Carona Ltd vs M/S Parvathy Swaminathan & Sons on 5 October, 2007

Equivalent citations: 2007 AIR SCW 6546, 2007 (8) SCC 559, 2007 (6) AIR BOM R 865, 2008 (1) AIR KANT HCR 89, 2007 CLC 1833, 2007 HRR 2 518, (2007) 2 RENTLR 481, (2007) 60 ALLINDCAS 146 (SC), (2008) 1 MAD LJ 51, (2007) 2 RENCR 489, (2007) 7 SUPREME 280, (2008) 1 WLC(SC)CVL 137, (2007) 4 CIVILCOURTC 618, (2007) 11 SCALE 630, 2008 (4) ALLMR (NOC) 18, (2007) 6 BOM CR 801, AIR 2008 SUPREME COURT 187

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Bench: C.K. Thakker, P. Sathasivam

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           CASE NO.:
Appeal (civil)  2805 of 2005

PETITIONER:
CARONA LTD

RESPONDENT:
M/S PARVATHY SWAMINATHAN & SONS

DATE OF JUDGMENT: 05/10/2007

BENCH:
C.K. THAKKER & P. SATHASIVAM

JUDGMENT:
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J U D G M E N T CIVIL APPEAL No. 2805 OF 2005 C.K. THAKKER, J.

1. This appeal by special leave is filed by the appellant-Carona Ltd. (hereinafter referred to as 'the tenant') against the judgment and order passed by the High Court of Judicature at Bombay on November 1, 2004 in Writ Petition No. 8781 of 2004. By the said order, the learned Single Judge of the High Court dismissed the writ petition filed by the tenant and confirmed the order passed by a Bench of Small Causes Court at Bombay on August 3, 2004 in Appeal No. 277 of 2003 which in turn confirmed the judgment and decree of eviction dated February 11, 2003, passed by a Judge of Small Causes Court at Bombay in T.E. & R. Suit No. 226/240 of 2001 in favour of the respondent-partnership firm (hereinafter referred to as 'the landlord').

FACTS

2. To appreciate the controversy raised in the present appeal, few relevant facts may be stated.

3. The appellant-tenant was the original defendant whereas the respondent-landlord was the original plaintiff in the suit instituted in the Court of Small Causes at Bombay. The landlord is a partnership firm registered under the Partnership Act, 1932. It owned a premises, bearing Shop No. 2, situated at ground floor of Plot No. 3, A.M. Ward, Chembur, Govind Road, Mumbai (hereinafter referred to as 'the suit premises'). According to the landlord, the suit premises was let out to the tenant. It was alleged that tenant was not paying rent regularly. It also initiated certain proceedings against the landlord. The landlord did not want the tenant to continue to occupy the suit premises. Accordingly, by a notice dated February 23, 2001, the landlord determined the tenancy with effect from March 31, 2001. In spite of determination of tenancy, the tenant did not hand over vacant and peaceful possession of the suit premises to the landlord. The landlord, therefore, filed a suit in the Small Causes Court, Bombay on April 2, 2001. In a written statement, dated August 1, 2001, the tenant disputed the averments made and allegations levelled by the landlord and contended that it was not liable to be evicted. The Small Causes Court, Bombay, however, passed a decree of eviction against the tenant on December 16, 2002 which was confirmed by a Bench of that Court as also by the High Court. The said order is challenged in the present appeal. INTERIM ORDER BY THIS COURT

4. On February 21, 2005, notice was issued by this Court. Status quo as regards possession was ordered to be maintained. On April 18, 2005, leave was granted. Pending appeal, stay of dispossession was continued subject to the tenant depositing a sum of Rs. twenty four lakhs with the Registry of the Court within eight weeks which was allowed to be withdrawn by the landlord without furnishing security. The matter was ordered to be placed for final hearing and that is how the matter is before us.

SUBMISSIONS

5. We have heard the learned counsel for the parties.

6. Mr. Gupta, learned counsel for the appellant- tenant contended that all the courts committed an error of law and of jurisdiction in passing the decree of eviction against the tenant. He submitted that the suit filed by the landlord was not maintainable and it ought to have been dismissed by the courts below. He also submitted that the question as to constitutional validity of clause (b) of sub-section (1) of Section 3 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'the Rent Act') is pending before this Court and in view of the said fact, the courts below ought not to have proceeded to decide the matter. Alternatively, it was argued that even if it is assumed that the provision is legal, valid and intra vires, it would not apply to the case on hand inasmuch as tenant's net worth/paid up share capital has been substantially eroded and it was not rupees one crore or more when the proceedings were initiated by the landlord. The provisions of the Rent Act, therefore, applied to the suit premises and unless and until one of the grounds of eviction specified in the Rent Act had been made out, the landlord was not entitled to a decree for possession. The learned counsel urged that the fact as to 'paid up capital' of the Company was a 'jurisdictional fact' and in absence of such fact, the Court had no power, authority or jurisdiction to consider, deal with and decide the matter.

7. It was further contended that the proceedings could not have been continued in view of the fact that the tenant was a 'sick company' within the meaning of the Sick Industrial Companies Act, 1985 (hereinafter referred to as 'SICA'). In accordance with Section 22 of that Act, hence, all proceedings against a sick company stood suspended. No order of eviction, therefore, could have been passed by the courts below. On all these grounds, it was submitted that all the courts were wrong in passing a decree of eviction against the tenant and the said order deserves to be set aside by this Court.

8. Mr. Parekh, learned counsel for the respondent-landlord, on the other hand, supported the decree passed by the Small Causes Court, confirmed by a Bench of that Court as also by the High Court. He submitted that as far as constitutional validity of Section 3(1)(b) of the Rent Act is concerned, the point is covered by a decision of the Division Bench of the High Court of Bombay in M/s Crompton Greaves Ltd. v. State of Maharashtra, AIR 2002 Bom 65. The Small Causes Court as well as the High Court were, therefore, wholly justified in proceeding with the matter and in deciding it on merits. He submitted that tenancy was terminated in accordance with law. It was, therefore, obligatory on the tenant to hand over vacant and peaceful possession of the property to the landlord, but it failed to do so. The landlord was, therefore, constrained to approach a Court of law which passed a decree for possession in favour of the landlord holding that since the paid-up share capital of the Company was more than rupees one crore, the provisions of the Act were not applicable to it. The counsel urged that there was no illegality in the said finding and obviously, therefore, the landlord was entitled to possession of suit-premises and the tenant could not resist eviction. An appellate Court confirmed the said decree. Before the High Court it was contended by the tenant that a unanimous resolution was passed by the Company to decrease the share capital to less than rupees one crore (Rs.41 lakhs from Rs.8.20 crores). Such unilateral action at a subsequent stage, submitted the counsel, would not deprive the owner of the property to the 'right accrued' in favour of the landlord. The 'jurisdictional fact' (paid up share capital of more than rupees one crore) was very much in existence at the time when the proceedings were initiated against the Company. But even otherwise, considering the factual situation, the tenant was not entitled to any relief. It was stated that though the so-called resolution was said to have been passed, it had not been approved by the Board for Industrial and Financial Reconstruction (BIFR). In the eye of law, therefore, there was no decrease of share capital. The High Court was, hence, wholly right in observing that even on that ground, the tenant was not entitled to any relief. The counsel also submitted that this Court is exercising discretionary and equitable jurisdiction under Article 136 of the Constitution. The tenant is not entitled to such equitable relief. It was submitted that the tenant has not paid rent since several years i.e. from January 1, 1995. According to the counsel, the amount due and payable by the tenant as on August 31, 2007 comes to Rs. 56,22,000/- pursuant to interim order passed by this Court on April 18, 2005, an amount of Rs. 24 lakhs was deposited by the appellant in this Court which was withdrawn by the landlord, but even excluding that amount, the tenant is liable to pay to the landlord an amount of Rs.32,22,000/-. It was further stated that after order dated April 18, 2005 i.e. for more than two years, the tenant has not paid even a pie to the landlord. Such tenant, urged the counsel, does not deserve sympathy and cannot claim equitable relief. On all these grounds, the counsel prayed for dismissal of the appeal.

CONSIDERATION OF CONTENTIONS

9. We have given anxious and thoughtful consideration to the rival contentions of the parties. And in our opinion, no case has been made out by the appellant-tenant for grant of discretionary and equitable relief from this Court.

CONSTITUTINAL VALIDITY OF SECTION 3(1)(b)

10. As far as constitutional validity of Section 3(1)

(b) of the Rent Act is concerned, in our opinion, the courts below were right in rejecting the contention raised by the tenant and in proceeding to decide the matter on merits in view of the decision in M/s. Crompton Greaves Ltd.

11. Our attention has been invited by the learned counsel for the parties to the relevant provisions of the Act. The Act came into force with effect from March 31, 2000. It repealed the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Preamble of the Act recites;

An Act to unify, consolidate and amend the law relating to the control of rent and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return on the investment by landlords and to provide for the matters connected with the purpose aforesaid.

Whereas it is expedient to unify, consolidate and amend the laws prevailing in the different parts of the State relating to the control of rents and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return and to provide for the matters connected with the purposes aforesaid.

12. Section 3 grants exemption and enacts that the Act would not apply to certain premises. Clause (b) of sub-section (1) of the said section declares that the Act would not apply "to any premises let or sub-let to Banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or Foreign Missions, International Agencies, Multinational Companies, and Private Limited Companies and Public Limited Companies having a paid up share capital of rupees one crore or more". (emphasis supplied)

13. It is an admitted fact that the appellant-tenant is a Public Limited Company having a paid up share capital of rupees more than one crore (Rs.8.20 crores). The Courts below considered the contention as to constitutional validity of clause (b) of Section 3(1) of the Rent Act and observed that the vires of the provision was upheld by the High Court in M/s. Crompton Greaves Ltd. In that case, constitutional validity of Section 3(1)(b) was challenged on the ground that it was arbitrary, discriminatory and unjust. It was contended that the so- called distinction between the Companies having a paid up share capital of less than rupees one crore and the Companies having a paid up capital of more than rupees one crore was arbitrary, discriminatory and unreasonable neither founded on any intelligible differentia nor the so- called classification has rational or reasonable nexus to the object sought to be achieved by the Legislation. It was urged that denial of protection of the Act to the Companies solely on the basis of 'paid up share capital' was based on irrational

criterion and was hit by Article 14 of the Constitution.

14. The Court, however, negatived the contention and upheld the validity of the provision. The Court stated;

> "10. We do not see any force in any of these contentions. The Bombay Rent Act was enacted originally as a temporary measure in order to protect the tenants from eviction from their premises and also from arbitrary enhancement of rent. The necessity for the control of rents by special legislation for properties located within the urban areas was felt during World War II. At that time not much by way of new construction for civil population was possible. A good proportion of private accommodation was requisitioned by the authorities for the war effort. In consequence, rents were beginning to shoot up. Landlords were trying to get rid of their existing tenants to get better rents. The legislation was undertaken primarily to save the tenants from harassment of unscrupulous landlords. To quote the words of Sarkaria J, Nagindas Ramdas v. Dalpatram Ichharam, (1974) 1 SCC 242 at page 248 : (AIR 1974 SC 471) (at page
>
> 474). "The strain of the last World War, industrial Revolution, the large scale exodus of the working people to the 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 spiralling 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 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".

11. The rent control laws are in force in the State for more than 60 years. As a result of these legislations a host of problems have cropped up. These problems have been discussed by various committees appointed by the Central Government and State Governments. The reports of such committees indicate that freezing of rentals at old historic levels, the excessive protection of tenancy rights and the extreme difficulties of recovering possession even for the owner's own use hit hard the house owners of modest means;

rendered investment in housing for rental unattractive; inhibited the letting out of available accommodation and thus had aggravated the acute scarcity of accommodation for hire. It was felt that the laws were being often abused by the rich tenants against the poor or middle class landlords.

12 The State of Maharashtra appointed a Committee known as Rent Acts Enquiry Committee (for short Tembe Committee) which observed as under :

> "……..The result of all this has been that the supply of rental housing in the market is gradually shrinking. Except in the public sector, the growing tendency is to dispose

> off houses on ownership or hire purchase basis. Rental housing has, therefore, almost come to a halt in cities like Bombay. This has adversely affected the economically weaker sections of the society";
>
> "....The rent law that was enacted for the benefit of the tenants is thus operating to the detriment of their interest in that the flow of rental housing is gradually shrinking".

Tembe Committee had recommended exemption of premises of floor area more than 65 sq. meters for business, trade or storage and 125 sq meters for residential purpose".

The Court, therefore, concluded;

> "It is already seen from the Statement of Objects and Reasons that the object of the Act is not merely, to protect tenants but also to provide fair returns to the landlords and to encourage housing activity so as to augment rental housing in the form of construction of buildings and letting them out. It is also meant to legitimise the pagadi or premium system which was prohibited earlier. Thus the Act has been enacted in order to strike a balance between the interests of landlords and tenants and for giving a boost to house building activity and in doing so the legislature in its wisdom has decided and thought it fit not to extend the protection of the Rent Act to certain class of tenants like multinationals scheduled banks, public sector undertakings and private and public limited companies having share capital of more than Rs. 1 crore. This is essentially a matter of legislative policy. The legislature would have repealed the Rent Act altogether. It could also withdraw the protection under the Rent Act on rental basis [see D.C. Bhatiya v. Union of India, (1995) 1 SCC 104] or on income basis [see Delhi Cloth and General Mills Ltd. v. S. Paramjit Singh, (1990) 4 SCC 923] or any other understandable basis. In our view it is for the legislature to decide" what should be the appropriate basis for the purpose of classification and the legislature as of necessity must have a lot of latitude in this regard. Whether any particular category of tenants needs to be protected under the Rent Act is a matter of legislative determination.

There is nothing arbitrary if such protection is taken away in case of certain categories of tenants having regard to their position determined on objective and reasonable criterion. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious or to bring about grossly unfair results, judicial policy should be one of judicial restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary".

15. It also appears that as the point was concluded by a decision in M/s. Crompton Greaves Ltd., the issue as to vires was not pressed by the tenant before the Trial Court. This is clear from the following observations made by the Court;

> "However, the advocate for Defendant not argued on this issue, may be in view of judgment dated 20.7.2001 of the Hon'ble High Court of Judicature at Bombay. The said judgment is reported in AIR 2002 Bombay 65 (M/s Crompton Greaves Ltd., v. State of Maharashtra) (not cited at Bar). In the said ruling, Hon'ble High Court upheld the constitutional validity of the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act. Therefore, this issue does not survive. Accordingly issue No.2 is answered".

16. The courts below were, therefore, in our opinion, fully justified in proceeding to decide the matter on merits.

MERITS OF THE MATTER

17. The Trial Court framed necessary issues and held that the defendant-Company was the tenant; the Rent Act was not applicable; the tenancy was legally and validly terminated; and defendant was liable to be evicted. A prayer was also made by the plaintiff for payment of mesne profits. The Court held that the landlord was entitled to a decree for possession. But since the proceedings were pending before BIFR, Section 22 of SICA was applicable and the landlord could recover amount of mesne profits only after taking requisite permission from BIFR. The Court, in the light of the above findings, issued the following directions;

> "The Defendants shall deliver vacant repossession of the suit premises to the Plaintiffs within 4 months.
>
> The Defendants shall pay mesne profits to the plaintiffs in respect of suit premises for the period from the date Operating Agency suit till the Plaintiffs recover possession of the suit premises.
>
> For determination of quantum of mesne profits, enquiry under O. 20 R. 12(c) of the Code of Civil Procedure is directed.
>
> However, the order to pay mesne profits shall be subject to the Plaintiffs obtain permission of the BIFR to recover mesne profits against the Defendants.
>
> Preliminary decree be drawn accordingly".

18. A Bench of Small Causes Court, Bombay confirmed the above order and dismissed the appeal. Before the High Court, again all the contentions were reiterated by the tenant, but the High Court negatived them and dismissed the writ petition. The High Court noted that it was not in dispute between the parties that notice terminating the tenancy was issued by the landlord on February 23, 2001 and tenancy was determined with effect from March 31, 2001. On that day, i.e. March 31, 2001, paid up share capital of the Company (tenant) was more than rupees one crore. If it were so, observed the High Court, Small Causes Court was right in proceeding with the matter and in passing the decree of eviction against the tenant.

19. The Courts were also right in relying upon Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, (1992) 3 SCC 1 and in holding that eviction proceedings initiated by the landlord against the tenant were maintainable even if the Company was 'sick' under SICA and Section 22 of that Act would not operate as bar to such proceedings.

JURISDICTIONAL FACT

20. The learned counsel for the appellant- Company submitted that the fact as to 'paid up share capital' of Rs. one crore or more of a Company is a 'jurisdictional fact' and in absence of such fact, the Court has no jurisdiction to proceed on the basis that the Rent Act is not applicable. The learned counsel is right. The fact as to 'paid up share capital' of a Company can be said to be a 'preliminary' or 'jurisdictional fact' and said fact would confer jurisdiction on the Court to consider the question whether the provisions of the Rent Act were applicable. The question, however, is whether in the present case, the learned counsel for the appellant tenant is right in submitting that the 'jurisdictional fact' did not exist and the Rent Act was, therefore, applicable.

21. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not posses.

22. In Halsbury's Laws of England, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114- 15, it has been stated:

> "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

23. The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a Court or Tribunal.

JURISDICTIONAL FACT AND ADJUDICATORY FACT

24. But there is distinction between 'jurisdictional fact' and 'adjudicatory fact' which cannot be ignored. An 'adjudicatory fact' is a 'fact in issue' and can be determined by a Court, Tribunal or Authority on 'merits', on the basis of evidence adduced by the parties. It is no doubt true that it is very difficult to distinguish 'jurisdictional fact' and 'fact in issue' or 'adjudicatory fact'. Nonetheless the difference between the two cannot be overlooked.

25. In Halsbury's Laws of England, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114- 15, it is stated:

> "There is often great difficulty in determining whether a matter is collateral to the merits or goes to the merits. The distinction may still be important; for an erroneous decision on the merits of the case will be unimpeachable unless an error of law is apparent on the face of the record of the determination or unless a right of appeal lies to a court in respect of the matter alleged to have been erroneously determined. An error of law or fact on an issue collateral to the merits may be impugned on an application for an order of certiorari to quash the decision or in any other appropriate form of proceedings, including indirect or collateral proceedings. Affidavit evidence is admissible on a disputed issue of jurisdictional fact, although the superior courts are reluctant to make an independent determination of an issue of fact on which there was a conflict of evidence before the inferior tribunal or which has been found by an inspector after a local inquiry".

26. In R. v. Fulham Rent Tribunal, (1950) 2 All ER 211, it was held that the question whether premium for renewal of tenancy was or was not paid was a jurisdictional fact and, therefore, was held to be a condition precedent for the lawful exercise of jurisdiction by a Rent Tribunal. In Brittain v. Kinnaird, (1819) 1 B&B 432, however, the factum as to possession of a 'boat' with gunpowder on board was held to be a part of the offence charged and thus a finding of fact or adjudicatory fact. It was stated: "The logical basis for discriminating between these cases and other falling on opposite sides of the line, is not easily discernible". (emphasis supplied)

27. Likewise, the fact whether the petitioner was an 'adult' in adoption proceedings was not held to be a 'jurisdictional' fact (Eversole v. Smith, 159 SW 2nd 35).

28. In Jagdish Prasad v. Ganga Prasad, 1959 Supp (1) SCR 733, the questin was whether the landlord was entitled to enhancement of rent. Under the Act, he was not entitled to such rent unless a 'new construction' had been made after June 30, 1946. It was held by this Court that the question whether construction was new or not was a 'jurisdictional fact' and if the court wrongly decided the said fact and thereby conferred jurisdiction not vested in it, the High Court could interfere with the order. The Court stated that "once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided". [See also Arun Kumar v. Union of India, (2007) 1 SCC 732].

29. But, in Roshanlal v. Ishwardas, (1962) 2 SCR 947, this Court held that the Rent Controller had jurisdiction to fix standard rent for new construction made after March 24, 1947. The question was as to when the construction was made. The Rent Controller recorded a finding of fact that the construction was put up after March 24, 1947. The finding was confirmed by the District Judge. But the High Court interfered in revision.

30. Setting aside the decision of the High Court, this Court stated:

> "It is clear from the orders of the Rent Controller and of the District Judge in appeal that the question whether the second floor was newly constructed or not was really a question of fact, though undoubtedly a jurisdictional fact on which depended the power of the Rent Controller to take action under s. 7A. If the Rent Controller had wrongly decided the fact and assumed jurisdiction where he had none, the matter would be open to reconsideration in revision. The High Court did not, however, go into the evidence, nor did it say that the finding was not justified by the evidence on record. The High Court referred merely to certain submissions made on behalf of the landlord and then expressed the opinion that what was done to the second floor was mere improvement and not a new construction. We think that the High Court was in error in interfering with the finding of fact by the Rent Controller and the District Judge, in support of which finding there was clear and abundant evidence which had been carefully considered and accepted by both the Rent Controller and the District Judge".

(emphasis supplied)

31. It is thus clear that for assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue.

32. As already seen earlier, in the case on hand, the appellant Company was having 'paid up share capital' of more than Rs. one crore, not only when the notice was issued and tenancy was determined but also when the suit for possession was instituted. What was stated was that a resolution was passed by the Board of Directors to reduce 'paid up share capital' from Rs.8.20 crores to Rs.41 lakhs (less than Rs.1 crore). But it was not approved by BIFR. The Small Cause Court considered this aspect and stated;

> "The reasons are that the above suit is filed on 4.4.2001. Whereas undisputed document Ex.B. annual report of the Defendant Company shows that on 30.9.1999 the paid up shares capital of the Defendant Company was more than Rs.1 crore. If the Defendants have moved BIFR by reference of 1997, by that time the Defendant ought to have received favourable orders reducing the paid-up capital of the Defendants to less than Rs. one crore. But no such evidence is produced by the Defendants to rebut the annual report Ex.B of the Defendants showing paid up capital of more than Rs.8 crores as on 30.9.1999. There is nothing before the court to show that the paid up share capital of the Defendants is brought down to Rs.41 lacs as per para 1.3(1) of the revised rehabilitation proposal in BIFR case No.74/1999 (Ex.4). The advocate for Defendants has not pointed out any order to show that the said proposal is accepted.
>
> In the absence of such order of the appropriate court or authority accepting the proposal Ex.1 to reduce share capital to less than 1 crore rupees, I am unable to accept the case of the Defendants that the said share capital of the Defendant Company is reduced to less than Rs.1 crore". (emphasis supplied)

33. The High Court also dealt with this aspect and concluded;

> "It is not in dispute between the parties that the tenancy of the petitioners was terminated with effect from 31.3.2001 and on that day the paid up share capital of the petitioners/Company was more than Rupees one crore, no fault can be found with trial Court taking cognizance of the eviction proceedings initiated against the petitioners, as the trial Court definitely had jurisdiction to entertain such proceedings, considering the provisions of law comprised under Section 3(1)(b) of the said Act, as rightly submitted by the learned advocate for the respondents. The clause (b) of Section 3(1) of the said Act clearly provides that "the said Act shall not apply to any premises let or sub-let to banks, or any Public Sector Undertaking or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more". Undisputedly, the petitioner/Company is a Public Limited Company having share capital of more than Rupees one crore".

(emphasis supplied)

34. All the Courts were, therefore, in our considered opinion, right in holding that the provisions of the Rent Act were not applicable to the present case.

SUBSEQUENT EVENTS

35. The learned counsel for the tenant then submitted that it was obligatory on the courts below including the High Court to take into consideration subsequent events. In support of the submission, our attention has been invited by the counsel to a leading decision of this Court in Pasupuleti Venkateswarlu v. Motor & General Traders, (1975) 1 SCC 770. In that case, the plaintiff filed a suit for possession on the ground of personal requirement for starting business. A decree for possession was passed in his favour which was confirmed by the Appellate Court. At the stage of Revision, however, due to subsequent event of acquisition of non-residential building by the plaintiff-landlord, an application for amendment was made by the defendant- tenant. The High Court allowed the amendment. The plaintiff challenged the said order by approaching this Court. It was contended that the High Court committed an error in taking cognizance of subsequent event which was 'disastrous'. This Court, however, held that the High Court had not committed any illegality in doing so.

36. Referring to leading cases on the point, Krishna Iyer, J. stated;

> "We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-`-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suit or institutes the legal proceeding. Equally clear is the principle that 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 exits, 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." (emphasis supplied)

37. In our judgment, the law is fairly settled. The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit. Thus, if the plaintiff has no cause of action on the date of the filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising subsequent to the filing of the suit. Conversely, no relief will normally be denied to the plaintiff by reason of any subsequent event if at the date of the institution of the suit, he has a substantive right to claim such relief.

38. In the instant case, in our opinion, the courts below were right in holding that the date on which tenancy was determined, the right in favour of the landlord got accrued. Such right could not have been set at naught by the tenant by unilateral act by passing a resolution to reduce 'paid up share capital' of the Company.

39. In this regard, it may be profitable to refer to a decision of this Court in Gajanan Dattatraya v. Sherbanu Hosang Patel & Ors., (1975) 2 SCC 668. In Gajanan, the Court was called upon to consider clause (e) of Section 13(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which read thus; 13(1)(e). That the tenant has, since the coming into operation of this Act, unlawfully sublet, or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1943, unlawfully given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein.

(emphasis supplied)

40. The tenant took on lease the premises on January 1, 1960. He, however, sublet a part of the premises in August, 1965. The landlord issued a notice on April 1, 1967 and terminated the tenancy. The tenant denied that there was unlawful sub-letting of a part of the premises. It was further submitted that in any case, the so-called sub-tenant vacated the premises on April 14, 1967 i.e. before the suit was instituted by the landlord and hence, cause of action did not survive. It was

contended on behalf of the tenant that Section 13(1)(e) used the expression "has sub-let", i.e. the present perfect tense which contemplated the event connected in some way with the present time. Since the sub-tenant had already vacated and left the premises, at the most it could be said that the tenant 'had sub-let' the premises but it was not a ground for eviction under the Act and hence no decree could have been passed. Reliance was also placed on an earlier decision of this Court in Goppulal v. Thakurji Shriji Shriji Dwarkadheshji, (1969) 3 SCR 989 : (1969) 1 SCC 792.

41. Negativing the contention, upholding the decree of eviction and distinguishing Goppulal, this Court said;

> "The provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e), namely, that he has sublet. The language is that if the tenant has sublet, the protection ceases. To accede to the contention of the appellant would mean that a tenant would not be within the mischief of unlawful subletting if after the landlord gives a notice terminating the tenancy on the ground of unlawful subletting the sub-tenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful subletting. In that way the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction arises once the fact of unlawful subletting is proved. At the date of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted".

(emphasis supplied)

42. The Court approved the view taken by the High Court of Gujarat in Maganlal Narandas Thakkar v. Arjan Bhanji Kanbi, (1969) 10 Guj LR 837. In Maganlal, the High Court of Gujarat had an occasion to consider a pari materia provision under the Saurashtra Rent Control Act, 1951?.

43. A similar argument was advanced before the Court. However, considering the scheme of the Act, the Court refuted the contention. The Division Bench observed;

> "So far as the first point is concerned, Mr. Desai laid great stress, and relied very heavily, on the grammatical meaning of the words 'has sub-let'. His argument is that the meaning of the words 'has sub-let' include the element that the subletting must be continuing on the date when the plaintiff filed his suit. He stated, and there is no dispute on the point, that the words 'has sub-let' do not use of the verb 'sub- let' in the present perfect tense. He referred to page 61 of the Handbook of English Grammar by R.W. Zandvoort. In paragraph 140 of this Book it is stated that when a verb is used in present perfect tense, it denotes "a completed past action connected, through its result, with the present moment". The argument of Mr. Desai was that the subletting which started sometime after 1951, that is after the Act came into operation, must be connected with the present moment through its result; and his argument was that

once the sub-tenancy was created, it must be connected with the present moment-the date of filing the suit-by its result by the sub-tenant continuing in possession of the premises upto that date. Mr. Desai thus urged before us that unless a sub-tenant were in possession of the property sublet on the date of the suit it cannot be said that the tenant 'has sub-let' the premises, even though a sub-tenancy was in fact created by the tenant. In our opinion if this interpretation were to be accepted, the result would be that a tenant can with impunity put some other person in possession of the premises as a sub- tenant and avoid an order for delivery of possession against him by seeing to it that the sub-tenant departs from the property before the plaintiff files a suit. Having regard to the scheme of the Rent Control Act, particularly the scheme of Sections 12 and 13 of the Act and the context in which the words 'has sub- let' are used, it appears to us that that is not the way in which the meaning of the words 'has sub-let' should be gathered. If the Rent Control Act were not in force and the parties were left to their ordinary rights under the Transfer of Property Act, the landlord will have a vested right to recover possession in him as soon as he terminates the tenancy of the tenant in the manner provided in the Transfer of Property Act. After terminating the tenancy he can immediately call upon the tenant to hand over possession to him. By enacting Section 12 of the Rent Control Act, the landlord's right to terminate the tenancy is not affected, but the enforcement of his right to recover possession immediately thereafter from the tenant is affected. The provisions of Section 12 prevent a landlord from recovering possession of the property from a tenant even after a lawful termination of his tenancy, provided the tenant fulfils the conditions mentioned in Section 12. Section 12 does not take away the right of the landlord to recover possession of the premises but merely postpones the enforcement of this right of the landlord so long as the tenant fulfils the conditions laid down in that section. Having put this impediment in the enforcement of the right of possession of the landlord or in other words, having clothed the tenant with an immunity from dispossession, the Legislature proceeds in Section 13 to lay down those conditions on the fulfillment of which the landlord is entitled to recover possession of the premises from the tenant. Section 13, therefore, provides for those contingencies on proof of which the tenant loses the immunity from dispossession under Section 12. Some discussion took place on the question whether the tenant has a right of possession or whether he has merely an immunity from being dispossessed. Whether it be called an immunity from dispossession or whether it be called a personal right of possession, the fact remains that by Section 13, the Legislature has provided for dispossession of tenant, despite provisions of Section 12, if the Court is satisfied that any one of the grounds mentioned in Section 13 does exist. One of such grounds is the subletting of the premises or a part thereof by the tenant. In view of this scheme of the provisions in Sections 12 and 13 of the Act, it is necessary for us to construe the meaning of the words 'has sub-let' keeping in mind that the verb 'sub-let' is used in the present perfect tense. First, it must be a completed past action, that is the subletting must be completed. A subletting is complete as soon as the sub-tenant is put in possession of the premises given to him on sublease. Now, this completed act of subletting must have a result. What would be that result in the

> context of Sections 12 and 13 of the Act? The result of subletting would be removal of the impediment in the way of the landlord to recover possession of the premises. In other words, the result of subletting would be to take away that personal right of possession which the tenant enjoyed under the provisions of the Rent Act. Now, this result must be connected with the present moment. The present moment will be the moment when the suit is filed. How is this result connected with the filing of the suit? The answer is quite obvious. It is this removal of the impediment in the way of the landlord's recovery of possession which induces him to go forthwith to the Court and file a suit for possession. Therefore, the words 'has sub-let' mean that a sub-letting has taken place and as a result of that subletting the impediment in the way of the landlord to recover possession has been removed, thus, inducing him to go to Court and ask for recovery of possession. It is the result of the completed act, i.e. the removal of the impediment in his way, which permits the landlord to go to the Court and ask for a decree for possession. It is not necessary, therefore, that subletting must continue enough if the premises have been sub-let sometime after the coming into operation of the Act. The provisions of Section 15 of the Saurashtra Rent Control Act make subletting unlawful. Therefore, any subletting by the tenant after the Act came into operation immediately removes the impediment in the way of the landlord to recover possession and entitles him immediately to go to the Court and ask for recovery of possession. In order to convey the correct meaning of the words 'has sub-let' it is not necessary to show that the subletting was in existence on the date of suit. It is enough that the subletting has taken place sometime after the Act came into operation; it does not matter that the subletting came to an end before the landlord gave notice or before the landlord filed a suit".

(emphasis supplied)

44. In our opinion, the ratio laid down in the above cases applies to the present case as well. Admittedly, on the date the tenancy was terminated, the tenant (Public Limited Company) was having a paid up share capital of rupees more than one crore. Under clause (b) of Section 3(1) of the Act, therefore, the provisions of the Act were not applicable to the suit-premises. It is true that a resolution was passed by the Company to reduce the paid up share capital to less than rupees one crore, but the said resolution was never approved by BIFR. But even otherwise, once it is proved that the tenancy was legally terminated and the Act would not apply to such premises, a unilateral act of tenant would not take away the accrued right in favour of the landlord. Unless compelled, a Court of Law would not interpret a provision which would frustrate the legislative intent and primary object underlying such provision. We, therefore, see no infirmity in the conclusions arrived at by the courts below.

EQUITABLE CONSIDERATIONS

45. The learned counsel for the respondent- landlord is also right in submitting that the appellant-tenant does not deserve equitable relief under Article 136 of the Constitution. The tenant has not paid 'rent'/'mesne profits' since more than ten years. Even after approaching this Court, it had made

part payment pursuant to interim order made in April, 2005. But nothing was paid/deposited thereafter even though two years have passed. These facts have not been disputed by the appellant. We are, therefore, of the view that even on that ground, the appellant-tenant cannot ask for discretionary and equitable relief and we are not inclined to grant such relief.

46. For the foregoing reasons, the appeal deserves to be dismissed and is, accordingly, dismissed with costs.