

Prabhudas Damodar Kotecha & Ors vs Manharbala Jeram Dmodar & Anr on 13 August, 2013

Equivalent citations: AIR 2013 SUPREME COURT 2959, 2013 (15) SCC 358, 2013 AIR SCW 4842, 2013 (5) ABR 1081, (2013) 2 WLC (SC) 355, (2013) 10 SCALE 242, (2013) 129 ALLINDCAS 113 (SC), AIR 2013 SC (CIV) 2550, (2013) 3 ALL RENTCAS 499, (2014) 3 CAL HN 81, (2013) 6 ALLMR 399 (SC), (2013) 2 RENCER 599, (2013) 100 ALL LR 378, (2013) 6 BOM CR 147

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Bench: Dipak Misra, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL Nos. 6726-6727 OF 2013
(Arising out of SLP (Civil) NO.20763-764 OF 2007)

Prabhudas Damodar Kotecha & Ors.

... Appellants

v.

Manhabala Jeram Damodar & Anr.

... Respondents

J U D G M E N T

K. S. Radhakrishnan, J Leave granted.

2. We are, in these appeals, concerned with the question whether a suit filed by a licensor against a gratuitous licensee under Section 41(1) of the Presidency Small Causes Courts Act, 1882 (for short “the PSCC Act”), as amended by the Maharashtra Act No.XIX of 1976 (for short “1976 Amendment Act”) is maintainable before a Small Causes Court, Mumbai. .

3. The Division Bench of the Bombay High Court in Ramesh Dwarikadas Mehra v. Indirawati Dwarika Das Mehra (AIR 2001 Bombay 470) held that a suit by a licensor against a gratuitous licensee is not tenable before the Presidency Small Causes Court under Section 41 (1) of the PSCC Act, and it should be filed before the City Civil Court or the High Court depending upon the valuation. The Division Bench held that the expression “licensee” used in Section 41(1) of the PSCC Act has the same meaning as in Section 5 (4A) of the Bombay Rents, Hotels and Lodging House Rates (Control) Act, 1947 (in short “the Rent Act”). Further it was held that the expression “licensee”

as used in Section 5(4A) does not cover a gratuitous licensee. The Division Bench in that case rejected the ejectment application holding that the Small Causes Court at Bombay lacked jurisdiction.

4. In Bhagirathi Lingawade and others v. Laxmi Silk Mills, in an unreported judgment of the Bombay High Court dated 03.09.1993, another Division Bench of the Bombay High Court expressed the view that Section 5(4A) and Section 13(1) of the Rent Act, 1947 are not at all relevant in interpreting the scope and ambit of Section 41 of the PSCC Act, under which suit was filed.

5. The Full Bench of the Bombay High Court, which is the Judgment under appeal, reported in 2007 (5) Maharashtra Law Journal 341, answered the question in the affirmative overruling the Ramesh Dwarikadas Mehra case (supra), the legality of which is the question, that falls for our consideration.

FACTUAL MATRIX

6. Respondent Nos.1 and 2 along with other plaintiffs (who are now deceased) filed a suit L.E. and C. No.430/582 of 1978 under Section 41 of the PSCC Act before the Small Causes Court, Bombay against the appellants (original defendants) for recovery and vacant possession of one bed room in Flat No.16, Ram Mahal, Churchgate, Mumbai and also for other consequential reliefs. Plaintiffs submitted that the defendants were in use and in occupation of the above premises as their guest-house and so far as hall and kitchen are concerned, family members of the plaintiff and defendants were using it as common amenities. The plaintiffs also claim that they are in occupation of another bed-room in the suit flat and no monetary consideration was charged by them from the defendants for exclusive use and occupation of one bed-room and joint use of the hall and kitchen as common amenities. Permission granted to the defendants to use the premises was later revoked and since they did not vacate the suit flat and continued to hold possession wrongfully and illegally, suit was filed for eviction.

7. The Small Causes Court decreed the suit on 07.02.1997 and ordered eviction of the appellants with a specific finding that they are gratuitous licensee. The appellants preferred an appeal before the Appellate Bench of Small Causes Court, which was dismissed on 05.04.2003. Against that order both the appellants and respondents filed writ petitions before the High Court, Bombay and the respondents' writ petition was for claiming mesne profits.

8. The Defendants questioned the jurisdiction of the Small Causes Court, Mumbai to entertain and try the suit before the learned Single Judge of the High Court of Bombay, placing reliance on the judgment of the Division Bench in Ramesh Dwarikadas Mehra's case (supra) contending that the licence created by the plaintiffs in favour of the defendants was gratuitous, i.e. without consideration, hence the suit is not maintainable in that Court. Learned Single Judge vide his order dated 16.01.2006 referred the matter to a larger bench. Consequently, a Full Bench was constituted.

9. The Full Bench of the Bombay High Court formulated the following questions for its consideration:

i) Whether the expression “Licensee” used in section 41(1) in Chapter VII of PSSC Act, not having been defined therein, would derive its meaning from the expression “licensee” as used in sub-

section (4A) of section 5 of the Rent Act and/or whether the expression “licensee” used in section 41(1) of PSSC Act is a term of wider import so as to mean and include a “gratuitous licensee” also?

ii) Whether a suit by a “licensor” against a “gratuitous licensee” is tenable before the Presidency Small Cause Court under section 41 of PSSC Act?

Both the above mentioned questions, as already indicated, were answered by the Full Bench in the affirmative, the correctness of otherwise of those findings is the issue that falls for our consideration.

Arguments

10. Shri Soli J. Sorabjee, learned senior counsel appearing for the appellants, submitted that the Full Bench was in error in overturning a well-reasoned judgment of the Division Bench of the High Court in Ramesh Dwarkadas Mehra’s case and contended that the licence created by the plaintiffs in favour of the defendants was admittedly gratuitous and hence a suit for eviction of such a licensee is not maintainable in a Small Causes Court. Further, it was pointed out that the intention of the Legislature was that the “licence” contemplated in Section 41 of PSSC Act must take its colour from Section 5(4A) of the Rent Act 1947, which specifically excludes a gratuitous licensee, hence, such a suit is maintainable only before a competent civil court. Learned senior counsel also pointed out that it is an established position of law that, under Section 9 of the Code of Civil Procedure, 1908, the jurisdiction of a Civil Court cannot be ousted unless such an ouster is expressed or clearly implied and such a provision has to be strictly construed. Shri Sorabjee also submitted that Section 41 of the PSSC Act, as initially enacted, used the expression “permission” and not “licence”, despite the Easements Act, 1882, which is indicative of the legislative intent that Section 52 of the Easements Act, not being *pari materia*, ought not be relied on in determining the scope and meaning of the term “licensee” in Section 41 of PSSC Act.

11. Shri Sorabjee also pointed out that, till 1976, the PSSC Act continued to use the expression “permission” and the 1976 Amendment to the PSSC Act was inspired only by 1973 Amendment to the Rent Act 1947. Further, it was also submitted that 1976 Amendment was specifically made to PSSC Act to harmonize it with the Rent Act 1947. Shri Sorabjee also submitted that Section 41 of the PSSC Act, by virtue of the 1976 Amendment, was completely reworded to specifically reflect the language used in Section 28 of the Rent Act 1947 so as to make it *pari materia*. In other words, it was submitted that, after the 1976 Amendment, the Rent Act 1947 and PSSC Act, are cognate and *pari materia* statutes which form part of the same system. Learned senior counsel pointed out that the statutes dealing with the same subject matter or forming part of the same system are *pari materia* statutes. Reference was made to the judgments of this Court reported in *Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale* (1995) 2 SCC 665, *R v. Herrod* (1976) 1 All ER 273 (CA) and *Ahmedabad Pvt. Primary Teachers Assn. V. Administrative Officer and Ors.* (2004) 1 SCC 755.

12. Shri Sorabjee also submitted that the Statement of Objects and Reasons of 1976 Amendment proceeds on the premise that the “licence” contemplated by Section 41 of PSSC Act is a non-gratuitous one which provides that, under the existing law, the licensor had to go to different Courts for recovery of possession and licence fee and that the intention of the Legislature was always to confine the jurisdiction of the Small Causes Court to eviction proceedings and proceedings for the recovery of rent/licence fee, not to evict a gratuitous licensee. Shri Sorabjee also submitted that the expression “licence” contemplated in Section 41 of PSSC Act does not include a gratuitous licensee, which is also in consonance with the principle of *Nocitur a sociis*, which provides that words must take colour from words with which they are associated. In support of this contention, reliance was placed on the judgment of this Court in *Ahmedabad Pvt. Primary Teachers Assn.’s case*.

13. Shri Sorabjee also submitted that the respondents have proceeded on a wholly incorrect premise that the Rent Act 1947 only protects the licensees who were in possession on 01.02.1973. It was pointed out that by virtue of 1973 Amendment to the Rent Act 1947, protection was given to all “licensees” defined in Section 5(4A). It was also submitted that certain licensees were given the status of deemed tenants under Section 15A and that only those licensees who had subsisting license on 01.02.1973 were given the status of deemed tenants. Learned senior counsel pointed out that if all the licensees were deemed tenants, there would not have been any need to insert the word “licence” in various provisions of the Act. Learned senior counsel also pointed out that these aspects were overlooked by the judgment in appeal, unsettling the law laid down by the Division Bench of the High Court in *Ramesh Dwarkadas Mehra’s case (supra)*.

14. Shri Shekhar Naphade, learned senior counsel appearing for the respondents, submitted that the Full Bench of the Bombay High Court is right in holding that the expression “licensee” used in Section 41(1) of PSSC Act does not derive its meaning from the expression “licensee” as defined in Section 5(4A) of the Rent Act 1947 and that the expression “licensee” used in Section 41(1) of PSSC Act is a term of wide import so as to mean and include a gratuitous licensee. Learned senior counsel also submitted that the argument of the appellants that the Rent Act 1947 is *pari materia* with Section 41 of PSSC Act or same system statute, is totally misconceived. Shri Naphade also submitted that the “licence” contemplated in Section 41(1) of PSSC Act be considered as licence, as defined in Section 52 of the Easements Act. Shri Naphade also pointed out that though Section 41(1) of PSSC Act, as originally enacted, refers to occupation of premises with permission, such permission means permission as referred to in Section 52 of the Easements Act which is a contemporaneous statute, i.e. Easements Act, the Transfer of Property Act and Section 41 of PSSC Act. In support of that principle, learned senior counsel placed reliance on the judgment of this Court in *National & Grindlays Bank Ltd. v. The Municipal Corporation of Greater Bombay (1969) 1 SCC 541* and *Tata Engineering and Locomotive Company Ltd. v. The Gram Panchayat, Pimpri Wachere (1976) 4 SCC 177*.

15. Shri Naphade also submitted that the expression “licensor” or “licensee” or “landlord” and “tenant” used in Section 41 of PSSC Act, as amended by the Maharashtra Act No. XIX of 1976, relate to “immoveable property” and Section 52 of the Easements Act which defines a “licence” has an inseparable connection to immoveable property and property law. Learned senior counsel pointed out that the expression “licensee” is used as an antithesis to the concept of tenant and, therefore, the

licensee under Section 41(1) must mean a person having a licence as defined in Section 52 of the Easements Act. Shri Naphade also submitted that the Maharashtra Act of 1976 made necessary changes in Chapter VII of PSCC Act which contained Sections 41 to 49 and by virtue of the amendment, the pecuniary restriction on the jurisdiction of the Small Causes Court placed by Section 18 has been removed to speed up the proceedings for eviction and to avoid multiplicity of proceedings. The Legislature also intended that all cases of licensees and tenants should be tried only by the Small Causes Court under Section 41(1) of PSCC Act.

16. Before considering the rival contentions raised by the counsel on either side and the reasoning of the Full Bench, it is necessary to examine the historical settings of the various legislations.

LEGISLATIVE HISTORY PSCC Act:

17. The PSCC Act came into force on 01.07.1882. In that year, the Transfer of Property Act as well as the Easements Act was also enacted. Under the PSCC Act, Small Causes Courts were established in Calcutta, Madras, Ahmedabad and Bombay and the PSCC Act was enacted to consolidate and amend the law relating to Courts of Small Causes established in the Presidency Towns. Small Causes Court was conferred with the jurisdiction to try all suits of a civil nature where value of the subject matter did not exceed Rs.10,000/- as per Section 18, subject to exceptions in Section 19 of PSCC Act. Small Causes Courts, at that time, were treated as a Civil Courts in the hierarchy of the Courts. Chapter VII of PSCC Act, as it stood prior to the Maharashtra Amendment Act, 1976, contained Sections 41 to 46 conferring limited jurisdiction of recovery of possession of immoveable property on Small Causes Court giving summary remedy for recovery of possession of immoveable property of the prescribed value. Section 41 of PSCC Act then stood as follows:

“41. Summons against persons occupying property without leave.- When any person has had possession of any immovable property situate within the local limits of the Small Cause Court’s jurisdiction and of which the annual value at a rack-rent does not exceed two thousand rupees, as the tenant, or by permission, or another person, or of some person through whom such other person claims, and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person, such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

18. Proceedings at that time were initiated by filing an application, not a suit. Even the Bombay Rent Act, 1939 and Bombay Rent Act, 1944, did not give exclusive jurisdiction to any Court. Legislative history indicates that in respect of premises having annual rack rent up to Rs.2,000/-, the proceedings for recovery of possession between landlord and tenant were to be filed in Small Causes Court under Chapter VII of the PSCC Act and in case where the annual rack rent exceeded Rs.2,000/-, the

recovery suits were to be filed in the Original Side of the High Court.

19. Bombay Rent Act 1947 also brought lot of changes to the Rent Act of 1939 and 1944 and Section 28 of the 1947 Act provided that exclusive jurisdiction was conferred on the Small Cause Court in respect of all the suits between landlord and tenant relating to recovery of rent or possession irrespective of value of the subject-matter. Suits between landlord and tenant pending on the original side of the High Court were transferred to the Presidency Small Cause Courts, Mumbai and were to be tried under the provisions of the Rent Act. Even landlords were prohibited from recovering any amount in excess of standard rent which was pegged down at the level of rent in September, 1940 or on the date of first letting.

Even the landlord's right of evicting tenant was also severely curtailed and the landlords could recover possession only on proof of grounds of eviction enumerated under the Rent Act, therefore, they started letting out their premises under an agreement of leave and license. Proceedings for recovery of possession against the licensee though started filing suits under Section 41 of the Small Cause Courts Act, the defendants in those cases starting denying that there were licensees but tenants and that the agreement of leave and licence was sham and bogus and hence not binding. Even the findings rendered by the Small Cause Court in exercise of its jurisdiction under Section 41 on the question of tenancy was not final and the aggrieved party had a right to file a regular suit for declaration of the title resulting in multiplicity of the proceedings. Chapter VII of the PSCC Act was later amended by the Maharashtra Act No. XLI of 1963. The object of the Amendment in a nutshell is as follows:

“In view of the fact that the provisions of Section 47 of the Presidency Small Cause Courts Act, 1882 are abused by the parties in an application under Section 41 and the litigation is protracted on account of parties in certain cases claiming the right to be tried under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Act deletes sections 45 to 47 of the Presidency Small Cause Courts Act, 1882 and empowers the Small Cause Court to decide as a preliminary issue the question whether an occupant is entitled to the protection of the Rent Control Act and to lay down that only one appeal can be preferred against the order and no further appeal can lie. New Section 49 provides that recovery of possession shall be a bar to a suit in any court except on the basis of title to the immovable property other than as title.”

20. Section 42A which provided that if in an application made under Section 41, the occupant raises a defence that he is a tenant within the meaning of Bombay Rent Act, 1947 then notwithstanding anything contained in that Act, the question shall be decided by the Small Cause Court as a preliminary issue. The question of filing civil suits against licensee even after the introduction of Section 42A depended upon the value of subject matter.

Bombay Rent Act

21. Bombay Rent Act, 1925 was repealed by the Bombay Rent Protection Act, 1939. Both the Acts did not contain any special or separate definition of “license” nor did they deal with “licensees”. In the year 1944, Bombay Rent, Hotel and Lodging House Rates (Control) Act 1944 was enacted followed by the 1947 Act. Rent Act, 1947 also did not deal with expressions “license” or “licensee” and their rights and there were widespread attempts to evade the rigour of the rent control legislation by entering into “leave and licence” agreements in order to prevent rampant evasion. Bombay Rent Act was amended in the year 1973 to bring “licensees” within the purview of the Rent Act, 1947 by adding Section 5(4A) and Section 15A.

22. Statement of Objects and Reasons of Maharashtra Act 19 of 1973 reads as follows:

“It is now notorious that the Bombay Rents, Hotel and lodging House Rates Control Act, 1947, is being avoided by the expedient of giving premises on leave and license for some months at a time; often renewing from time to time at a higher license fee. Licensees are thus charged excessive license fees’ in fact, several times more than the standard rent, and have no security of tenure, since the licensee has no interest in the property like a lessee. It is necessary to make provision to bring licensees within the purview of the aforesaid Act. It is therefore provided by Cl.14 in the Bill that persons in occupation on the 1st day of February 1973 (being a suitable anterior date) under subsisting licenses, shall for the purposes of the act, be treated as statutory tenants and will have all the protection that a statutory tenant has, under the Act. It is further provided in Cl. 8 that in the case of other licenses, the charge shall not be more than a sum equivalent to standard rent and permitted increases, and a reasonable amount for amenities and services. It is also provided that no person shall claim or receive anything more as license fee or charge, than the standard rent and permitted increases, and if he does receive any such excessive amounts, they should be recoverable from the licensor.” (Emphasis supplied)

23. Section 15-A introduced in the said Act stated that a person as on 1st February, 1973 in occupation of any premises or any part of which is not less than a room as licensee under a subsisting agreement of leave and license, he shall on that day deemed to have become tenant of the landlord for the purpose of Bombay Rent Act, 1947 in respect of the premises or part thereof in his occupation. The definition of the expression “tenant” in Section 5(11) was also amended to include such licensee as shall be deemed to be the tenant by virtue of Section 15A. The expression “licensee” was also inserted by Sub-section (4A) in Section 5 which provided that a person in occupation of the premises or of such part thereof which is not less than a room, as the case may be, in a subsisting agreement for license given only for a license fee or charge but excluded from its sweep a gratuitous licensee.

Maharashtra Act XIX of 1976

24. Maharashtra Act XIX of 1976 made drastic changes in Chapter VII of PSSC Act by which Chapter VII was substituted for the original Chapter VII (Sections 41 to 49). Under Chapter VII of the 1976 Amendment, the proceedings for recovery of possession under Section 41 no more

remained summary and they were given status of regular suits. For easy reference, we may refer to both sub-sections (1) and (2) of Section 41, which reads as follows:

41. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court.-

(1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant relating the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject-matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fees or charges of rent thereof, to which the provisions of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Bombay Housing Board Act, 1948 or any other law for the time being in force, applies.

25. The Statement of Objects and Reasons of the 1976 Amendment is also relevant and same is extracted hereunder:

“STATEMENT OF OBJECTS AND REASONS At present in Greater Bombay, all suits and proceedings between a landlord and tenant relating to recovery of possession of premises or rent, irrespective of the value of the subject matter lie in the Court of Small Causes, Bombay under Section 28 of the Bombay, Rent, Hotel and Lodging House Rates Control Act, 1947. Under that section, suits and proceedings for the recovery of the license fee between a licensor and licensee as defined in that Act also lie in the Court of Small Causes, irrespective of the value of the subject matter. Under Chapter VII of the Presidency Small Causes Court Act, 1882 an application can be made by a licensor for recovery of possession of premises, of which the annual value at a rack rent does not exceed three thousand rupees. If the rack rent exceeds three thousand rupees, the licensor has to take proceedings in the City Civil Court where the rack rent does not exceed twenty five thousand rupees and for higher rents in the High Court. Similarly, for recovery of license fees to which the provisions of the Bombay Rent Control Act do not apply, the licensor has to seek his remedy in the Small Causes Court, the City Civil Court or the High Court, as the case may be, according to the value of the subject matter. Under the existing law, the licensor has to go to different Courts for recovery of possession of premises and license fees and if the plea of tenancy is raised by the defendant and succeeds, the matter has again to go to the Small Causes Court. Similarly, where proceedings on the basis of tenancy

are started in the Small Causes Court and subsequently the plea of license is taken and succeeds, the plaint is returned and has to be represented to the City Civil Court or the High Court as the case may be, depending on the valuation. Thus, there is unnecessary delay, expense and hardship caused to the suitors by going from one Court to another to have the issue of jurisdiction decided. Moreover, Chapter VII of the Presidency Small Causes Courts Act envisages applications which culminate in orders and are always susceptible of being challenged by separate suits on title where relationship is admittedly not between a landlord and tenant.

2. In order to avoid multiplicity of proceedings in different Courts and consequent waste of public time and money and unnecessary delay, hardship and expense to the suitors, and to have uniformity of procedure, it is considered expedient to make the required supplementary provisions in the Presidency Small Causes Court Act, so that all suits and proceedings between a landlord and tenant or a licensor and licensee for recovery of possession of premises or for recovery of rent or license fee, irrespective of the value of the subject matter should go to and be disposed of by the Small Causes Court, either under that Act or the Rent Control Act.

3. The Bill is intended to achieve these objects.”

26. We may, on the basis of the above legal and historical settings, examine the exact intent of the Legislature in inserting the expressions “licensor” and “licensee” in Section 41(1) of the PSCC Act by the 1976 Amendment and also whether all disputes between licensors and licensees are intended to be tried only by the Small Causes Courts. Before embarking upon such an exercise, we have to deal with the basic principles of interpretation of the expressions which figures in the Statutes under consideration.

Golden Rule

27. Golden-rule is that the words of a statute must be prima facie be given their ordinary meaning when the language or phraseology employed by the legislature is precise and plain. This, by itself proclaims the intention of the legislature in unequivocal terms, the same must be given effect to and it is unnecessary to fall upon the legislative history, statement of objects and reasons, frame work of the statute etc. Such an exercise need be carried out, only when the words are unintelligible, ambiguous or vague.

28. It is trite law that if the words of a Statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The above principles have been applied by this Court in several cases, the judgments of which are reported in Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu and Others (1979) 2 SCC 34, Kehar Singh and Others v. State (Delhi Admn.) AIR 1988 SC 1883, District Mining Officer and Others v. Tata Iron and Steel Co. and Another (2001) 7 SCC 358, Gurudev datta VKSSS Maryadit and Others v. State of Maharashtra and Others AIR 2001 SC 1980, State of H.P. v. Pawan Kumar (2005) 4 SCC 350 and State of Rajasthan v. Babu Ram (2007) 6 SCC 55.

29. Section 41(1), as such, came up for consideration before this Court in Mansukhlal Dhanraj Jain's case (supra). While interpreting the said provision, the Court stated that the following conditions must be satisfied before taking the view that jurisdiction of regular competent civil court is ousted:

- i) It must be a suit or proceeding between the licensee and licensor; or
- ii) between a landlord and a tenant
- iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or
- iv) relating to the recovery of the licence fee or charges or rent thereof.

30. We are primarily concerned with the condition nos. (i) and (iii) and if we hold that both the above conditions are satisfied, then Small Causes Courts will have the jurisdiction to entertain the suit in question, provided the expression "licensee" means and include "gratuitous licensee" also. In that context, we have also to examine whether the expression "licensee" in Section 41(1) of the PSCC Act would mean only "licensee" within the meaning of sub-section (4A) of Section 5 of the Rent Act 1947.

31. Let us, in this context, make a brief reference to Sub-section (2) of Section 41 of the PSCC Act, which states, nothing contained in Sub-section (1) shall apply to suit or proceeding for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which provisions of Rent Act 1947 apply. A plain reading of this sub-section shows that the provisions of sub-section shall not apply to suit or proceeding for recovery of possession of any immovable property or licence fee to which Rent Act 1947 apply, meaning thereby, if the provisions of Sub-section (4A) and Sub-section (11) of Section 5 read with Section 15A of the Rent Act 1947 are attracted, the provisions of Sub-section (1) of Section 41 of the PSCC Act cannot be resorted to to institute a suit between the licensor and licensee, relating to recovery of licence fee, therefore, if a licensee is covered by Section 15A read with Section 5(4A) of the Rent Act 1947, the suit under Section 41(1) would not be maintainable. Section 41(1), therefore, takes in its compass "licensees" who do not fall within the ambit of Section 5(4A) read with Section 5(11) and Section 15A of the Rent Act 1947.

32. Gratuitous licensee, it may be noted, does not fall within Section 5(4A) read with Sections 5(11) and 15A of the Rent Act 1947. The provisions of Section 41(1) also do not specifically exclude a gratuitous licensee or makes any distinction between the licensee with material consideration or without material consideration. Further, it may also be noted that Section 28 of the Rent Act 1947 do not confer jurisdiction on the Small Causes Court to entertain a suit against a gratuitous licensee. Section 28 read with Section 5(4A) would show that a party who claims to be a gratuitous licensee is not entitled to any protection under the Rent Act 1947.

PARI MATERIA:

33. Viscount Simonds in *A.G. v. HRH Prince Ernest Augustus of Hanover* (1957) 1 All ER 49, conceived the above mentioned principle to be a right and duty to construe every word of a statute in its context and used the word “context” in its widest sense, including “other statutes in *pari materia*”. Earlier, same was the view taken in *R. v. Loxdale* (1758) 97 ER 394 stating that when there are different statutes in *pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory to each other. This Court in *State of Punjab v. Okara Grain Buyers Syndicate Ltd.* Okara AIR 1964 SC 669 held that when two pieces of legislation are of different scopes, it cannot be said that they are in *pari materia*. In *Shah & Co., Bombay v. State of Maharashtra* AIR 1967 SC 1877, this Court held that the Rent Act 1947 and the Bombay Land Requisition Act, 1948 were not held to be the acts in *pari materia*, as they do not relate to the same person or thing or to same class of persons of things.

34. “*Pari materia*” words, it is seen, are used in Section 28 of the Bombay Rent Act, 1947 and Section 41(1) of PSCC Act referring to the nature of suits in both the provisions would indicate that those provisions confer exclusive jurisdiction on Small Causes Court meaning thereby it alone can entertain suits or proceedings relating to recovery or possession of the premises. Section 28 of the Bombay Rent Act deals with the suits only between landlord and tenant and between licensor and licensee relating only to recovery of licence fee or charge while Section 41 of the PSCC Act deals with such suits between licensor and licensee also. Where the premises are not governed by the Rent Act, the provisions of Section 41 of the PSCC Act would apply, at the same time where the premises are governed by the provisions of Rent Act, the provisions of Section 28 would be attracted.

35. When we look at both the provisions, it is clear that the nature of such suits as envisaged by both the sections is the same. In this connection, a reference may be made to the judgment of this Court in *Mansukhlal Dhanraj Jain’s case* (supra) wherein this court has dealt with a question whether the suit filed by the plaintiff claiming the right to possess the suit premises as a licensee, against defendant alleged licensor who is said to be threatening to disturb the possession of the plaintiff – licensee without following due process of law is cognizable by the Court of Small Causes Bombay as per Section 41(1) of the PSCC Act or whether it is cognizable by City Civil Court, Bombay? This Court while dealing with that question held that the Court of Small Cause have jurisdiction and that in Section 41(1) of the PSCC Act and Section 28 of the Bombay Rent Act, 1947, *pari materia* words are used, about the nature of the suits in both these provisions, for conferring exclusive jurisdiction on Small Causes Courts. Paragraphs 17 and 18 of that judgment would make it clear that in that case this Court only observed that some expressions in Section 28 of the Rent Act only are *pari materia* with the expressions employed in Section 41(1) of the Small Cause Court and not stated that the PSCC Act and the Rent Act are *pari materia* statutes.

36. We may in this respect refer to Section 51 of the Rent Act which provides for the removal of doubt as regards proceedings under Chapter VII of the PSCC Act which states that for removal of doubt, it is declared that unless there is anything repugnant in the subject or context references to suits or proceedings in this Act shall include references to proceedings under Chapter VII of the PSCC Act and references to decrees in this Act shall include references to final orders in such proceedings. The Full Bench of the Bombay High Court, in our view, is right in holding that Section 51 of the Rent Act will have to be read with Section 50. The Court rightly noticed that on the date

when the Rent Act came into force, there were two types of proceedings for recovery of possession pending in two different courts in the City of Bombay, that is proceedings under Chapter VII were pending in the Small Causes Court and also suits were pending on the original side of the High Court. Section 50 provides that suits pending in any court which also includes the High Court shall be transferred to and continued before the courts which would have jurisdiction to try such suits or proceedings under the Rent Act and shall be continued in such Courts as the case may be and all provisions of the Rent Act and the Rules made thereunder shall apply to all such suits and proceedings. In other words, the suits pending in the High Court would be transferred to the Small Causes Court and would be heard and tried there and all the provisions of the Rent Act and the Rules made thereunder would apply to such suits. Section 50 also provided that all proceedings pending in the Court of Small Cause under Chapter VII shall be continued in that court and all provisions of the Rent Act and the Rules made thereunder shall apply to such proceedings. Pending proceedings under Chapter VII were to be continued as proceedings under the Rent Act and all provisions and the Rules under the Rent Act were to apply to such proceedings.

37. Section 51 in that context states that references to suits or proceedings under the Rent Act shall include references to the proceedings under Chapter VII of the PSSC Act and references to decrees in the Rent Act shall include references to final order in such proceedings. When we make a comparative analysis of the abovementioned provisions, it is not possible to hold that the Rent Act and Chapter VII of the PSSC Act are *pari materia* statutes.

Noscitur a sociis Principle

38. The Latin maxim “*noscitur a sociis*” states this contextual principle, whereby a word or phrase is not to be construed as if it stood alone but in the light of its surroundings - Bennion on Statutory Interpretation, Fifth Edition. A-G Prince Ernest Augustus of Hanover [1957] AC 436, Viscount Simonds has opined that “a word or phrase in an enactment must always be construed in the light of the surrounding text. “...words and particularly general words, cannot be read in isolation; their colour and their content are derived from their context.” *Noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words are intentionally used by the legislature in order to make the scope of the defined word correspondingly wider. The above principle has been applied in several judgments of this Court like *The State of Bombay and Others v. The Hospital Mazdoor Sabha and Others* [AIR 1960 SC 610, (1960) 2 SCR 866] *Bank of India v. Vijay Transport and Others*, [AIR 1988 SC 151, (1988) 1 SCR 961], *M/s Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise*, (1990) 3 SCC 447, *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191, *M/s Brindavan Bangle Stores & Ors. v. The Assistant Commissioner of Commercial Taxes & Another*, (2000) 1 SCC 674 etc.

39. We find the expression “licensee” in Section 41 of the PSSC Act has been used to fully achieve the object and purpose especially of 1976 Amendment Act and legislature has used clear and plain language and the principle *noscitur a sociis* is inapplicable when intention is clear and unequivocal. It is only where the intention of the legislature in associating wider words with words of a narrow significance is doubtful or otherwise not clear, the rule of *Noscitur a Sociis* can be applied. When the intention of the legislature in using the expression ‘licensee’ in Section 41(1) of the PSSC Act is clear

and unambiguous, the principle of *Noscitur a Sociis* is not to be applied.

Contemporenea Expositio

40. Contemporenea Expositio is the best and most powerful law and it is a recognized rule of interpretation. Reference may be made to the judgments of this Court in *National and Grindlays Bank Ltd. v. The Municipal Corporation of Greater, Bombay* (1969) 1 SCC 541 and *The Tata Engineering and Locomotive Company Ltd. v. Gram Panchayat* (1976) 4 SCC 177.

41. We notice in the instant case that the concept of licence and lease were dealt with by contemporary statutes - Indian Easement Act, Transfer of Property Act and Section 41 of the PSCC Act and, as already indicated, all those statutes were enacted in the year 1882. Therefore, Section 41(1) of the PSCC Act could not have been contemplated any other meaning of the term "occupation with permission" but only the permission as contemplated by Section 52 of the Indian Easements Act. The PSCC Act is a procedural law and as already indicated, the expression "licensor" and "licensee" or "landlord" and "tenant" used in Section 41 of the PSCC Act (as amended by Maharashtra Act No. XIX of 1976) relate to immovable property and Section 52 of the Indian Easements Act which defines a licence has an inseparable connection to immovable property and property law. Legislature was well aware of those contemporaneous statutes, that was the reason, why the expression licence as such has not been defined in the PSCC Act with the idea that the expression used in a contemporaneous statutes would be employed so as to interpret Section 41 of the PSCC Act. Above-mentioned principle, in our view, would apply to the instant case.

Licensor – Licensee

42. The PSCC Act, as already indicated, does not define the expression "licensor" and "licensee". Both these expressions find a place in Section 41(1) of the PSCC Act. Section 41(1) confers jurisdiction on Court of Small Causes to entertain and try all the suits and proceedings between a "licensor" and a "licensee" relating to recovery of possession of any immovable property or relating to recovery of licence fee. Section 5(4A) of the Rent Act defines the term "licensee" so also Section 52 of the Indian Easement Act, 1882. Sub-section (4A) of Section 5 of the Rent Act provides that "licensee" means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a "licence fee or charge". The definition of "licensee" under sub-section (4A) of Section 5 is both exhaustive as well as inclusive. But it is relevant to note that the licensee under sub-section (4A) must be a licensee whose licence is supported by material consideration meaning thereby a gratuitous licensee is not covered under the definition of licensee under sub-section (4A) of Section 5 of the Rent Act.

43. Let us now examine the definition of "licence" under Section 52 of the Indian Easement Act which provides that 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 easement or an interest in the property, the right is called a licence. This Court in *State of Punjab v. Brig. Sukhjit Singh* (1993) 3 SCC 459 has observed that "payment of licence fee is not an essential attribute for

subsistence of licence. Section 52, therefore, does not require any consideration, material or non material to be an element, under the definition of licence nor does it require the right under the licence must arise by way of contract or as a result of a mutual promise.

44. We have already referred to Section 52 of the Indian Easement Act and explained as to how the legislature intended that expression to be understood. The expressions “licensor” and “licensee” are not only used in various statutes but are also understood and applied in various fact situations. The meaning of that expression “licence” has come up for consideration in several judgments. Reference may be made to the judgment of this Court in C.M. Beena and Anr. v. P.N. Ramachandra Rao (2004) 3 SCC 595, Sohan Lal Naraindas v. Laxmidas Raghunath Gadit (1971) 1 SCC 276, Union of India (UOI) v. Prem Kumar Jain and Ors. (1976) 3 SCC 743, Chandy Varghese and Ors. v. K. Abdul Khader and Ors. (2003) 11 SCC 328.

45. The expression “licensee” has also been explained by this Court in Surendra Kumar Jain v. Royce Pereira (1997) 8 SCC 759. In P.R. Aiyar’s the Law Lexicon, Second Edition 1997, License has been explained as “A license in respect to real estate is defined to be an authority to do a particular act or series of acts on another’s land without possessing any estate therein”. The word “licensee” has been explained in Black’s Law Dictionary, Sixth Edition to mean a person who has a privilege to enter upon land arising from the permission or consent, express, or implied, of the possessor of land but who goes on the land for his own purpose rather than for any purpose or interest of the possessor. Stroud’s Judicial Dictionary of Words and Phrases, Sixth Edition, Vol. 2 provides the meaning of word “licensee” to mean a licensee is a person who has permission to do an act which without such permission would be unlawful.

46. We have referred to the meaning of the expressions “licence” and “licensee” in various situations rather than one that appears in Section 52 of the Indian Easement Act only to indicate that the word licence is not popularly understood to mean that it should be on payment of licence fee, it can also cover a gratuitous licensee as well. In other words, a licensor can permit a person to enter into another’s property without any consideration, it can be gratuitous as well.

47. We have already indicated the expression “licence” as reflected in the definition of licensee under sub-section (4A) of Section 5 of the Rent Act and Section 52 of the Indian Easement Act are not *pari materia*. Under sub-section (4A) of Section 5, there cannot be a licence unsupported by the material consideration whereas under Section 52 of the Indian Easement Act payment of licence fee is not an essential requirement for subsistence of licence. We may indicate that the legislature in its wisdom has not defined the word “licensee” in the PSCC Act. The purpose is evidently to make it more wide so as to cover gratuitous licensee as well with an object to avoid multiplicity of proceedings in different courts causing unnecessary delay, waste of money and time etc. The object is to see that all suits and proceedings between a landlord and a tenant or a licensor and a licensee for recovery of possession of premises or for recovery of rent or licence fee irrespective of the value of the subject matter should go to and be disposed of by Small Cause Court. The object behind bringing the licensor and the licensee within the purview of Section 41(1) by the 1976 Amendment was to curb any mischief of unscrupulous elements using dilatory tactics in prolonging the cases for recovery of possession instituted by the landlord/licensor and to defeat their right of approaching the Court for

quick relief and to avoid multiplicity of litigation with an issue of jurisdiction thereby lingering the disputes for years and years.

48. We may in this connection also refer to the judgment of this Court in *Km. Sonia Bhatia v. State of U.P. and Ors.* (1981) 2 SCC 585, wherein this Court was concerned with the ambit of expression “transfer” and “consideration” occurring in U.P. Imposition of Ceiling on Land Holdings Act. Both the expressions were not defined in the Act. In such circumstances, this Court observed that the word “transfer” has been used by the legislature in general sense of the term as defined in the Transfer of Property Act. This Court also observed that the word “transfer” being a term of well known legal significance having well ascertained incidents, the legislature did not think it necessary to define the term “transfer” separately. The ratio laid down by the apex court in the above-mentioned judgment in our view is also applicable when we interpret the provisions of the PSCC Act because the object of the Act is to suppress the mischief and advance the remedy.

49. The interpretation of the expressions licensor and licensee which we find in Section 41(1), in our view, is in tune with the objects and reasons reflected in the amendment of the PSCC Act by the Maharashtra Act (XIX) of 1976 which we have already extracted in the earlier part of the judgment. The objects and reasons as such may not be admissible as an aid of construction to the statute but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time of introduction of the bill and the extent and urgency of the evil which was sought to be remedied. The legal position has been well settled by the judgment of this Court in *M.K. Ranganathan and Anr. v. Government of Madras and Ors.* AIR 1955 SC 604. It is trite law that the statement of objects and reasons is a key to unlock the mind of legislature in relation to substantive provisions of statutes and it is also well settled that a statute is best interpreted when we know why it was enacted. This Court in *Bhaiji v. Sub Divisional Officer, Thandla and Ors.* (2003) 1 SCC 692 stated that the weight of the judicial authority leans in favour of the view that the statement of objects and reasons cannot be utilized for the purpose of restricting and controlling statute and excluding from its operation such transactions which it plainly covers. Applying the above-mentioned principle, we cannot restrict the meaning and expression licensee occurring in Section 41(1) of the PSCC Act to mean the licensee with monetary consideration as defined under Section 5(4A) of the Rent Act.

ONE UMBERALLA POLICY

50. We are of the considered view that the High Court has correctly noticed that the clubbing of the expression “licensor and licensee” with “landlord and tenant” in Section 41(1) of the PSCC Act and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between the “landlord and tenant” and the “licensor and licensee” under one umbrella to avoid unnecessary delay, expenses and hardship. The act of the legislature was to bring all suits between “landlord and tenant” and “licensor and licensee” whether under the Rent Act or under the PSCC Act under one roof. We find it difficult to accept the proposition that the legislature after having conferred exclusive jurisdiction in one Court in all the suits between licensee and licensor should have carved out any exception to keep gratuitous licensee alone outside its jurisdiction. The various amendments made to Rent Act as well the Objects and Reasons of the Maharashtra Act XIX of 1976 would clearly indicate that the intention of the legislature was to avoid unnecessary delay, expense and hardship

to the suitor or else they have to move from the one court to the other not only on the question of jurisdiction but also getting reliefs.

51. We are of the view that in such a situation the court also should give a liberal construction and attempt should be to achieve the purpose and object of the legislature and not to frustrate it. In such circumstances, we are of the considered opinion that the expression licensee employed in Section 41 is used in general sense of term as defined in Section 52 of the Indian Easement Act.

52. We have elaborately discussed the various legal principles and indicated that the expression 'licensee' in Section 41(1) of the PSCC Act would take a gratuitous licensee as well. The reason for such an interpretation has been elaborately discussed in the earlier part of the judgment. Looking from all angles in our view the expression 'licensee' used in the PSCC Act does not derive its meaning from the expression 'licensee' as used in Sub-section (4A) of Section 5 of the Rent Act and that the expression "licensee" used in Section 41(1) is a term of wider import intended to bring in a gratuitous licensee as well.

53. We are, therefore, in complete agreement with the reasoning of the Full Bench of the High Court. In such circumstances, the appeals lack merits and are, therefore, dismissed. There is no order as to costs.

.....J. (K.S. Radhakrishnan)J. (Dipak Misra) New Delhi,
|August 13 , 2013 | | | |