Timblo Irmaos Ltd., Margo vs Jorge Anibal Matos Sequeira & Anr on 16 December, 1976

Equivalent citations: 1977 AIR 734, 1977 SCR (2) 451, AIR 1977 SUPREME COURT 734, 1977 3 SCC 474, 1977 2 SCR 451, 1977 2 SCWR 263

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Jaswant Singh

PETITIONER:
TIMBLO IRMAOS LTD., MARGO

Vs.

RESPONDENT:
JORGE ANIBAL MATOS SEQUEIRA & ANR.

DATE OF JUDGMENT16/12/1976

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1977 AIR 734 1977 SCR (2) 451
1977 SCC (3) 474

ACT:
Construction of a power of attorney--Principles of ejusdem generis---Object-Purpose--Nature--Frame--Provisions and language used--Dictionary meaning --Surrounding circumstances, whether power includes--Incidental to the ascertained objects.
Evidence Act 1872--Sec. 92 proviso 2--Existence of separate oral agreement on which written agreement is silent.

HEADNOTE:
The appellant.company sued Mr. & Mrs. Sequeira for recovery of certain amounts under two contracts of supply of iron ore. The first contract was signed by Ramesh holder of a power of attorney of Sequeiras and the second contract was

signed by Ramesh's father as the agent of Ramesh. Under the two contracts Sequeiras were supposed to supply and load iron ore and were liable to pay demurrage in case of delay in loading the ship and were entitled to receive certain despatch money if the loading was made earlier. Sequeiras filed their counter claims. The Court did 'not arrive at a definite conclusion about the quantity of ore supplied and left that to be determined in execution proceedings. The court found that the first contract was binding between the appellant and Sequeiras as it had been ratified by Sequerias and acted upon by the appellant. The court, however, held that the second contract was not 'binding on Sequeiras as Ramesh had a limited authority and, therefore, he could not constitute his father his attorney for the purposes of executing the second agreement. The trial Court also found that the appellant had committed breaches of the contract but left the quantum of damages to be determined in execution proceedings. The decree of the .trial Court was substantially confirmed in appeal by the Additional Judicial Commissioner.

HELD: 1. The Judicial Commissioner erred in concentrating on only one dictionary meaning of. the word "exploitation" used in the power of attorney executed by Sequeiras m favour of Ramesh. The court, while interpreting a power of attorney, has to construe the document as a .whole m the light of its purpose and surrounding circumstances and the transactions meant to be governed by it. Practice and custom have also some bearing on the nature and effect of the power of attorney. The purpose of the powers conferred on the power of attorney have to be ascertained having regard to the need which gave rise to the execution of the document, the practice of the parties and the manner in which parties themselves understood the purpose of the document. The powers. which are absolutely necessary and incidental to the execution of the ascertained purposes of the general powers given must be necessarily implied. Applying the above rules of interpretation the court came to the conclusion that Ramesh had power to appoint an agent to execute the contract in question and therefore the second .contract was also binding on Sequeiras [454A-B, 456A-H]

Bryant, Powls, and Bryant, Limited v. La Banque De Peuple etc. (1893) A.C. 170 @ 177 and 179 and Jonmenjoy Coondoo v. George ,Alder Watson, 10 I.L.R. Cal. 901 @ 912 approved.

O.A.P.R.M.A.R. Adaikappa Chettiar v. Thomas Cook & Son (Bankers) Ltd. AIR 1933 PC 78, distinguished.

2. The implied powers cannot go beyond the scope of the general object tances do not derrogate from the width of the general power initially conferred of the power of attorney but must necessarily be subordinated to it Specific in to such a case ejusdem generis cannot be applied. The mode of construing a document and the rules to be applied to extract its meaning correctly depends upon not only the nature and

object but also upon the frame, provisions, and language of the documents. In cases of uncertainty the rule embodied in provisose2tion to 92 of the Evidence Act which is applicable to contracts can be invoked.
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The ultimate decision of such a matter turns upon the practice and particular facts of each case. [458D-P]

3. The findings arrived at by the Appellate Court that Sequeiras were prevented from performing their part of the contract, owing to the failure of the appellant to provide either sufficient lighting or enough winches to enable due performance of the contract, is unexceptionable. The Judicial Commissioner rightly concluded that the company had not discharged its own part of the contract so that it could not claim demurrage or damages. [458-G-H]

The court partly allowed the appeal and remanded the matter back to the trial court for determining the liabilities of the parties in the light of the judgment. [459E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1868 of 1968. Appeal from the Judgment and Decree dated the 21st February 1968 of the Judicial Commissioner's Court at Goa, Daman and Diu in Appeal No. 3370 of 1964.

S.V. Gupte, Naunit Lal and (Miss) Lalita Kohli for the Appellant.

V.C. Mahajan and R.N. Sachthey for Respondents. The Judgment of the Court was delivered by BEG, J.--The Plaintiff-appellant Timblo Irmaos Ltd., (hereinafter referred to as 'the Company') had sued Jorge Anibal Matos Sequeira and his wife (hereinafter referred to as Sequeiras') for recovery Rs. 2,82,141/- claimed under a contract of 23rd January, 1954, and a sum of Rs. 1,14,700/-, claimed under another contract of 4th February, 1954. The Sequeiras counter-claimed Rs. 3 lakhs as price of 8000 tons of iron ore supplied to the Company; and pleaded that a sum of Rs. 1,13,000/-, advanced by the Company to the Se- queiras was to be adjusted after final determination of the amount due as price, of goods sold and supplied. The Sequeiras are holders of a mining concession. They, it was alleged, had entered into the two contracts, one of 23rd January, 1954, through their attorney, Ramesh Jethalal Thakker (hereinafter referred to as Thakker Junior), for supplying 8000 tons of iron ore, altered in some respects, by a later agreement, and the other of 4th February, 1954, alleged to be binding on the Sequeiras although entered into through Jethalal C. Thakker (hereinafter referred to as 'Thakker Senior'), the.father of R.J. Thakker. The most important clause in the contract of 23rd January, 1954, was that iron ore should be loaded in a ship 'Mary K' at Marmagoa, and that the loading must be done at the rate of 500 tons per 'weather working day" of 24 hours. Under the contract, the rate of demurrage for not loading the ship in time was to be paid at the rate of US $ 800.00 per day an pro rata for each fraction of a day. The buyer company was to pay what was called "despatch money" at half the rate of demurrage for time saved in loading. The payment was to be in the Portuguese Indian rupees at the exchange rate of Rs. 4.76 per US $. The buyers had

also to make an initial payment of Rs. 55,000/- as soon, as delivery by load- ing began. The buyers were also to establish a Letter of Credit, before 27th January, 1954, in favour of the sellers, the Sequeiras, for the full value of the iron ore after deducting Rs. 55,000/- paid initially, and Rs. 1/4 per gross ton awaiting final settlement by presentation within ten days, at the bank named in the agreement, by presentation of the certificate of weight issued by the Master of the vessel. Certificates of the quality and specifications and of final weighment were to be sent by the buyers after the vessel's arrival at the port of dis- charge.

The second agreement of 4th February, 1954, relates to loading of 6000 to 9000 tons of iron ore of given quality and specifications in the ship 'Mary K' at the minimum rate of 500 tons per day commencing delivery within 24 hours of the buyer notifying the requirements to the seller. It also contained other stipulations similar to those of the first one. The important point to note about this agreement is that it is signed by Jethalal C. Thakker as the attorney of his son Ramesh Jethalal Thakker.

It appears that the clause relating to initial payment was changed so that the sellers, Sequeiras, were paid Rs. 1,13,000/- between 25th January, 1954, and 22nd July, 1954. It also appears that there was delay in delivery for which the plaintiff claimed demurrage. There were also complaints about alleged departure by the seller from the specifica- tions agreed upon. The Sequeiras, the sellers, had it seems, also applied for an interim injunction so that the ship's loading capacity may be checked. Under orders of the Court, an inspection of the ship was made and a report was submitted by an expert on 15th March, 1954, after the deter- mination of its loading capacity so that the ship could finally sail only on 16th March, 1954.

The Margao Comarca Court, where the claim and the counter claims were filed, held that the seller's attorney, Thakker Junior, who had received Rs. 1,13,000/-, which had to be deducted from the price of the iron ore supplied, was not duly authorised by the power of attorney executed by the Sequeiras to sell. The Court did not find enough material to reach a definite conclusion about the quantity of ore supplied and left that to be determined in execution pro- ceedings. It, however, held the first contract to be binding between the parties as it had been ratified by the seller and acted upon by the buyer. But, the second contract was held to be not binding upon the Sequeiras as Thakker (Jun- ior) was found to have been given only a limited authority so that he could not constitute his father his attorney for the purpose of executing the second agreement. The Trial Court accepted the basis of the counter-claim of the Sequei- ras and found that the company had committed breaches of contract but left the quantum of damages to be determined in execution proceedings.

The decree of the Trial Court was substantially affirmed in appeal. Nevertheless, the Additional Judicial Commission- er Goa, Daman & Diu, had modified the decree, the appellant company has come up to this Court in appeal as of right. Two questions arise for determination before us. The first is whether the second contract of 5th February, 1954, was duly covered by the authority conferred by the Sequeiras upon their attorney, Ramesh Jethalal Thakker, or not. The second relates to the amount of demurrage, if any, payable by the Sequeiras, the defendants-respondents, to the plaintiff- appellant.

On the first question, the Judicial Commissioner concen- trated on the dictionary meaning of the word "exploitation" used in the power attorney executed by the Sequeiras in favour of Thackker Junior. The learned Judicial Commissioner took the meaning of the word from Chambers' 20th Century Dictionary which gave: "the act of successfully applying industry to any job, as the working of mines, etc; the act of using for selfish purposes". The learned Judicial Com- missioner also referred to the inability of learned Counsel for the company to cite a wider meaning from the Oxford Dictionary which the learned Counsel had carried with him to the Court. The Judicial Commissioner then ruled:

> "Hence, I see no escape from the conclu- sion that on the basis of the power of attor- ney given by Sequeira to Ramesh the latter could not have entered into any agreement for sale of ore extracted from the mine belonging to Sequeira on his behalf. Consequently, Sequeira is not bound by the agreement dated 4th of February, 1954".

As already mentioned by us, the first con.tract of 23rd January, 1954, was held to-be binding despite this finding because the parties had acted upon it and dealt with each other on the basis that such a contract existed. We think that this background can be taken into account as indicating what the parties themselves understood about the manner in which the words used in the power of attorney dated 17th January, 1953, executed by Sequeiras in favour.of Thackker Junior was related to the actual facts or dealings between or by the parties. Moreover, the power of attorney had to be read as a whole in the light of the purpose for which it was meant. As it is not lengthy, we reproduce its operative part. It reads:

> "Jorge Anibal de Matos Sequeira, mar- ried, major of age, businessman, landlord, residing in Panglm, whose identity was war- ranted by witnesses, said in the presence of the same witnesses that by the present letter of attorney he appoints and constitutes his attorney Mr. Ramesh Jethalal, Bachelor, major of age, businessman, from Bombay, residing at present in Bicholim and conters on him the power to represent him, to make applications, allegations, and to defend his right in any public offices or Banks, to draw up and sign applications, papers, documents and corre- spondence; specially those tending to acquire petrol, gunpowder, train, transport vehicles, machines, furniture (alfaias) and other in- struments used in mining industry, apply for and obtain licences for importation and expo- ration, to give import and export orders, even temporary, sign applications, suits and only other things necessary, attach and withdraw documents, make declaration. even under oath and in general any powers necessary for the exploitation of the mine named Pale Dongor situate at Pale for the concession of which the said Siqueira applied and which he is going to obtain to impugn, object, protect and prefer appeals upto the higher Courts, notify and accept notifications and summons in terms of Sec. 35 and 37 of the C.P.C., to use all judicial powers without any limitation, to subrogate these powers to some one else. This was said and contracted. The witnesses were Bablo Panduronga Catcar ad Xec Adam Xecoli, both married landlords, major of age from Bicholim who sign below".

Apparently, practice and custom have some bearing on these transactions in Goa. It is this reason that, although the power of Attorney was executed by Mr. Sequeira, yet, his wife was impleaded, according to the practice in Goa, and no objection was raised either on the ground that she was wrongly impleaded or that the power of attorney was vitiated on the ground that it was executed only by her husband. In any case, the subsequent agreement of 23rd January, 1954, which was held to have been acted upon, and the similar agreement of 5th February, 1954, of which also the defendants were bound to have and did have full knowledge, were never repudiated by Sequeiras, before the filing of the suit before us. Indeed, the agreement of 5th February, 1954, appears to be a sequal to the first agreement of 23rd January, 1954. We do not think that the two could be really separated in the way in which the Judicial Commissioner thought that they could be by holding that the one was acted upon whereas the other was not. In any case, the second was the result of and a part of the same series of dealings between the parties.

We do not however propose forest our findings on the ground that the parties are bound by the second agreement due to some kind of estoppel. We think that the terms of the power of attorney also justify the meaning which the parties themselves appear to have given to this power of attorney that is to say, a power to conduct business on behalf of the Sequeiras in such a way as to include sales on behalf of Sequeiras.

We think that perhaps the most important factor in interpreting a power of attorney is the purpose for which it is executed. It is evident that the purpose for which it is executed must appear primarily from the terms of the power of attorney itself, and, it is only if there is an unresolved problem left by the language of the document, that we need consider the manner in which the words used could be related to the facts and circumstances of the case or the nature or course of dealings. We think that the rule of construction embodied in proviso 6 to Section 92 of the Evidence Act, which enables the Court to examine the facts and surrounding circumstances to which the language of the document may be related, is applicable here, because we think that the words of the document, taken by themselves, are not so clear in their meanings as the learned Judicial Commissioner thought they were.

As we have already mentioned, the learned Judicial Commissioner chose to concentrate on the single word "ex- ploitation" torn out of its context. The word "exploita- tion" taken by itself, could have been used to describe and confer only such general powers as may be 13--1546 SCI/76 them. If the word 'negotiate' had stood alone, its meaning might have been doubtful, though, when applied to a bill of 'exchange or ordi-

nary promissory note, it would probably be generally understood to mean to sell or dis- count, and not to pledge it. Here it does not stand alone, and, looking at the words with which it is coupled, their Lordships are of opinion that it cannot have the effect which the appellant gives to it, and, for the same reason, 'dispose of' cannot have that effect".

We think that this case also bears out the mode of construc- tion adopted by us.

We were then referred to O.A.P.R.M.,A.R..Adaikappa Chettiar v. Thomas Cook & Son (Bankers) Ltd.,(1) where the well known principle of ejusdem generis was applied to hold that general words following words conferring specifically enumerated powers "cannot be construed so as to enlarge the restricted power there mentioned". In this case, the purpose of the general power was subordinated to the specif- ic powers given which determined the object of the power of attorney. There is no deviation in this case from the general rules of construction set out above by us. We have indicated above that implied powers cannot go beyond the scope of the general object of the power but must necessari- ly be subordinated to it. In fact, in a case like the one before us, where a general power of representation in' various business transactions is mentioned first and then specific instances of it are given, the converse rule, which is often specifically stated in statutory provisions (the rules of construction of statutes and documents being large- ly common), applies. That rule is that specific instances do not derrogate from the width of the .general power ini- tially conferred. To such a case the ejusdem generis rule cannot be applied. The mode of construing a document and the rules to be applied to extract its meaning correctly depend upon not only upon the nature and object but also upon the frame, provisions, and language of the document. In cases of uncertainty, the rule embodied in proviso 2 to Section 92 of the Evidence Act, which is applicable to contracts, can be invoked. Thus, the ultimate decision, on such a matter, turns upon the particular and peculiar facts of each case.

Coming now to the second question, we find that the findings of fact recorded by the Judicial Commissioner are unexceptionable. Firstly, it was found that, although, under the contract, the defendants-respondents could load iron ore at any time during 24 hours, which included the night, yet, the defendants were prevented from doing so owing to the failure of the plaintiff to provide either sufficient light- ing or enough winches to enable due performance of the contract. Secondly, it was admitted that the appellant never opened a Letter of Credit with the named bank by 27 January, 1954, as promised by it. Thirdly, the delay in loading was held to be due to the fault of the company. The Judicial Commissioner rightly concluded that the company had not discharged its own part of the contract so that it could not claim (1) A.I.R. 1933 PC 78.

demurrage or damages. Indeed, it was found that the company did not have to pay any demurrage at all to the shippers for delayed departure.

Learned Counsel for the appellant relied strongly on the following terms in the contract of 23rd January, 1954:

> "Demurrage (if any) in loading payable by Seller at the rate of US $ 800.00 per running day fraction of day pro rata. Buyers to pay despatch money at half the demurrage rate for all time saved in loading. Payment either way in Portuguese Indian rupee currency at the rate of exchange of Rs. 476/- for US $ 100.00."

The contention was that this created an absolute liability to pay for delay in loading irrespective of whether the company had to pay the shippers any demurrage. It was urged that the liability was upon the seller irrespective of whether such payment had to be made to the shipping company or not. We think that the demurrage could not be claimed when the delay in loading was due to the

default of the respondents themselves. It is apparent that the basis upon which the agreement to pay demurrage rested was that the appellant will afford proper facilities for loading. When the appellant itself had committed breaches of its obliga- tions, it is difficult to see how the respondents could be made responsible for the delay in loading. We think that the Judicial Commissioner had rightly disallowed this part of the claim.

In the result, we partly allow this appeal, set aside the finding of the Judicial Commissioner as regards the binding nature of the contract dated 5th February, 1954. We hold that this document embodied the terms of an agreement which was legally binding on both sides before us. The case will now go back to the Trial Court for determination of the liabilities of the parties to each other for alleged breaches of contract except to the extent to which the findings negative the claim to demurrage and the admitted payment of Rs. 1,13,000/by the appellant to the defendants which will have to be taken into account. The parties will bear their own costs.

P.H.P. Appeal allowed in part

Ltd., Calcutta v. Commissioner of Excess Profits Tax, West Bengal(1) wherein the High Court held .that when a party at whose instance the reference had been made under section 66(1) of the Indian Income tax Act, 1922 does not appear at the hearing of the reference, the High Court is not bound to answer the question referred to it and should not do so. It is urged by Mr. Manchanda that the above decision has been followed by some of the other High Courts. As against that Mr. Desai on behalf of the appellant has urged that the correctness of those decisions is open to question in view of the decision of this Court in the case of Commissioner of Income-tax, Madras v.S. Chenniappa Mudaliar(1). It was held by this Court in that case that an appeal filed by the assessee before the Tribunal under section 33 of the Act should be disposed of on merits and should not be dismissed in default because of non-appearance of the appellant. The Court in this context referred to section 33(4) of the Act and particularly the word "therein" used in that sub-sec- tion. It is urged by Mr. Desai that as the Tribunal is bound to dispose of the appeal on merits even though a party is not present, likewise the High Court when a question of law is referred to it, should dispose of the reference on merits and answer the question referred to it. In our opinion, it is not essential to express an opinion about this aspect of the matter, because we are of the opinion that the High Court was not functus Officio in entertaining the application which had been filed on behalf of the appel- lant for re-hearing the reference and disposing of the matter on merits.

A party or its counsel may be prevented from appearing at the hearing of a reference for a variety of reasons. In case such a party shows, subsequent to the order made by the High Court, declining to answer the reference, that there was sufficient reason for its nonappearance, the High Court, in our opinion, has the inherent power to recall its earlier order and dispose of the reference on merits. We find it difficult to subscribe to the view that whatever might be the ground for non-appearance of a party, the High Court having once passed an order declining to answer the question referred to it because of the non-appearance of that party, is functus officio or helpless and cannot pass an order for disposing of the reference on merits. The High Court in suitable cases has, as already mentioned, inherent power to recall the order made in the absence of the party and to dispose of the reference

on merits. There is nothing in any of the provisions of the Act which, either expressly or by necessary implication, stands in the way of the High Court from passing an order for disposal of the reference on merits. The courts have power, in the absence of any ex- press or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice. Suppose, for instance, a party proceeds towards the High Court to be present at the time the reference is to be taken up for hearing and on the way meets with an accident. Suppose, further, in such an (1) 27 I.T.R. 188. (2) 74. I.T.R 41.

event the High Court passes an order declining to answer the question referred to it because of the absence of the person who meets with an accident. To hold that in such a case the High Court cannot recall the said order and pass an order for the disposal of the reference on merits, even though full facts are brought to the notice of the High Court, would result in obvious miscarriage of justice. It is to meet such situations that courts can exercise in appropriate cases inherent power. In exercising inherent power, the courts cannot override the express provisions of law. Where however, as in the present case, there is no express or implied prohibition to recalling an earlier order made because of the absence of the party and to directing the disposal of the reference on merits, the courts, in our opinion, should not be loath to exercise such power provided the party concerned approaches the court with due diligence and shows sufficient cause for its non-appearance on the date of hearing.

Our attention had been invited to the decision of the Alla- habad High Court in Roop Narain Ramchandra (P) Ltd. v. Commissioner of Income-tax, U.p.(1) wherein the High Court held that it has no power to recall an order returning a reference unanswered. For the reasons stated above, we are unable to agree with the view taken by the Allahabad High Court in that decision. The facts brought out in the appli- cation flied on behalf of the appellant show, in our opin- ion, that there was sufficient cause for the non- appearance on behalf of the appellant on the date of hear- ing as well as for the non-filing of the paper books within time. It also cannot be said that there was lack of dili- gence on the part of the appellant in approaching of the High Court for recalling it's earlier order and for dispos- ing of the reference on merits. We accordingly accept the appeal, set aside the order of the High Court and remand the case to it for answering the questions referred to it on merits. Looking to all the circumstances, We make no order as to costs.

M.R. Appeal al-
lowed.
(1) 84 I.T.R. 181.

The Judgment of the Court was delivered by

BHAGWATI, J.---There is a house bearing No. 10-A situ- ate at Khuldabagh in the city of Allahabad belonging to respondent No. 3. This house consists of a ground floor and a first floor. There are two tenements on the ground floor and two tenements on the first floor. Each of the two tene- ments in the first floor is in the possession of a tenant. The tenement on the northern side of the ground floor is in the possession of respondent No. 3, while the tenement on the southern side is in the possession of the appellant as a tenant since the last over 35 years. The appellant pays rent of Rs. 4/- per month in respect of the tenement in his occupation. Respondent No. 3, after determining the

tenan- cy of the appellant, made an application before the Rent Control and Eviction Officer, Allahabad under section 3 of the U.P. Rent Control & Eviction Act, 1947 for permission to file a suit to eject the appellant on the ground that she bona fide required the rented premises in the possession of the appellant for her use and occupation. The Rent Control & Eviction Officer, on a consideration of the evidence led before him, came to the conclusion that the need of respond- ent No. 3 for the rented premises was not bona fide and genuine and on this view, he rejected the application of respondent No. 3 by an order dated 23rd February, 1972. Respondent No. 3 preferred a revision application against the decision of the Rent Control and Eviction Officer to the Commissioner and, on the coming into force of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (U.P. Act No. 13 of 1972), this revision application came to be transferred to the District Court under section 43 (m) of that Act and it was numbered as Civil Appeal No. 245 of 1972. The District Judge by an order dated 12th January, 1973 agreed with the view taken by the Rent Control and Eviction Officer and dismissed the appeal. However, within a short time thereafter, respondent No. 3 undaunted by her failure, filed an application before the Prescribed Authority on 18th January, 1974 under section 21(1) of U.P. Act No. 13 of 1972 claiming release of the rented premises in her favour on the ground that she bona fide required them for occupation by herself and the members of her family for residential purposes. The Prescribed Authority held that Explanation (iv) to section 21(1) of U.P. Act No. 13 of 1972 was attracted in the present case, since the ground floor of house No. 10-A constitute a build- ing, a part of which was under tenancy of the appellant and the remaining part was in the occupation of respondent No. 3 for residential purposes, and hence it must be held to be conclusively established that the rented premises were bona fide required by respondent No. 3. The Prescribed Au- thority also went into the question of comparative hardship of the appellant and respondent No. 3 and observed that greater hardship would be caused to respondent No. 3 by refusal of her application than what would be caused to the appellant by granting it. On this view, the Prescribed Authority allowed the application of respondent No. 3 and released the rented premises in her favour. The appellant being aggrieved by the order passed by the Prescribed Authority prefered an appeal to the District Court, Allahabad. The District Court agreed with the view taken by the Prescribed Authority that Explanation (iv) to section 21(1) of U.P. Act No. 13 of 1972 was applicable to the facts of the present case and "that fact conclusively proved that the building was bona fide required" by respondent No. 3. But on the question of greater hardship, the District Court disagreed with the conclusion reached by the Prescribed Authority and held that the appellant was likely to suffer greater hard- ship by granting the application than what respondent No. 3 would suffer by its refusal. The District Court accordingly allowed the appeal and rejected the application of respond- ent No. 3 for release of rented premises.

This led to the filing of a writ petition by respondent No. 3 in the High Court of Allahabad challenging the legali- ty of the order rejecting her application. Respondent No. 3 contended that since her bona fide requirement of the rented premises was established by reason of applicability of Explanation (iv) to section 21 (1) of U.P. Act No. 13 of 1972, the question of comparative hardship was immaterial and the District Court was in error in throwing out her application on the ground that greater hardship would be caused to the appellant by granting her application than what would be caused to her by refusing it. The High Court while dealing with this contention observed that the Pre- scribed Authority had recorded a finding of fact that "the accommodation on the ground floor

constituted one building"

> and "the respondent was in possession of a part of the building and the land lady was in occupation of the remain- ing part of the building for the residential purposes" and this finding of fact reached by the prescribed Authority was confirmed by the District court and in view of this finding which the High Court a apparently thought it could not disturb, the High Court proceeded on the basis that Expla- nation (iv) to section 21 (1) of U.P. Act No. 13 of 1972 was applicable in the present case. But the High Court went on to point out that once it was held that Explanation (iv) to section 21(1) of the U.P. Act No. 13 of 1972 was attracted, there could be no question of examining comparative hard- ship, for in such a case greater hardship of the tenant would be an irrelevant consideration. The High Court on this view allowed the writ petition, set aside the order of the District Court and allowed the application of respondent No. 3 for release of the rented premises but gave two months' time to the appellant to vacate the same. The appel- lant being dissatisfied with this order passed by the High Court preferred the present appeal with special leave ob- tained from this Court.
>
> Now, it may be pointed out straight away that if Explanation
>
> (iv) to section 21(1) of U.P. Act No. 13 of 1972 is applica-

ble in the present case, the question of comparing the relative hardship of the appellant and respondent No. 3 would not arise and respondent No. 3 would straight away be entitled to an order of eviction as soon as she shows that the conditions specified in the Explanation are satisfied. Section 21 (1), as it stood at the material time with the retrospective amendment introduced by the U.P. Urban Build- ings (Regulation of Letting, Rent & Eviction) (Amendment) Act, 1976 being U.P. Act accommodation which is the subject-matter of tenancy. The question thus is: what is the sense in which the word 'buil- ding' is used when it occurs for the second time in the Explanation. The context clearly indicates that the word 'building' is there used to denote a unit, of which the accommodation under tenancy constitutes a part and the remaining part is in the occupation of the land, lord for residential purposes. The accommodation under tenancy and the accommodation in the occupation of the landlord together go to make up the 'building'. The use of the word 'part' is a clear pointer that the 'building', of which the accommoda- tion under tenancy and the accommodation in the occupation of the landlord are parts, must be a unit. Where a super- structure consists of two or more tenements and each tene- ment is an independent unit distinct and separate from the other, the Explanation would be of no application, because each tenement would be a unit and not part of a unit. It is only where there is a unit of accommodation out of which a part is under tenancy and the remaining part is in the occupation of the landlord, that the Explanation, would be attracted. To determine the applicability of the Explana- tion, the question to be asked would be whether the accommo- dation under tenancy and the accommodation in the occupation of the landlord together constitute one unit of accommoda- tion ? The object of the Legislature clearly was that where there is a single unit of accommodation, of which a part has been let out to a tenant, the landlord who is in occupation of the remaining part should be entitled to recover posses- sion of the part let out to the tenant. It could never have been intended by the Legislature that where a

super-struc- ture consists of two independent and separate units of accommodation one of which is let out to a tenant and the other is in the occupation of the landlord, the landlord should, without any proof of bona fide requirement, be entitled to recover possession of the tenement let out to the tenant. It is difficult to see what social object or purpose the legislation could have had in view in conferring such a right on the landlord. Such a provision would be plainly contrary to the aim and objective of the legisla- tion. On the other hand, if we read the Explanation to be applicable only to those cases where a single unit of accom- modation is divided by letting out a part to a tenant so that the landlord, who is in occupation of the remaining part, is given the right to evict the tenant and secure for himself possession of the whole unit, it would not unduly restrict or narrow down the protection against eviction afforded to the tenant. This construction would be more consistent with the policy and intendment of the legislation which is to protect the possession of the tenant, unless the landlord establishes his bona fide requirement of the accom- modation under tenancy. We may point out that Mr. Justice Hari Swarup has also taken the same view in a well consid- ered judgment in Chuntwo Lal v. Addl. District fudge. Alla- habad(1) and that decision has our approval. Since the question as to the applicability of Explana- tion (iv) on the facts of the present case has not been considered by the High Court as well as the lower courts on the basis of the aforesaid construction of the Explanation, we must set aside the judgment of the High Court as also the order of the District Court and remand the case to the District Court with a direction to dispose it of in the light (1975) 1 A.L.R. 362.

of the interpretation placed by us on the Explanation, It was contended before us on behalf of the appellant that since Explanation (iv) has been omitted by U.P. Act No. 28 of 1976, respondent No. 3 was no longer entitled to take advantage of it and her claim for possession must fail. But the answer given by respondent No. 3 to this contention was that the omission of Explanation (iv) was prospective and not retrospective and since Explanation (iv) was in force at the date when respondent No. 3 filed her applica- tion for release, she had a vested right to obtain release of the rented premises in her favour by virtue Explanation

(iv) and that vested right was not taken away by the pro- spective omission of Explanation (iv) and hence she was entitled to rely on it despite its omission by U.P. Act No. 28 of 1976. We have not pronounced on these rival conten- tions since we think it would be better to leave it to the District Court to decide which contention is correct. If the District Court finds that by reason of the omission of Explanation (iv) by U.P. Act No. 28 of 1976 respondent No. 3 is no .longer entitled to rely on it to sustain her claim for release of the rented premises in her favour, it will be unnecessary for the District Court to examine the further question as to whether Explanation (iv) is attracted on the facts of the present case, If, on the other hand, District Court finds that the omission of Explanation (iv) by U.P. Act No. 28 of 1976 being prospective and not retrospective, respondent No. 3 is entitled to avail of that Explanation, the District Court will proceed to decide whether the two tenements or the .around floor constituted one single unit of accommodation so as to attract the applicability of Explanation (iv) and for this purpose, the District Court may, if it so thinks necessary, either take further evidence itself or require further evidence to be taken by the Pre- scribed Authority.If the District Court finds that the case is covered by Explanation (iv), there would be no ques- tion of examining comparative hardship of the appellant and respondent No. 3, and respondent No. 3 would straight away be entitled to an order of release of the rented premises in her favour. On the

other hand, if the District Court comes to the conclusion that by reason of the omission of Explanation (iv) of the U.P. Act No. 28 of 1976 respondent No. 3 is not entitled to rely on it or that Explanation (iv) is not applicable on the facts of the present case, the application of respondent No. 3 would fail, since it has already been found by the District Court--and we do not' propose to disturb this finding--that the appellant would suffer greater hardship by granting of the application than what would be suffered by respondent No. 3 if the application were to be refused. We accordingly remand the matter to the District Court with no order as to costs.

P.H.P. Appeal allowed.
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