

## **Super Forgings & Steels (Sales) Pvt. Ltd vs Thyabally Rasuljee (Dead) Through ... on 1 December, 1994**

**Equivalent citations: 1995 SCC (1) 410, JT 1995 (1) 51, 1995 AIR SCW 179, 1995 (1) SCC 410, 1995 HRR 187, (1995) 1 MAD LJ 59, (1995) 2 RENCJ 487, (1995) 1 RENTLR 200, (1995) 1 RENCN 417, 1995 SCFBRC 494, (1995) 1 JT 51 (SC)**

**Author: N Venkatachala**

**Bench: N Venkatachala, K. Ramaswamy**

PETITIONER:

SUPER FORGINGS & STEELS (SALES) PVT. LTD.

Vs.

RESPONDENT:

THYABALLY RASULJEE (DEAD) THROUGH L.R'S.

DATE OF JUDGMENT 01/12/1994

BENCH:

VENKATACHALA N. (J)

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VENKATACHALA N. (J)

RAMASWAMY, K.

CITATION:

1995 SCC (1) 410 JT 1995 (1) 51

1994 SCALE (5) 125

ACT:

HEADNOTE:

JUDGMENT:

**VENKATACHALA, J.:**

1. This is a tenant's appeal by special leave granted under Article 136 of the Constitution. It is directed against the judgment and order dated 22.12.1981 of the

High Court of Judicature at Madras in CRP No. 1923 of 1981 by which an eviction order made by the courts below against the tenant/appellant under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 -- "the Act", was affirmed.

2. Messrs Fakruddin & Company is a partnership firm the business of which was formerly carried on by Thyabally Rasuljee, respondent-1 at non-residential building No. 155 Linghi Chetty Street, Madras, taken on rent, not being his own.

3. Messrs Super Forgings & Steels Ltd, a company registered under the Indian Companies Act is the tenant, which was carrying on its business in a non-residential building No. 118, Linghi Chetty Street, Madras -- "the petition non-residential building" of which respondent-1 was the landlord. The landlord filed a petition against the tenant on the ground available to him under Section 10(3)(a)(iii) of the Act before the Rent Controller at Madras for eviction of the tenant from the petition non-

residential building, by stating the facts which constituted the said ground, thus:

"The petitioner submits that he is carrying on business in the name and style of Messrs Fakruddin & Company which is a partnership firm at No. 155 (Old No. 307) Linghi Chetty Street, G.T. Madras<sup>1</sup>, which is a rented d building and there is a threat of eviction. The petitioner is not in occupation of an), building of his own for the business which he is carrying on anywhere in the City of Madras."

4. Since it was found by the Rent Controller that the facts constituting the said ground of eviction under Section 10(3)(a)(iii) of the Act, on which the landlord had sought eviction of the tenant from the petition non- residential building were satisfactorily established, eviction order was made by him in respect of the petition non-residential building. Though, that eviction order was challenged by the tenant before the Appellate Authority and the High Court, in appeal and revision, respectively, both the appeal and revision were dismissed by judgments and orders made in them. The present appeal by special leave, filed by the tenant in the year 1982 is directed against the said eviction order of the Rent Controller and judgments and orders of the Appellate Authority and the High Court.

5. Certain developments which have taken place during the pendency of the present appeal in this Court, need mention here as they directly bear on the case under appeal :- That in the year 1984, after an order was made by this Court on 29.4.1982, granting special leave to appeal from eviction order of the Rent Con' troller and the judgments and orders of the Appellate Authority and the High Court and granting stay of eviction order operating against the tenant, partnership business of M/s. Fakruddin & Company which was carried on by respondent-1 at the rented non-residential building No. 155 Linghi Chetty Street, Madras came to be shifted to non-residential building No. 151, Linghi Chetty Street, Madras. Respondent<sup>1</sup> in the present appeal, who was the landlord since died on 16.8.1985, that partnership business of M/s. Fakruddin & Company, came to be carried on by some

of its partners who are some of the respondents 2 to 11 in this appeal, brought on record as L.R's of deceased respondent-1. When the said developments were brought to the notice of a Division Bench of this Court presided over by one of us (Ramaswamy, J.), before which the present appeal had come up for hearing on 29.9.1993, an order was made directing the Small Causes Court, Madras, to hold an enquiry into matters relating to the partners who are carrying on the business of Messrs Fakruddin & Company after the demise of respondent- 1, the owners of non-residential building No. 151, Linghi Cherry Street, Madras, where the business of M/s. Fakruddin & Company is presently carried on, its partners who had become the owners of the petition non-residential building after the death of its owner respondent-1, and the owners of non- residential building No. 151, Linghi Chetty Street, Madras, and to submit a report on the questions specified 6. therein. On an enquiry held by the Court of Small Causes at Madras, pursuant to the said order, the report dated 4.4.1994 is sent by it to this Court. The true facts disclosed in that report, which were not controverted, before us are:

(i) that the partnership business of M/s.

Fakruddin & Company which was carried on by the deceased landlord respondent-1, in rented building No. 155, which was not his own, was shifted in the year 1984 to non-residential building No. 151, Linghi Cherry Street, Madras;

(ii) that the partnership of M/s. Fakruddin & Company, of which respondent-1, the father, and respondents 2, 3, 5, 6, 8 and 9, the sons, were the partners, has become the partnership of sons of the deceased respondent-1, i.e., respondents 5, 6 and 9, Rashida, the wife of respondent-5, Sara, the wife of the respondent6, Farida, the wife of respondent-9 and respondent-11 Sugrabai, the wife of deceased respondent-1 -- the active partners out of them being respondents 5, 6 and 9, the sons of deceased respondent-1;

(iii) that respondents-2 to 10 are the co-owners of non-residential building No. 151, Linghi Chetty Street, Madras after its purchase which had taken place even before filing of the eviction petition by the landlord, respondent-1 against the tenant- appellant for its eviction from nonresidential building No. 118, Linghi Chetty Street, Madras;

(iv) that the petitioners-2 to 11 became the co-owners of the non-residential building No. 118, Linghi Chetty Street, Madras - the petition non-residential building, on the demise of respondent-1, as his heirs.

6. Because of the said true facts disclosed from the report of the Court of Small Causes at Madras which have emerged as a result of developments in the case during the pendency of the present appeal, the main question that needs our consideration and decision is, whether respondents-5, 6 and 9, the sons of the deceased respondent-1 who, as co-owners of non-residential building No. 151, Linghi Chetty Street, Madras, are carrying on the business of their partnership M/s. Fakruddin & Company in that non-residential building be regarded as landlords not occupying a non-residential building in the city which is their own, for obtaining under Section 10(3)(a)(iii) of the Act, possession of the petition nonresidential building of which also they are co-owners.

7. That a landlord who, for purposes of carrying on his business, is not occupying a non-residential building of his own in the city can get under Section 10(3)(a)(iii) of the Act, possession or another non-residential building of his own in the city in the occupation of a tenant was not disputed on behalf of the tenant appellant. But it was contended on behalf of the tenant-appellant that a landlord occupying for purposes of carrying on his business a non-residential building, of which he is a co-owner cannot claim the benefit of ground of eviction available under section 10(3)(a)(iii) of the Act against a tenant in a non-residential building of which he is a owner or a co-owner. The sustainability of that contention was, questioned, rather strenuously, by learned counsel for respondents 2 to 11 on the plea that a landlord who is a co-owner Of non-residential building where he carries on his business, not being its sole owner, such building cannot be regarded as 'his own' envisaged under section 10(3)(a)(iii) of the Act as would disentitle him to the benefit of the ground of eviction, available thereunder.. We find it difficult to accept the plea advanced on behalf of respondents 2 to 11 in questioning the sustainability of the contention raised on behalf of the appellant-tenant.

8. Section 10(3)(a)(iii) of the Act in-sofar as it is material, reads thus:-

"10(3)(a) .....

(ii) .....

(iii) In case it is any other nonresidential building if the landlord or (any member of his family) is not occupying for purposes of a business which he or (any member of his family) is carrying on, a non-

residential building in the city, town or village concerned which is his.

OWN"

9. If a landlord is a co-owner of a non-residential building in the city, town or village concerned, which he is occupying for purposes of carrying on his business, will he not be occupying therefor a non-residential building of his own envisaged in the above Section 10(3)(a)(iii), as would disentitle him to the ground of eviction available thereunder being the real question needing our answer in the light of the aforesaid plea of learned counsel for respondents urged in questioning the sustainability of the contention raised on behalf of the appellant-tenant, we have to find the answer therefor.

10. The answer to the said question, in our view, cannot be anything other than that a non-residential building in occupation of landlord which is 'his own' envis-

aged in Section 10(3)(a)(iii) above, is not only that of which he is an absolute owner, but also that of which he is a co-owner, for a co-owner of a building who is its landlord is regarded under Rent Control Laws of our country as its owner entitled to obtain possession of such a building from a tenant for his bonafide requirement.

11. In *Sri Ram Pasricha vs. Jagannath Ors.*, 1977(1) SCR 395, a three-Judge Bench of this Court had to consider the question whether a co-owner-landlord can be said to require the premises for his own occupation within the meaning of the expression "if he is the owner" in Section 13(1)(1') of the West Bengal Tenancy Act, 1956 which read thus:

"Sec. 13. Protection of tenant against eviction --

(1 ) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of , 'my premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely --

where the premises are reasonably required by the landlord either for purposes of building or rebuilding or for making thereto substantial additions or alterations or for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held".

12. The Bench which considered the aforesaid question with reference to the said provision of Rent Control law, pressed its view thereon, thus:

"jurisprudentially, it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others , 'red it cannot be said that he is only a pan-owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of section 13 (1 )(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants. .... We are of the opinion that co-owner is as much an owner of the entire property as , 'my sole owner of a property is."

13. The owner in the expression 'if he is the owner' in Section 13(1)(f) of the West Bengal Tenancy Act, 1956 when as opined by this Court ought to be regarded as 'the co- owner' inasmuch as 'the owner', like any sole owner of property, there would be no justification for us to hold that 'the non-residential building which is has own' in Section 10(3)(a)(iii) of the Act, can only be that of its absolute 'owner' and not of its 'co-owner'.

14. Therefore, we have no hesitation in reaching the conclusion that the respondents, who are carrying on the business of M/s. Fakruddin & Company in non-residential building No. 151, Linghi Chetty Street, Madras, of which they are co-owners can be regarded as landlords, who are occupying their own non-residential building envisaged under clause (iii) of Section 10(3)(a) of the Act, as would disentitle them to retain the benefit of the eviction order made by the Rent Controller against the tenant in respect of the petition non-residential building at the instance of the deceased

respondent-1, for carrying on his business on the ground that he did not occupy his own non-residential building for' the purpose. Consequently, the eviction order of the Rent Controller as affirmed by the Appellate Authority and the High Court, which is under challenge in this appeal, calls to be set aside taking into consideration the developments which have taken place during its pendency in this Court.

15. However, it was argued on behalf of respondents 2 to 11 that even if the non-residential building where respondent was carrying on the partnership business of M/s Fakruddin & Company, for the carrying on of which he wanted to get possession of the non-residential building in occupation of the appellant-tenant had come to be owned by respondents 2 to 11 because of the death of respondent-1 during the pendency of the present appeal, they could not be denied the benefit of eviction order under' appeal got by the deceased respondent- 1 under section 10(3)(a)(iii) of the Act. What was submitted on behalf of respondents 2 to 11 was that a proceeding for eviction under the Act should be regarded as having created a vested right when the eviction order of the Controller was affirmed by the High Court in a revision petition allowed under the Act and an appeal pending in this Court under Article 136 of the Constitution against that eviction order, being special appeal provided for under the Constitution cannot be considered as a continuation eviction proceeding as would entitle this Court to deny the relief got by a party from the Rent Controller and the High Court because of the subsequent developments taking place during the pendency of the appeal in this Court. We find it difficult to accede to the said submission made on behalf of respondents 2 to 11 in this appeal.

16. Section 10(3)(a)(iii) of the Act confers a right on a landlord to take advantage of the ground available thereunder to evict his/her tenant from a non-residential building. The right conferred under that provision of the Act is not an accrued right. As held by the Privy Council in *Abbott v. Ministers for Land*, 1895 AC 425, that a mere right to take advantage of the provision of an Act is not an accrued right and this position is accepted by this Court in *Kanaya Ram and Others v. Rajender Kumar and Others*, 1985(1) SCC 436, as well. Therefore, if a landlord under the Act obtains an eviction order in respect of a non-residential building against the tenant taking advantage of the right conferred upon him in that regard under section 10(3)(a)(iii) of the Act such eviction order does not create in him an indefeasible vested right when it has not become final and conclusive, having become the subject of an appeal under Article 136 of the Constitution, where this Court has the power to annul such eviction order, if the circumstances so warrant. In *Pasupuleti Venkateswarlu v. The Motor & General Traders*, 1975 (1) SCC 770, where a three judge Bench of this Court had an occasion to deal about the jurisdiction and propriety of Court taking note of the circumstances which come into being after the commencement of the eviction proceeding under a Rent Control Legislation, which will have a fundamental impact on the right to relief or the manner of moulding it, explained the legal position thus:

"..It is basis to our processual jurispru-

dence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that the procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding

it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed..."

17. The said legal position adumbrated by the three-Judge Bench of this Court, leaves no room for us to doubt the power of this Court to take note of the circumstances which have cropped up during the pendency of an appeal under Article 136 of the Constitution for granting, denying or moulding the relief to be given to a party in such appeal, for meeting the ends of justice. Hence, the power of this Court in an appeal under Article 136 of the Constitution to take cautious cognizance of events and developments subsequent to institution of eviction proceeding and grant, deny, mould the relief sought by a party, in consonance with justice and fair play is not restricted merely because it is exercising its power to deal with an appeal conferred upon it by the Constitution.

18. In the facts of the present case as we have pointed out earlier respondents 2 to 11 become disentitled to obtain eviction order under section 10(3)(a)(iii) of the Act because they are the co-owners of a non-residential building, where they are carrying on the business of M/s. Fakruddin & Company for carrying on which business the deceased respondent-1 had sought eviction of the appellant-tenant from another non-residential building of which also respondents 2 to 11 have become the co-owners after the demise of respondent-1. Thus, the subsequent developments which have arisen during the pendency of the present appeal warrant the setting aside of the eviction order which is questioned in appeal.

19. In the result, we allow this appeal and set aside the eviction order made against the appellant-tenant by the Rent Controller and the appellate and the revisional orders made thereon by the appellate authority and the/High Court, with no costs.