

Nagindas Ramdas vs Dalpatram Ichharam @ Brijram And Ors on 30 November, 1973

Equivalent citations: 1974 AIR 471, 1974 SCR (2) 544, AIR 1974 SUPREME COURT 471, 1974 (1) SCC 242, 1974 RENCER 148, 1974 3 SCR 544, 1974 2 SCJ 21, 1974 CURLJ 57

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, D.G. Palekar, V.R. Krishnaiyer

PETITIONER:

NAGINDAS RAMDAS

Vs.

RESPONDENT:

DALPATRAM ICHHARAM @ BRIJRAM AND ORS.

DATE OF JUDGMENT 30/11/1973

BENCH:

SARKARIA, RANJIT SINGH

BENCH:

SARKARIA, RANJIT SINGH

PALEKAR, D.G.

KRISHNAIYER, V.R.

CITATION:

1974 AIR 471 1974 SCR (2) 544

1974 SCC (1) 242

CITATOR INFO :

F 1974 SC 994 (103)

RF 1975 SC2130 (3,4)

R 1978 SC 952 (2,3,4)

F 1987 SC1986 (13,20)

E 1990 SC1725 (18)

ACT:

Bombay Rent Act, 1947, Ss. 12 and 13-Compromise decree for eviction-When may be passed.

HEADNOTE:

The respondent-landlord instituted a suit under the Bombay Rent Act for possession against the appellant-tenant on two grounds, namely, arrears in payment of rent and bona fide

requirement of the premises for personal use and occupation. A compromise decree was passed. When the appellant applied for execution of the decree, the appellant contended inter alia that the compromise decree had been passed by the Rent Court without satisfying itself as to the existence of grounds of eviction under the Act and hence, being a nullity, was not executable. The Executing Court accepted the contention. In appeal, the appellate Court set aside the dismissal and remanded the matter holding that there were admissions in the compromise itself from which the Court could be satisfied about the existence of both the statutory grounds for eviction alleged in the plaint. A revision to the High Court was dismissed.

Dismissing the appeal to this Court,

HELD : (1) The public policy permeating this Act is the protection of tenants against unreasonable eviction. Construing the provisions of s.12,13 and 28 of the Act in the light of this policy, it should be held that the Rent Court under the Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is dehors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in s. 12 and 13 is a sine qua non to the exercise of jurisdiction by the Rent Court. Parties, by their consent cannot confer jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do. [550C-E]

Shah Rasiklal Chunilal v. Sindhi Shyamlal Mulchand, 12 Guj. Law Reporter 1012, approved.

Barton v. Fiacham, [1921] 2 K. B. 291 at 299, applied.

(2) The fact that O. 23 r. 3, C.P.C., is applicable to the proceedings does not remove that fetter or empower the Rent Court to make a decree for eviction dehors the statute. Even under that provision the Court, before ordering that the compromise be recorded, is required to satisfy itself about the lawfulness of the agreement. Such lawfulness or otherwise of the agreement is to be judged also on the ground whether terms of the compromise are consistent with the provisions of the Rent Act. [551 A-C]

(3) But, if at the time of the passing of the decree there was some material before the Court on the basis of which the Court could prima facie be satisfied about the existence of a statutory ground for eviction, it will be presumed that the court was so satisfied and the decree for eviction, though passed on the basis of the compromise would be valid. Such material may be in form of evidence recorded or produced or it may be partly or wholly be in the shape of express or implied admissions made in the compromise agreement. Admissions if true and clear are by far the best proof of the facts admitted especially when they are judicial admissions admissible under s. 58, Evidence Act. [552F-H]

In the present case, because of the admission to pay the

arrears of rent and mesne profits at the contractual rate and the withdrawing of his application for fixation of standard rent, there was no dispute with regard to the amount of standard rent, and there was an admission that the rent was in arrears. The admission of these material facts constitute a ground for eviction under s. 12 (3)(a). [553B-D]

Bahadur Singh v. Muni Subrat Dass, [1969] 2 S.C.R. 432, Kaushalya Devi v. Shri K. L. Bansal, [1969] 2 S.C.R. 1048, and Ferozi Lal Jain v. Man Mal, [1970]. 3 S.C.C. 181, held inapplicable.

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K. K. Chari v. B. M. Seshadri, [1973] 1 S.C.R. 761, followed.

Jeshwant Raj Mulukchand v. Anandilal Bapalal, [1965] 2, S.C.R. 350, distinguished.

(4) Further the Executing Court is not competent to go behind the decree if the decree on the face of it discloses some material on the basis of which the rent court could be satisfied with regard to the existence of a statutory ground for eviction. If on the face of it the decree does not show the existence of such material or jurisdictional fact, the Executing Court may look to the original record of the trial court to ascertain whether there was any material furnishing a foundation for the trial court's jurisdiction to pass the decree. The moment it finds that prima facie such material existed its task is complete, and it was not competent to go behind the decree and question its validity. [553G-554B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 2479 (N) of 1972.

Appeal by Special Leave from the judgment and order dated the 26th October 1972 of the Gujarat High Court at Ahmedabad in Civil Revision Application No. 1254 of 1972. S. K. Dholakia, for the appellant.

P. H. Parekh and Sunanda Bhandare, for the respondents. The Judgment of the Court was delivered by SARKARIA, J.-Whether the decree dated September 23, 1964, passed by the Trial Judge in Regular Suit No. 6 of 1963, filed under the Bombay Rent Control Act, 1947 (for short, called Bombay Rent Act) directing the eviction of the appellant is a nullity and, as such, in executable, is the only question that falls for decision in this appeal by special leave. It arises out of these facts:

Appellant was a tenant of the premises at Ward No. 3, Nondh No. 1823/9 in the Salabatpur area of Surat. He was in arrears of rent since 16-10-1961. On 16-11-1962, the landlords (respondents herein) served a notice on the appellant terminating his tenancy and also requiring him to pay the arrears of rent. On 2-1-1964, the landlords instituted the suit in the Court at Surat for possession against the tenant on two

grounds, namely :

- (i) non-payment of rent in arrears for a period of more than one year,
- (ii) bona fide requirement of the premises by the landlords for their own use and occupation.

The rate of contractual rent was Rs. 151- per month. On 23-9-1964 the parties arrived at a compromise, the terms of which, as incorporated in the decree, were as under :

"(i) The defendant do hand over possession of the suit premises by 30-9-1968 without any objection. The tenant to pay Rs. 532 50 P as arrears of rent and mesne profits upto 30-9-

1964. The plaintiff is to receive Rs. 380/- deposited by the defendant in court and the remaining amount is to be paid by the defendant to the plaintiffs on or about 31-12- 1964. The defendant is to pay Rs. 151- p.m. as mesne profits from 1-10-1964.

(ii) The relationship of the landlord and tenant between the parties has come to an end and no such relationship is to be created by the compromise. The defendant has been given time to vacate the suit. premises by way of grace. If the defendant fails to comply with the aforesaid terms of the decree, the plaintiffs would be entitled to execute the decree both for the decretal amount' as well as for possession of the suit premises.

(iii) If the plaintiffs get for the defendant the lease of the premises bearing Nondh No. 1602 of Ward No. 3 on a monthly rent of Rs.

50/- the defendant is to hand over the possession of the suit premises immediately.

(v) The parties are to bear their own costs." On 12-1-1968, the landlords filed a petition for execution of the decree. It was dismissed as premature. The tenant having failed to pay Rs. 152/50 i.e. the balance of arrears. by the agreed date, the decree-holders on 17-1-1968, again took out execution for the recovery of the said amount. Thereafter, on 3-10-1968, the landlords filed the second petition to-recover possession of the suit premises in execution of the decree.

The tenant admitted that he had, according to the compromise, agreed to give possession on 30-9-1968, but added that in 1968 A.D., the ground floor of the premises had become submerged in flood waters, and thereupon the decree-holders seeing his (tenant's) plight, orally agreed to allow him to continue in the premises on payment of a monthly rent of Rs. 151-. and thus the decree had been adjusted and satisfied. Subsequently, by another application, the judgment debtor raised an objection that since the decree had been passed by the Court without satisfying itself as to the existence of a ground of eviction under the Bombay Rent Act, it was a nullity, and as such, not executable.

The executing court (Joint Civil Judge, Surat) rejected the story of adjustment and satisfaction of the decree, but accepted the other objection holding that the decree was void because "the Court did not apply its mind while allowing it under s. 13 (1) (j), Rent Act". With regard to the second ground it was said that it had ceased to exist because "under the terms of compromise the default in payment of rent was waived and the defendant was given time to pay up to 30-9-68". In the result, the execution was dismissed.

From the order of the executing court, the decree-holders carried an appeal to the Extra Assistant Judge, Surat, who held that there was ample material in the shape of admissions in the compromise, itself, from which the court could be satisfied about the existence of both the statutory grounds or eviction alleged in the plaint. He, therefore, set aside the dismissal of the execution and remanded the case to the executing court "to be dealt with in accordance with law". Aggrieved by that order of the Extra Assistant Judge, the tenant preferred a revision petition in the High Court of Gujarat,. The revision was dismissed in limine by an order dated 26-10- 1972, against which this appeal by special leave has been filed.

Mr. Dholakia, learned Counsel for the appellant, contends that in view of public policy which underlies all Rent Control Acts, including the Bombay Rent Act, no decree or order of eviction can be passed unless the Rent Court or Tribunal is satisfied, on the basis of extrinsic material as to the existence of all the essential facts constituting a statutory ground for eviction. It is stressed that in the instant case the material, if any, preceding the decree or even the so-called admission of the rent being in arrears in the compromise itself, was far too insufficient to make out a ground for eviction under s. 12(3) of the Bombay Rent Act. Clause (a) of s. 12(3), proceeds the argument, could not cover the case because the tenant had deposited the rent due upto the date of the suit and had also made an application for fixation of standard rent; and clause (b) of the same sub-section did not apply because no interim standard rent had been fixed by the Court. As regards the ground of bona fide personal requirement of the land-lords, it is urged that there was not even a scintilla of material from which the satisfaction of the court as to the existence of a ground under s. 13 could be spelled out. The decree, concludes the Counsel, being based solely on the consent of the parties, was a nullity, and was directly hit by the rule laid down by this Court in *Bahadur Singh v. Muni Subrat Dass*;⁽¹⁾ *Kaushalya Devi v. Shri K. L. Bansal*⁽²⁾ and *Ferozi Lal fain v. Man Mal* ⁽³⁾. Learned Counsel has further attempted to distinguish this Court's decision in *K. K. Chari v. R. M. Seshadri* ⁽⁴⁾ on the ground that there was documentary and oral evidence of the plaintiff which not been challenged in cross-examination, from which the statutory ground of the premises being required by the landlord for bona fide personal occupation, had been fully made out. Reference has also been made to *Jeshwant Rai Mulukchand v. Anandilal Bapalal*⁽⁵⁾ and *Shah Rasiklal Chunilal v. Sindhi Shyamlal Mulchand*⁽⁶⁾. On the other hand, Mr. Parekh, learned Counsel for the respondents, has canvassed three principal contentions: (i) The appeal should be dismissed on the preliminary ground that there is no equity in this case in favour of the appellant who has, in spite of the ample time granted to him, contumaciously failed to comply with the decree and surrender possession even five years after the expiry of the agreed date fixed for this purpose in the decree. Counsel has cited in support of this contention, the decisions of this Court in *A. M. Allison V. R. L. Sen* ⁽⁷⁾ and *Shri Balwantrao Chimanlal Trivedi v. M. N. Nagreshna and ors.* ⁽⁸⁾

(ii) The principle laid down by (1) [1969] 2. S.C.R. 432.(2) [1969] 2, S.C.R. 1048. (3) [1970] 3. S.C.C. 181.(4) [1973] 1, S.C.C. 761. (5) [1965] 2. S.C.R. 350.(6) 12, Guj. Law Reporter 1012. (7) [1957] S.C.R. 359. (8) [1961] 1, S.C.R. 113.

this Court in the cases relied upon by Mr. Dholakia, is not applicable to a compromise decree passed under the Bombay Rent Act because:

(a) The provisions of s. 13 of the Delhi and Ajmer Rent (Control) Act, 1952 (for short, Delhi Rent Act) and s. 10 of the Madras Buildings (Lease and Rent Control) Act, 1960 (for short Madras Rent Act), on the interpretation of which the said decisions are based, are materially different from ss. 12 and 13 of the Bombay Rent Act;

(b) by virtue of Rule 8 of the Bombay Rent Act Rules, the provision of the Code of Civil Procedure, including O.23, Rule 3, which gives a mandate to the court to pass a decree in terms of a compromise, are applicable to suits under the Bombay Rent Act, but the application of the Code to proceedings before the Rent Controller Tribunal under the Delhi Rent Act or Madras Rent Act has been expressly excluded' In support of this contention reliance has been placed on Chandan Baj v. Surjan (1). (iii) Even if the ratio of the said Supreme Court decisions applies to decrees under the Bombay Rent Act, then also both the statutory grounds for eviction pleaded in the plaint, had been expressly or impliedly admitted by the defendant in the compromise, and it will be presumed that in passing the eviction decree the court was satisfied about the existence of those grounds. In this view, according to the Counsel, the instant case will fall within the ratio of Seshadri's case (supra). At the stage of the final hearing of the appeal, especially after the learned Counsel for the appellant had addressed us on merits, we do not propose to go into the preliminary ground urged by Mr. Parekh. If the decree turns out to be without jurisdiction, this equitable plea will be of no avail; because equity cannot operate to annul a statute. If the decree is found to be in conformity with the statute, the appeal will fail on that ground, alone, and it will be wholly unnecessary to consider the equitable aspect of the matter.

We, therefore, come straight to the contention (ii) raised by Mr. Parekh. In order to find out whether or not a decree or order of eviction can be passed by the Rent Court/Tribunal exercising special jurisdiction under any of these statutes Delhi Rent Act, Madras Rent Act and Bombay Rent Act-on a ground which is not one of the statutory grounds of eviction, it is necessary to have a peep into the historical background of the Rent Control laws, in general, and a quick look at the broad scheme and language of the relevant statutory provisions of these Acts. The strain of the last World War, Industrial Revolution, the large scale exodus of the working people to urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their concomitant evils. The country was faced with spiraling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Rack renting and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life (1) A.I.R. 1972 M.P. 106.

of the community unstable and insecure. To tackle these problems and curb these evils, the Legislatures of the States in India enacted Rent Control legislations. The preamble of the Bombay

Rent Act states that the object of the Act is "to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions". The language of the preambles of the Delhi Rent Act and Madras Rent Act is Strikingly similar. The broad policy and purpose as indicated in their preambles is', substantially the same viz., to protect tenants against their landlords in respect of the rents, evictions and repairs. With the same beneficent end in view, all the three Acts interfere with contractual tenancies and make provisions for fixation of fair and standard rents, or protection against eviction of tenants not only during the continuance of their contractual tenure but also after its determination. indeed, the neologism "statutory tenant" has come into existence because of this protective policy which is common to all enactments of this kind. Further, all the three Acts create Courts/Tribunals of special and exclusive jurisdiction for the enforcement of their provisions.

Section 28 of the Bombay Rent Act which begins with a non- obstante clause, specifies Courts which shall have exclusive jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant inter alia relating to (a) recovery of rent of any premises;(b) recovery of possession of any premises to which the provisions of Part II apply. The words "to which the provisions of Part II apply" are significant. They indicate that the exclusive jurisdiction for recovery of possession is to be exercised when the provisions of Part II, which include ss. 12 and 13, apply. All these three Acts lay down specific grounds more or less similar, on which a decree or order of eviction can be passed by the Rent Court or the Tribunal exercising exclusive jurisdiction. In the Delhi Rent Act, such grounds are specified in a consolidated form under s. 13, while the same thing has been split up into two and provided in two sections (12 and 13) in the Bombay Rent Act which represent the negative and positive parts of the same pattern. Taken together, they are exhaustive of the grounds on which the Rent Court is competent to pass a decree of possession. Similarly, in the Madras Rent Act, the grounds on which a tenant can be evicted, are given in ss. 10, 14 to 16. Section 13 of the Delhi Rent Act starts with a non-obstante clause viz., "Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant..... Likewise, s. 10(1) of the Madras Rent Act starts with the clause, "a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16."

It will thus be seen that the Delhi Rent Act and the Madras Rent Act expressly forbid the Rent Court or the Tribunal from passing a decree or order of eviction on a ground which is not any of the grounds mentioned in the relevant sections of those statutes. Nevertheless, such a prohibitory mandate to the Rent Court that it shall not travel beyond the statutory grounds mentioned in ss. 12 and 13, and to the parties that they shall not contract out of those statutory grounds, is inherent, in the public policy built into the statute (Bombay Rent Act).

In Rasiklal Chunilal's case (supra), a Division Bench of the Gujarat High Court has taken the view that in spite of the fact that there is no express provisions in the Bombay Rent Act prohibiting contraction, out, such a prohibition would have to be read by implication consistently with the public policy underlying this welfare measure. If we may say so with respect, this is a correct approach to the problem. Construing the provisions of ss. 12,13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no

escape from the conclusion that the Rent Court under this Act is not competent to pass a decree for Possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in ss. 12 and 13 is a sine qua non to the exercise of jurisdiction by the Rent Court under these provisions. Even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do.

In the view we take, we are fortified by the ratio of the decision in *Barton v. Fincham*(1). Therein the Court of Appeal was considering the scheme of the Rent Restrictions Act, 1920, the language of S. 5 of which was similar to s. 13 of the Delhi Rent Act. In that context, Atkin L. J. stated the law on the point thus :

"The section appears to me to limit definitely the jurisdiction of the Courts in making ejectment orders in the case of premises to which the Act applies. Parties cannot by agreement give the Courts jurisdiction which the Legislature has enacted they are not to have.

If the parties before the Court admit that one of the events has happened which give the Court jurisdiction, and there is no reason to doubt the bona fides of the admission, the Court is under no obligation to make further inquiry as to the question of fact; but apart from such an admission the Court cannot give effect to- an agreement, whether by way of compromise or otherwise, inconsistent with the provisions of the Act."

It is true that in *Barton's* case just as in *Seshadri's* case (supra), the statute under consideration expressly prohibited the Court from passing a decree on a ground which was not covered by the statute but (1) (1921] 2, K.B. 291 at 299.

the principle equally applicable to cases under statutes which place such 'a 'fetter on the jurisdiction of the Court, by necessary implication.

The mere fact that Order 23, Rule 3. of the Code of Civil Procedures applicable to the proceedings in a suit under the Bombay Rent Act, does not remove that fetter on the Rent Court or empower it to make a decree for eviction de hors the statute. Even under that. Provision of the Code, the Court, before ordering that the compromise be recorded, is required to satisfy itself about the lawfulness of the agreement. Such lawfulness or otherwise of the agreement is. to be judged, also on the ground whether the terms of the compromise are consistent with the provisions of the Rent Act.

In view of what has been said above, it is clear that the general principles enunciated by this Court in cases referred to by the learned Counsel for the appellant, are a relevant guide for determining whether in a particular case the consent decree for. possession passed by the Court under the Bombay Rent Act is or is not a nullity. But the case in hand is not in line with *Bahadur Singh's* case, *Kaushalaya Devi's* case and *Ferozi Lal Jain's* case (supra). On facts, they are distinguishable from the instant case. In those cases, there was absolutely no material, extrinsic or intrinsic to the consent

decree on the basis of which the Court could be satisfied as to the existence of a statutory ground for eviction.

The case before us falls well nigh within the ratio of Seshadri's case (supra). Therein, K. K. Chari, who was under an eviction order, purchased the suit premises in the same city for his occupation. Seshadri was then the tenant of the suit premises under the vendor, and after the purchase, he attuned in favour of the appellant and had been paying rent to him. Chari issued notices under s. 106 of the Transfer of Property Act, terminating the tenancy of Seshadri. Since Seshadri did not surrender possession, Chari filed a suit for eviction under s. 10 (3) (a)(i) of the Madras Act mainly on the ground that he required the premises for his bona fide use and occupation. Seshadri controverted Chari's claim. At the commencement of the enquiry, Chari was examined before the Court. He particularly testified how he had purchased the house for his own occupation. He also filed a number of documents to establish that the requirement of premises for his own occupation was true. Seshadri did not prefer to cross-examine Chari. About 11/2 months thereafter, both the parties entered into a compromise in these terms :

"(1) The respondent hereby withdraws his defence in the aforesaid petition and submits to a decree for eviction unconditionally. (2) The respondent prays that time for vacating upto June 5, 1969, might please be given and the petitioner agrees to the same. (3) The respondent agrees to vacate the petition premises and hand over possession of the entire petition premises to the petitioner on or before the said date viz. June 5, 1969, without fail under any circumstances and undertakes not to apply for extension of time.

(4) It is agreed by both the parties that this memo of compromise-is executable as a Decree of Court."

The Court, after referring to the petition of the landlord being under s. 10 (3)(a)(i), of the Act on the ground of his own occupation, passed the following order "Compromise memo filed and recorded. By consent eviction is ordered granting time to vacate till June 5, 1969. No costs."

The aforesaid terms of the compromise were also incorporated in the order. After distinguishing the former three cases viz. Bahadur Singh's case, Kaushalaya Devi's case and Ferozi Lal Jain's case, Vaidialingam J. speaking for himself and Dua J. (comprising majority) enunciated the law on the point, thus :

"The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact viz., the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a prerequisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the

grounds on which the order of eviction was based..... If the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for possession in favour of the landlord without further enquiry."

From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction, though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself, Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under s. 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and

553. constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties On the other hand evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

We do not find any force in the contention of Mr. Dholakia, that the facts admitted in the compromise, itself were insufficient to make out even a prima facie ground for eviction mentioned in s. 12 (3) (a) of the Bombay Rent Act, merely because the tenant had made an application for fixation of standard rent, which was still pending at the time of passing of the decree. By admitting to pay the arrears of rent and mesne profits at the rate of Rs. 15/- per month, the tenant had clearly withdrawn or abandoned his application for fixation of standard rent. The admission in the compromise was thus an admission of the material facts which constituted a ground for eviction under s. 12 (3) (a). Rent was admittedly payable by the month; since the application for fixation of fair rent stood withdrawn, there was no dispute with regard to the amount of standard rent. Further, the rent was admittedly in arrears for a period of more than six months; so much so that in the present case, the tenant had neglected to pay the balance of arrears, amounting to Rs. 152/50, even long after the decree and the landlord was compelled to recover the same by execution. The case of Jeshwant Rai Mulukchand (supra) , cited by Mr. Dholakia, does not advance his stand. In that case, there was a serious dispute regarding the amount of standard rent. Though the final order of standard rent was passed by the Court of Small Causes, neither the landlord nor the tenant accepted the determination and each side questioned the amount by filing Revision Petitions. In the present case, however, no dispute regarding the standard rent was, subsisting at the time of compromise. That dispute was Put an end to by the compromise itself.

Be that as it may, in cases where an objection as to the non-executability of the decree on the ground of its being a nullity, is taken, the Executing Court is not competent to go behind the decree, if the decree on the face of it, discloses some material on the basis of which, the Rent Court could be satisfied with regard to the existence of a statutory ground for eviction. In such a case it must accept

and execute the decree as it stands. If, on the face of it, the decree does not show the existence of such material or jurisdictional fact, the Executing Court may look to the original record of the trial court to ascertain whether there was any material furnishing a foundation for the trial court's jurisdiction to pass the decree it did. The moment it finds that prima facie such material existed, its task is complete. It is not necessary for it to go further and question the presumed or expressed finding, of the trial court on the basis of that material. All that it has to see is whether there was some material on the basis of which the Rent Court could have-as distinguished from must have-been satisfied as to the statutory ground for eviction. To allow the Executing Court to go beyond that limit, would be to exalt it to the status of a super Court sitting in appeal over the decision of the Rent Court. Since in the instant case, there was a clear admission in the compromise, incorporated in the decree, of the fundamental facts that could constitute a ground for eviction under. s. 12 (3) (a), the Executing Court was not competent to go behind the decree and question its validity. For the foregoing reasons, the appeal fails and is dismissed with costs.

V.P.S.

Appeal dismissed.