section 9 of the old Act. In that factual background the Division Bench held that the law recognises right to possession as a substantive right or interest which exist as certain legal incidence attached to it and it recognised such an advantage. As the respondent did not claim possession in the legal notice but merely claimed damages from that contract, it was inferred that he had no intention to retain possession. Accordingly the decree for possession was set aside. Far from helping the appellant this decision supports the view that even a landlord under colour of title cannot dispossess the person in occupation except in due course of law. If the person dispossessed expresses animus possedendie he is entitled to the relief under Section 6. In Anoopchand Revishanker Mehta v. Amerchand AIR 1951 Mysore 101, possession taken even in execution but not by a competent officer was held to be not in a due course of law.

33. It is thus clear that the courts have viewed with askance any process other than strict compliance of law as valid in dispossessing a person in occupation of immovable property against his consent. The reason is obvious that it aims to preserve the efficacy of law and peace and order in the society relegating the jurisprudential perspectives to a suit under Section 5 of the Act and restitute possession to the person dispossessed, irrespective of the fact whether he has any title to possession or not.

34. Unlike a tenant, the legal incidence of licence in normal parlance is that licensee has no right to possession of the demised property as the legal possession always remains with the licensor. It creates neither interest nor estate therein. After the expiry of the period of licence or termination thereof, the continuance in possession of the premises by the licensee would be as a trespasser unless the covenant in a contract under which he/they came into possession creates such a right or acquiesced by the licensor. His possession, therefore, would not be juridical.

35. In D.H. Maniar and Ors. v. Waman Laxman Kudav considered the effect of Section 15A of Bombay Rents Hotel and Lodging House Rates Control Act, 1947 of the person whose licence had been revoked whether he is entitled to the protection of Section 15A thereof. The leave and licence granted to the respondent on March 31, 1966 was terminated but he remained in possession. In the eviction proceedings, rejecting the plea that he was a tenant, a decree for ejectment was passed which was challenged in the proceedings under Article 226; pending the proceedings in the High Court Section 15A was brought on statute conferring on existing licensee the status of a tenant under that Act. It was contended by the respondent that he was entitled to the protection of Section 15A to remain in possession. On those facts, this Court held that the licensee under a subsisting agreement of licence, alone is entitled to the protection of Section 15A as a tenant to continue in possession of the premises. After termination, withdrawing or determination of the licence, if he continues to occupy it as a trespasser or a person who has no right to continue occupation of the premises, such a person cannot be called a licensee at all. It is clear from the factual scenario that this Court did not consider the scope of Section 6 of the Act and the nature of possession of a licensee after termination. In Saut Lal Jain v. Avtar Singh , this Court held at p. 189A that the principle that once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser. This Court approved the ratio in Milkha Singh and Ors. v. Diana and Ors. AIR 1964 J. & K. 99, wherein Murtaza Fazal Ali, J., as he then was, speaking for the Division Bench of that court, held that after the termination of licence, the licensee is under a clear obligation to surrender his possession and if he fails to do so mandatory injunction could be granted to compel performance of the obligation to deliver possession. In that context, it was held that the possession of the licensee after termination is not that of a trespasser.

36. It is seen that there is a covenant in the contract for renewal for further 12 years. There is an acute controversy whether it is a licence or lease which needs to be decided in the regular suit laid by the appellant. Suffice to stale that in exercise of the clause the respondent claimed to remain in possession till the fire broke out. With a view to enable the appellants to have the repairs, renovation and refurnishing effected the possession was surrendered. Therefore, though the possession of the respondent after the expiry of the contract of licence or termination, even assuming to be that of a trespasser, whether the Bank is liable to be dispossessed otherwise than in due course of law?

37. This Court had occasion to consider the concept of settled possession and the right of a trespasser to repel an owner when there is a threat to his possession.

38. In Munshi Ram and Ors. v. Delhi Admn. , 'A' purchased at a public auction certain evacuee property and provisional delivery was given to him on October 10, 1961 followed by issue of sale certificate on February 8, 1962 and delivery on a warrant issued by the Managing Officer of the department on June 22, 1962. On July 1, 1962, 'A' accompanied by his party, went to the land with a tractor to level the land. The complainant party resisted the action asserting that they were continuing in possession for over thirty years and the tenancy was never terminated. A bench of three Judges considering the right of private defence to a trespasser held that "it is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is

entitled to defend his possession even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period, and acquiesced in by the trueowner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he docs not use more force than was necessary. Such entry will be viewed as a resistance to an intrusion upon possession which has never been lost. The person in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time, to remove the obstruction even by using necessary force". In Puran Singh v. State of Punjab (1975)Suppl. SCR 299, while following the ratio in Munshi Ram's case, this Court held that it is difficult to lay clown any hard and fast rule as to when the possession of a trespasser can mature into settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. There is no special charm or magic in the words "settled possession" nor is it a ritualistic formula which can be confined in a straight jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his properly against attack even by the true owner. It would be reiterated that the possession must be within the knowledge either express or implied, of the owner or without any attempt at concealment and which contains an element of animus possedendic. In that case possession for 14 days was held to be settled possession since they raised the crops in the land. This view was reiterated again in Ram Ratan v. State of U.P. (1977)2 SCR 2323, laying therein that the true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law.

39. This court thus firmly laid the rule that stray or intermittent acts of possession does not constitute settled possession. A person in settled possession is entitled to resist the attempt of even the owner or persons claiming under him to dispossess the trespasser. The only exception was that a recent or concealed possession does not enable a trespasser to defend his possession. The landlord is entitled to use reasonable force only to the attempted or intermittent acts or attempts to take possession. The trespasser in settled possession is to be ejected in due course of law. Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors, is an authority for proposition that a tenant holding over cannot be dispossessed without following due course of law. In a suit under revenue code like Section 9 of the old Act, this Court held that the question of title under Section 9 is irrelevant. The word trespass would include forcible entry. Unilateral dispossession of a tenant holding over for nonpayment of rent by the landlord was held unlawful and upheld the decree for possession. The ratio laid down by Chagla, C.I. in K.K. Verma and Anr. v. Naraindas C. Malkani I.L.R. 1954 Bombay 950 at 957, was also to the same effect. The facts were that the respondent Naraindas was put in possession of a flat by the Ministry of Defence as a displaced person on monthly tenancy. A notice to vacate the premises was given by the Union but was resisted. The possession was taken under the provisions of Act 26 of 1950 which provided summary remedy for ejectment as an "unauthorized

occupant". The question therein was whether the respondent was an unauthorized occupant. Chagla, C.J. speaking for the Division Bench, held that a trespasser is one who had come into occupation of the government premises without any authority or contract and to him remedy under Section 9 was not available. But the respondent having had possession legally and after determination of the tenancy, he was tenant holding over his possession was held to be juridical. Chief Justice Chagla in those circumstances held, on which Shri Nariman placed strong reliance, that a trespasser who has been thrown out of possession cannot get into possession under Section 9 which question vis-a-vis the licensee did not arise for consideration therein. In Lallu Yeshwant's case, though approved the ratio of Verma's case the precise question in issue also did not crop up for adjudication. This Court yet did not approve of the conduct of the landlord of self help to dispossess the tenant holding over without due course of law.

41. In M.C. Chockalingam and Ors. v. Manickavasagam and Ors. , this Court held that lawful possession in the context of Rule 13 of Madras Cinemas (Regulations) Act, 1955 would mean only juridical that is protected by law such as Section 9 of the Specific Relief Act and that, therefore, the possession of the respondent therein was held to be lawful possession.

42. In K.K. Firm v. The Govt. of A.P. and Ors. this Court held that the remedy of Section 6 of the Act is founded on expediency rather than jurisprudence and the tenant holding over has juridical possession and not in unlawful possession. The possession of such a person though not legal yet not without interest.

43. In Nair Service Society Ltd. v. Rev. Father K.C. Alexander and Ors. (1963) 3 SCR 163, this Court held that the plaintiff need not prove title and the title of the defendant does not avail him. Even a suit by a trespasser was held to be maintainable under Section 9 of the old Act. It was also further held that the relief cannot be denied on the ground that he was an offender liable to penalty under the Act.

44. In M.C. Batra v. Laxmi Insurance Co. Ltd. AIR 1965 Allahabad 709, the tenant had inducted the petitioner as a subtenant. The respondent had unilaterally dispossessed the petitioner who claimed protection under Section 9 for redelivery of possession. The Division Bench held that the object of Section 9 is to discourage people from taking law into their own hands, however, good their title may be. Section 9 says nothing about the nature of the possession enjoyed by the person dispossessed, although it may well be that a suit under Section 9 cannot be maintained by a person who is manifestly a trespasser and whose possession is of a very short duration. Save in those cases where the nature of the possession of the plaintiff is clearly such as to result in proceeding under s, 9 defeating the purpose of that section, the title of the plaintiff is no more to be inquired into than that of the defendant. It was held that he is entitled to restitution until he is duly ejected in accordance with law. This view was approved in Yar Muhammad's case whose ratio was approved by this Court in Lallu Yeshwant Singh's case. In Yar Muhammad's case it was held that possession is prima facie title and if a person who is in possession is dispossessed, he has a right to possession from the person who dispossessed him, even if he is unable to prove title. A suit under Section 9 is entirely different from the suit based on title for possession. A person dispossessed is entitled to succeed simply by showing (1) that he is in possession; (2) he has been dispossessed by the defendant; (3)

that dispossession is not in accordance with law and (4) that dispossession took place within six months of the suit. No question of the title either of the plaintiff or defendant can be raised or gone into in that case. Far from helping the appellant the ratio in Yar Muhammad's case goes against it. In Ayodhiya Prasad Belihar Sao and Anr. v. Ghasiram Premsai Nai AIR 1938 Nagpur 326, the plaintiff/petitioner was inducted into possession under an unregistered sale-deed and remained in possession for four years, was held to be "in excusable possession" and the decree under Section 9 of the old Act was directed to be made. It was further held that possession required under Section 9 cannot mean merely possession under a valid title; it must include possession that is at least excusable. In Shri Praful Nyalchand Sanghajka v. Dr. Prakash V. Pradhan of Bombay and Ors. , the doctors were given leave and licence to use cabins for medical practice. Though they had no exclusive possession, when they were sought to be dispossessed unlawfully, in their suit the Bombay High Court held that "plaintiffs entry into the cabins were lawful and are in settled possession". The threat of dispossession would give them cause of action to lay the suit under Section 6 and the injunction was accordingly granted. In Krishna Ram Mahate (dead) by L.Rs. v, Mrs. Shobha Venkat Rao JT 1989 (3) SC 489 : (1989)4 SCC 131, the facts were that the respondent was inducted into' possession under an agreement to conduct business in a restaurant. On an attempted issue of notice of terminating the agreement, the respondent was dispossessed surreptitiously and a suit was laid by her for an order of injunction and for restoration of possession under Section 6 of the Act which was granted. The appeal was filed to this Court by the defendant/appellant. While deprecating the conduct of the owner, following the ratio in Lallu Yeshwant Singh and Ram Ratan's cases this court held that the occupant in possession cannot be dispossessed without recourse to law. When attempted to argue that by the date of the hearing" of the appeal the period of licence had expired, this Court discountenanced the contention and directed a receiver to lake over possession and the respondent was directed to be given possession of the restaurant.

45. Law respects possession even if there is no title to support it. No-one is permitted to take law in one's own hands and to dispossess the person in actual settled possession without due course of law. No person can be allowed to become a judge in his own case. The object of Section 6 is to discourage people to act in self help, however, good their title may be. The licensee in possession for well over 15 years is in settled possession and is entitled to remain in possession and make use of the premises for the purpose for which it was demised until it is ejected in due course of law. The acquiescence of the landlord in this context would be to the initial unlawful entry into possession and continuation thereafter but not to the continuance in possession of the licencee after the expiry or termination of the licence. That was what this court appears to have meant in the previous decisions. Take for instance that when a licence was granted for a couple of years and after its expiry, by efflux of time, or on termination, if the possession of the licensee, though unlawful and unjust is not protected, the aggressor or mighty would trample upon the rights of the weak and meek and denial of relief under Section 6 would put a premium upon the aggression or treachery or tricks. No doubt long delay in disposal of cases due to docket explosion became a ruse to unscrupulous litigant to abuse the due course of law to protract litigation and remain in unjust or wrongful possession of the property. Landlord could be suitably compensated by award of damages. It cannot, by any stretch of imagination, be said that a person in settled possession, though unlawful, is not entitled to the protection under Section 6 of the Act. Maintenance of law and order, and enthusing confidence in the efficacy of rule of law are condition precedent for orderly society. Therefore, giving primacy,

legitimacy or legality to the conduct or acts of the landlord to take possession of the property in derogation of the due course of law would be deleterious to rule of law and a pat on high-handedness or self-help.

46. In Amirudin's case the facts were that Amirudin, plaintiff filed the suit to recover a room from the defendant when he was dispossessed on June 3, 1890. The defendant pleaded that he had been in possession and that the plaintiff trespassed into it by excluding him from the room and put a padlock on the door. He had removed the padlock and resumed possession. The plea, therefore, was that the plaintiff was a rank trespasser and the defendant resumed possession in his assertion as an owner, and as such, the plaintiff was not entitled to relief under Section 9 of the old Act. The trial court accepted that plea and held that the plaintiff was a trespasser. Under those circumstances, the court held that he was not entitled to possession. That ratio has no application to the facts. In Chandu Lal's, case no doubt the ratio therein is in favour of the appellant. But it is difficult to approve of it. The licensee in settled possession is entitled to the remedy under Section 6. But each case has to be considered in the light of its own facts.

47. In Maganlal Radia's case the Bombay High Court held that a licensee whose licence has been terminated, even though he may have actual possession of the properly, is not protected by law to avail himself of the remedy of Section 6. In that case he was evicted by a summary procedure, i.e. in due course of law. So the remedy under Section 6 was not available. That was not a suit under Section 6 but a Writ Petition under Article 226. This ratio renders little assistance to the appellant. In Harshad kumar Sunderlal Dalai's case the facts were that access to the room to the licensee was only through the court yard of the landlord. On termination of the licence the landlord closed the door from inside and did not allow the petitioner to get into possession. When a suit under Section 9 was laid for possession, it was held that a trespasser thrown out from possession cannot claim possession against the true owner under Section 9 of the old Act. For the aforesaid reasons, the ratio is not good law.

48. In Puran Singh Sahni's case the question therein was the distinction between licence and lease vis-a-vis the power of the Tribunal under Section 91 of the Co-op. Societies Act. It is also of no avail to the appellant. Thus I hold that the respondent, after expiry of the licence or its termination, was in settled possession, and its dispossession was otherwise than in due course of law. Therefore, the decree for possession under Section 6 of the Act is not illegal. Remedy of judicial review under Article 136 of the Constitution is plenary and is not hedged with the bar of appeal or review prescribed by Section 6 of the Act. The contention of the counsel for the respondent that this court would not review the decision of the High Court is ex facie desperate and is rejected.

49. The appeal is accordingly dismissed but without costs.

ORDER

50. In view of the conflicting judgments given by us, the matter may now be placed before the Hon'ble the Chief Justice of India for constituting a larger bench for resolving the conflict.