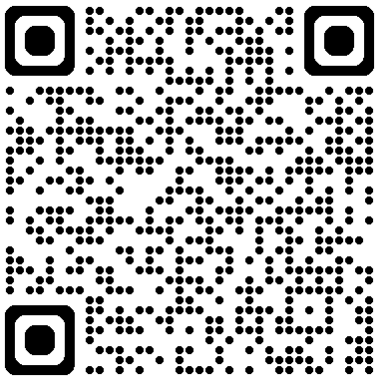
Restoration of Rent Control Protection

Case Name: M/S. Depe Global Shipping Agencies Pvt. Ltd. v. M/S. Mather And Platt (India) Ltd.

Citation: 2024:BHC-AS:39344

Act: Maharashtra Rent Control Act, 1999



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 719 OF 2023

M/s. Depe Global Shipping Agencies
Pvt. Ltd., a private company
Incorporated under Companies Act, 1956
And having its registered office at
Hamilton House, J. N. Heredia Marg,
Ballard Estate, Mumbai – 400 038. } …Applicant
(Original Plaintiff)

-Versus-

M/s. Mather and Platt (India) Ltd.
A private limited company incorporated
Under Companies Act, 1956,
And having its registered office at
Hamilton House, J. N. Heredia Marg,
Ballard Estate, Mumbai – 400 038. } …Respondent
(Original Defendant)

Mr. Haresh Jagtiani, Senior Advocate with Mr. Yashpal Jain, Mr. Suprabh Jain, Mr. Pushpvijay Kanoji, Ms. Jahnavi Vora, Mr. Siddhesh Jadhav and Ms. Aashna Punjabi i/b Haresh Jagtiani & Associates, *for the Applicant.*

Mr. Prasad Dani, Senior Advocate with Ms. Jai Kanade, Ms. Sonal Doshi and Mr. Ishvendra Tiwari i/b Sonal Doshi & Co., *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 11 September 2024.

Pronounced On : 4 October 2024.

JUDGMENT :-

A. ISSUE FOR CONSIDERATION

1) The issue involved in the Revision Application is permissibility to seek restoration of protection of rent control legislation by an entity, which has once lost the same. Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 (MRC Act) excludes the entities enumerated therein from application of the Act. Accordingly a public or private limited company having paid up share capital of rupees one crore or more is excluded from protection of its tenancy under the MRC Act. The issue that this Court is tasked upon to decide is whether a company which had paid up share capital in excess of Rs. 1 Crore as on the date of coming into effect of MRC Act (31 March 2000) and had lost the rent control protection, can resume the lost rent control protection on account of subsequent reduction of its paid up share capital below Rs. 1 crore.

B. THE CHALLENGE

2) Applicant-lessor is aggrieved by dismissal of its Suit seeking ejectment of Respondent and has accordingly invoked revisionary jurisdiction of this Court under Section 115 of the Code

of Civil Procedure, 1908 (**Code**) for setting up a challenge to the Judgment and Order dated 11 August 2023 passed in P. Appeal No. 508 of 2016, by which the Appellate Bench of the Small Causes Court has confirmed the decree dated 6 October 2016 passed by the Small Causes Court dismissing the T.E. & R. Suit No. 198/211 of 2006.

C. FACTS

3) The building 'Hamilton House' situated at 8, J.N. Heredia Marg, Ballard Estate, Mumbai 400 038 was earlier owned by BP India Ltd, which had inducted Defendant-Company as monthly tenant in respect of the preemies located on the entire second and fourth floor. B.P. India Ltd. had filed RAE Suit No.244/515 of 1995 in the Small Causes Court for ejectment of the Defendant, which was compromised, under which the Defendant handed over possession of the fourth floor to BP India Ltd. and in turn Defendant's tenancy in respect of second floor was agreed not to be terminated and accordingly, no further steps were to be taken for recovery of possession of second floor. This is how Defendant remained as a monthly tenant of B. P. India Ltd. in respect of entire second floor admeasuring approximately 5000 sq.ft. in the building Hamilton House **(suit premises).** Defendant was paying Rs. 13,865/- towards rent in respect of the suit premises. Plaintiff purchased the building Hamilton House and thus became Defendant's landlord/lessor in respect of the suit premises.

4) According to Plaintiff, Defendant being a limited company having paid up share capital of more than Rs. 1 crore as on 31 March 2000, is not entitled to claim protection under MRC Act 1999 and therefore provisions of Act are not applicable to it. Plaintiff accordingly served termination notice dated 24 December 2002 calling upon Defendant to handover vacant possession of the suit premises. Defendant replied the termination notice on 28 December 2002, to which Plaintiff sent a Rejoinder on 18 January 2003. Treating Defendant as an unprotected tenant, Plaintiff filed eviction suit under Section 41 of the Presidency Small Causes Act, 1888 (**PSCC Act**), being T.E. & R. Suit No. 198/211 of 2006.

5) Defendant filed Written Statement raising preliminary objection about maintainability of the suit under Section 41 of the PSCC Act and contended that tenancy between the Plaintiff and Defendant is governed by provisions of MRC Act. Defendant has further pleaded that its paid-up share capital was Rs.75,60,000/- as on 31 March 2000 by relying on the Order dated 18 April 2001 passed by this Court in Company Petition Nos. 381 of 2000, 382 of 2000 and 383 of 2000 and certificate issued by Registrar of Companies.

6) After the Defendant filed the Written Statement, Plaintiff filed an application for amendment of plaint to incorporate averments relating to Judgment and Order dated 18 April 2001 passed by this Court. The application was resisted by the Defendant. The Small Causes Court allowed the application for amendment of plaint on 2 November 2006. The order allowing amendment was challenged before this Court by filing Writ Petition No. 213 of 2007.

By Order dated 4 April 2011, this Court disposed of the petition by granting liberty to the Defendant to file additional written statement. Accordingly, Plaintiff amended the plaint and additional paragraph 7(a) was incorporated in the plaint. In the amended plaint, Plaintiff pleaded that the alleged reduction of the share capital of the Defendant-Company was not carried out in lawful manner and that Defendant has fraudulently obtained Order dated 18 April 2000. In the amended Plaint, Plaintiff pleaded details of device employed by Defendant in voluntarily reducing its paid-up share capital from Rs. 18.90 crores to Rs. 75.60 Lac by showing that transfer of its Fire Safety and Fluid Divisions to its sister concerns Veedip Financial Services Pvt. Ltd. **(Veedip)** and Datum Trading Pvt. Ltd. **(Datum)**. Plaintiff also pleaded that the order of this Court sanctioning the scheme of arrangement and merger was a result of misrepresentation made by the Defendant-Company.

7) Defendant filed additional Written Statement to the amended plaint denying the contents of amended plaint and objecting to the attempt on Plaintiff's part to challenge order passed by this Court in Small Causes Court. Additionally, Defendant justified the necessity for seeking sanction for the Scheme of Arrangement and De-merger.

8) On 15 March 2004, issues were framed. Plaintiff filed application for recasting the issues in September 2011, in view of substantial amendment in the plaint and filing of additional Written Statement. The application was resisted by the Defendant. The Small Causes Court by order dated 26 September 2011 rejected the application, which was challenged before this Court by filing Writ

Petition No. 8355 of 2011. By Judgment and Order dated 21 October 2011, this Court set aside the order of the Small Causes Court and framed 3 additional issues. Accordingly, the Small Causes Court framed 3 additional issues on 9 December 2014. Both the parties led evidence in support of their respective claims. After considering the pleadings and evidence on record, the Small Causes Court passed Judgment and Decree dated 6 October 2016 and dismissed Plaintiff's suit on the ground that share capital of the Defendant-Company on the date of institution of suit as well as on the date of termination notice was less than Rs.1 crore and therefore Plaintiff ought to have filed the suit under the MRC Act. The Small Causes Court also held that Order dated 18 April 2000 passed by this Court was binding on the Plaintiff and that Plaintiff failed to prove that the said order was obtained fraudulently by the Defendant.

9) Plaintiff challenged the judgment and order of the Small Causes Court by filing P. Appeal No. 508 of 2016 before the Appellate Bench of the Small Causes Court. The Appellate Bench, by Judgment and Order dated 11 August 2023, has dismissed the Appeal and confirmed the Judgment and decree dated 6 October 2016 passed by the Small Causes Court. Aggrieved by the decisions of the Small Causes Court and its Appellate Bench, Applicant-Plaintiff has filed the present Revision Application.

D. SUBMISSIONS

10) Mr. Haresh Jagtiani, the leaned senior advocate appearing for the Applicant and Mr. Prasad Dani, the learned senior advocate appearing for Respondent, have canvassed extensive

submissions in support of their respective contentions. They have also filed written notes of arguments. The submissions canvassed are briefly captured below.

D. 1 SUBMISSIONS ON BEHALF OF APPLICANT

11) Mr. Jagtiani would submit that Respondent, whose paid up share capital was Rs.18.90 crores as on the date of coming into effect of MRC Act, is clearly a 'cash rich entity' which stood excluded from protection of rent control legislation. All the entities referred to in Section 3(1)(b) of the MRC Act are deemed to be cash rich entities and once protection *qua* them is removed, such entities cease to be statutory tenants under the MRC Act and would be treated as tenants governed by the provisions of the Transfer of Property Act, 1882. That once the protection enjoyed prior to 31 March 2000 has been revoked by the legislation, the same cannot be reinstated by voluntary act of the concerned entity by reducing its paid up share capital to less than Rs.1 crore. That legislative object and intent in enacting MRC Act must be borne in mind. The legislature has consciously provided for exclusion of cash rich entities from the protection of the MRC Act by including them in Section 3(1)(b). The class of tenants enumerated in that provision are treated by the legislature as entities who can fend for themselves and negotiate with their respective landlords for payment of rent as per prevalent market conditions. In support of his contention that respondent is a cash rich entity, who could afford to pay market rent as on 31 March 2000, Mr. Jagtiani would rely upon judgment of the

Apex Court in ***Leelabai Gajanan Pansare and others Versus. Oriental Insurance Company Limited and others***[1].

12) Mr. Jagtiani would further submit that paid up share capital of a company is a criterion which is consciously included by the legislature for removing protection of rent control legislation. Relying upon judgment of this Court in ***Crompton Greaves Ltd. Versus. State of Maharashtra and others***[2], he would submit that paid up share capital of the company is its real worth and a factor which rarely fluctuates. That once a Company is classified into cash rich entity on the basis of its paid up share capital as on 31 March 2000, there is nothing in the MRC Act which permits the company to regain lost protection of rent control legislation. In fact, if the legislature intended that the tenant may resume enjoying the protection, it would have made a specific provision in the Act. He would rely upon judgment of the Apex Court in ***Central Bank of India Versus. National Rayon Corporation Limited***[3] in support of the contention that rent control protection once lost cannot be regained by a tenant.

13) Mr. Jagtiani would further submit that the Respondent-tenant lost the protection of MRC Act on 31 March 2000 and the status of its paid up share capital as on the date of filing of the suit becomes irrelevant. That there is marked difference in cause of action for a landlord to seek eviction of tenant who has lost protection under Section 3(1)(b) of MRC Act and the cause of action

[1] (2008) 9 SCC 720
[2] 2002(2) Mh.L.J. 305
[3] (2014) 13 SCC 291

that arises under the provisions of Section 15 or 16 of the said Act. That for former class of causes of action, there is no period of limitation and it is for landlord to decide the day to seek eviction of tenant who has lost protection under rent control legislation. In a given case, the landlord may tolerate presence of tenant covered by Section 3(1)(b) and subsequently choose to terminate his monthly tenancy under Transfer of Property Act. That section 3(1)(b) uses the word 'having' while referring to paid up share capital of a company as on 31 March 2000 and therefore share capital of the company as on the date of termination of tenancy becomes irrelevant. That there is marked difference between causes of action under Section 16(1)(a) to 16(1)(f) where the cause is complete on account of commission of certain acts for eg. where tenant 'has' sublet the premises, as contradistinct from use of the words 'having' share capital of Rs.1 crore or more. Relying upon judgment of the Apex Court in ***Carona Ltd. Versus. Parvathy Swaminathan & Ors.***[4], Mr. Jagtiani would submit that subsequent act of a tenant in reversing the violation giving rise to cause of action for eviction is irrelevant. He would submit hat the judgment in ***Carona Ltd.*** fully covers the present case.

14) Mr. Jagtiani would further submit that by order passed by this Court in case of present parties in ***Depe Global Shipping Agencies Pvt. Ltd Versus. MPIL Corporation Ltd.***[5], a specific additional issue was directed to be framed about company not enjoying protection of MRC Act as on 31 March 2000 subsequently resuming such protection on account of reduction of its share capital below Rs.1 crore. That both the Courts however failed to answer the said

[4] (2007) 8 SCC 559
[5] 2012(2) Mh.L.J. 318

additional issue in its right perspective. That all the submissions canvassed before this Court were also canvassed before the learned Judge as well as before the Appellate Bench of Small Causes Court, both of whom have chosen to skirt the same.

15) Mr. Jagtiani would further submit that the unilateral and voluntary attempt on the part of Respondent in reducing its paid up share capital to less than Rs.1 crore under Sections 391 to 394 of the Companies Act, 1956 can have no impact vis-à-vis the landlord who is neither party to the same nor has any remedies in respect thereof. That the scheme of demerger and amalgamation resulting into reduction of paid up share capital has limited operation within the boundaries and jurisdiction of the Companies Act and the order sanctioning such demerger and amalgamation applies in *personam* and not in *rem*. It is jurisprudentially valid in the area of corporate law alone and cannot govern relationship of landlord and tenant under the MRC Act. In support, Mr. Jagtiani would rely upon order passed by the Company Law Board in ***Efirst Technologies Pvt. Ltd. and Others. Versus. Hiferworld Cybertech Ltd. and Others***[6]. He would also rely upon judgment of the Apex Court in ***M/s. General Radio and Appliances Co. Ltd. and others Versus. M.A. Khader (Dead) by LRs***[7], wherein, according to Mr. Jagtiani, attempt on the part of the Tenant-Company to merge with another Company was viewed by the Apex Court as an act of subletting on the principle of merger operating in *personam* and not in *rem*. Mr. Jagtiani would submit that merely because Scheme is binding on statutory or regulatory authorities such as Income Tax, Sales Tax, Reserve Bank of India,

[6] 2004 SCC OnLine CLB 46
[7] (1986) 2 SCC 656

SEBI etc. who are necessary parties under the provisions of Sections 391 to 394 and are mandatorily required to participate in the scheme under Section 230(5) of the Companies Act, 2013 and Section 394(A) of the Companies Act, 1956, it cannot be contended that the Scheme becomes binding on other entities, particularly the landlord.

16) Mr. Jagtiani would further submit that the appointed date of 1 April 1999 for the Scheme sanctioned for the Respondent is irrelevant and inconsequential to the rationale of Section 3(1)(b) of the MRC Act as the said date has relevance only to the concerned entity and its stakeholders. It cannot have any impact or significance beyond the limits of operation of the scheme. In support, he would rely upon judgment of the Apex Court in ***Hindustan Lever and Another Versus. State of Maharashtra and Another***[8].

17) Mr. Jagtiani would further submit that applying the scheme of arrangement to the landlord for the purpose of resuming protection, which stood revoked as on 31 March 2000, would tantamount to fraud on statute, which is impermissible. Fraud on statute being a jurisprudential concept, the same need not be pleaded so long as evidence before the Court sustains it. In support, he would rely upon judgment of the Apex Court in ***Bhaurao Dagdu Paralkar Versus. State of Maharashtra and Others***[9]. That the principle of fraud on statute would apply in the present case where the Scheme of Arrangement sanctioned in accordance with object of one statute is sought to be transported to frustrate the object of another statute. An attempt to apply results of the Scheme outside its legitimate area of

[8] (2004) 9 SCC 438
[9] (2005) 7 SCC 605

operation to another statute, enacted for altogether different purpose is a fraud on statute. He would also rely upon judgment of the Apex Court in ***Reserve Bank of India Versus. Peerless General Finance and Investment Co. Ltd. and others***[10].

18) Mr. Jagtiani would further submit that apart from fraud on statute, there is factual fraud involved in the present case where the Respondent has deliberately interfered with the numbers while seeking approval to the Scheme of Arrangement. That the net asset value of Respondent's Fire and Fluid Divisions was earlier indicated as Rs.17.87 crores by the Auditor and the board resolution for the Scheme was adopted after considering the said audit report. If the said net value of Rs.17.87 crores of Fire and Fluid Division was to be adjusted against the paid up share capital of Respondent of Rs.18.90 crores, still a balance of Rs.1.03 crores would have remained as paid up share capital of Respondent retaining its status as cash rich entity. However, the figure of net asset value of Fire and Fluid Divisions, was deliberately and artificially inflated by the Respondent to Rs.19.88 crores in the Scheme submitted before this Court by misleading and misrepresenting this Court for sole purpose of retaining protection of the MRC Act. Mr. Jagtiani would rely upon provisions of Section 44 of the Indian Evidence Act, 1872 in support of his contention that fraud can be agitated in collateral proceedings. Relying upon judgment of Division Bench of Calcutta High Court in ***Ashwini Kumar Samaddar Versus. Banamali Chakrabarty and ors.***[11] and of Delhi High Court in ***Seva International Fashions & Anr. Versus. Employees' Provident Fund Organization and***

[10] (1987) 1 SCC 424
[11] AIR 1917 Cal 612(1)

Ors.[12], Mr. Jagtiani would submit without prejudice to his other contentions that the entire Scheme of Arrangement has ultimately resulted into redistribution of the paid up share capital of the sister concerns requiring application of principle of lifting of corporate veil by treating Respondent Veedip and Datum as unit of Respondent for the purpose of application of provisions of Section 3(1)(b) of the MRC Act. In support of his contention of lifting of corporate veil, he would rely upon judgment of Apex High Court in ***Delhi Development Authority Versus. Skipper Construction Co. (P) Ltd. and another***[13] and ***State of Rajasthan and Others Versus. Gotam Lime Stone Khanij Udyog Private Limited and another***[14] and of Single Judge of the Delhi High Court in ***Delhi Airport Metro Express Private Limited Versus. Delhi Metro Rail Corporation Ltd.***[15]

19) Lastly, Mr. Jagtiani would submit that in the event of this Court accepting Applicant's contention of application of provisions of Section 3(1)(b) to the Respondent, the suit filed by the Applicant be decreed instead of remanding the same before Small Causes Court as the order of remand would cause enormous hardship and delay to the applicant in obtaining reliefs.

D. 2 SUBMISSIONS ON BEHALF OF RESPONDENT

20) Mr. Dani would submit that the Scheme of the MRC Act, which came into effect from 31 March 2000, is such that Section 2 thereof applies to premises on two parameters of 'purpose of

[12] 2007 SCC OnLine Del 271
[13] (1996) 4 SCC 622
[14] (2016) 4 SCC 469
[15] 2023 SCC OnLine Del 1619

letting' and the 'territorial area' and Section 3 further seeks exempt certain premises from its applicability notwithstanding their coverage under Section 2. That therefore it is impermissible to expand the scope of exempted categories enumerated under Section 3(1)(b). Every exempted category specified under Section 3(1)(b) is a separate and independent category which must be understood in the context of its specific statutory wording as the said categories do not take colour from each other. That 'cash richness' of entities is not the determinative factor to identify entities covered under Section 3(1)(b) as all cash rich entities are not exempted from application of the MRC Act. He would rely upon judgment of this Court in ***Shetkari Sahakari Sangh Ltd. Kolhapur Versus. Dilip Shankarrao Patil***[16] wherein this Court held that every cooperative society cannot be exempted from application of MRC Act by applying the test of 'affordability to pay market rent.' That since the language of Section 3(1)(b) is plain and unambiguous, there is no scope for expanding the entities enumerated in four categories of Section 3(1)(b).

21) Mr. Dani would further submit that the Legislature has consciously used the word 'having' in Section 3(1)(b) instead of using the word 'has' meaning thereby that only the entities who were having paid up share capital in excess of Rs.1 crore as on the date of termination of tenancy would stand excluded from application of the MRC Act. If the legislature intended to exclude every company which had paid up share capital of Rs.1 crore as on 31 March 2000 from applicability of the Act, it could have used the word 'has' instead of using the word 'having'. Mr. Dani would further submit that there is conscious use of the word 'having' and 'has' in various

[16] Second Appeal No.126 of 2023 decided on 25 April 2024.

provisions of the MRC Act. He would submit the grounds of eviction under Section 16(1)(a) to (f) refer to the acts done in the past whereas the ground of *bonafide* requirement under Section 16(1)(g) requires continuation of the cause as on the date of filing of the suit. This is the reason why conscious use of the word 'having' in Section 3(1)(b) must be given its proper grammatical meaning by interpreting that only companies who qualify the requirement of having paid up share capital in excess of Rs.1 crore on the date of termination of tenancy would get exempted from application of the Act.

22) Mr. Dani would further submit that the crucial or controlling date to determine the status of the company for applicability of exemption under Section 3(1)(b) is the date on which the landlord files the proceedings for eviction and not the date of enactment of the Rent Act. He would rely upon judgment of the Apex Court in ***MST. Subhadra Versus. Narsaji Chenaji Marwadi***[17], ***Vasudev Dhanjibhai Modi Versus. Rajabhai Abdul Rehman and others***[18] and ***Nalanikant Ramadas Gujjar Versus. Tulasibai (Dead) by LRs and others***[19]. He also relies upon judgment in ***Carona Ltd.,*** cited by Mr. Jagtiani, in support of his contention that the Apex Court has considered the jurisdictional fact of the share capital being in excess of Rs.1 crore at the time when the proceedings were initiated against the Company. He would submit that except to this limited extent, the judgment in ***Carona Ltd.*** has no application where approval of BIFR was not taken for reduction of share capital below Rs.1 crore and therefore there was no reduction of share capital in the eyes of law.

[17] AIR 1966 SC 806
[18] AIR 1970 SC 1475
[19] AIR 1997 SC 404

23) Mr. Dani would further submit that the reduction in the paid up share capital of the Respondent has taken effect from 1 April 1999 i.e. before the enactment of MRC Act on 31 March 2000 and such reduction has taken place not only after following due procedure under Sections 391 and 394 of the Companies Act, but through an order passed by this Court. He would rely upon judgment of this Court in ***New Era Fabrics Ltd., Mumbai Versus. Bhanumati Keshrichand Jhaveri and others***[20] in which judgment of the Apex Court in ***Carona Ltd.*** was considered and it was held that the relevant date for ascertaining the authorized share capital of a Company is the date of filing of the suit. He would rely upon judgment of this Court in ***Pune Zilla Madhyawarti Sahkari Bank, Pune Versus. Smt. Urmila Chandrakant Patil***[21] in support of his contention that it is impermissible to enlarge the scope of Section 3(1)(b) by way of interpretation.

24) Mr. Dani would further submit that Respondent took commercial decision of demerger of its two business divisions and adopted the legal procedure by approving the Scheme of Arrangement and Demerger vide Resolution dated 29 October 1999, much before coming into effect of MRC Act. Though the Scheme is sanctioned by this Court by order dated 18 April 2001 the same has come into effect from 1 April 1999 whereby Respondent's paid up share capital has been reduced from Rs.18,90,19,120/- to Rs.75,60,000/- w.e.f. 1 April 1999. Therefore, even as on 31 March 2000, Respondent had share capital of less than Rs.1 crore. In any

[20] 2017(5) Mh.L.J. 781
[21] 2006(3) Mh.L.J. 53

case, as on the date of service of termination notice on 24 December 2002, this Court had already sanctioned the scheme on 18 April 2001 and the suit for eviction under Section 41 of the Presidency Small Causes Courts Act, 1882 was filed on 25 July 2003. Therefore, the crucial date for determining paid up share capital of Respondent would be the date of filing of the suit i.e. 25 July 2003. Mr. Dani would further take me through the order of this Court sanctioning the Scheme of Arrangement and Demerger. He would submit that this Court had expressly reserved liberty to apply to the Court for any directions by any person interested in the Scheme. That Petitioner never challenged the order sanctioning the Scheme. That under the provisions of Section 391 and 394 of the Companies Act, the order of the Company Board sanctioning the scheme has legal effect and is binding not only on the parties to the arrangement but also on third parties. He would rely upon judgment of this Court in ***Sadanand S. Vardhe & others Versus. State of Maharashtra & others***[22] in this regard. He would also rely upon judgment of the Apex Court in ***Marshall Sons & Co. (India) Ltd. Versus. Income Tax Officer***[23] holding that every Scheme has to necessarily provide a date from which the Scheme shall take effect and that where the Court does not prescribe any specific date, but merely sanctions the Scheme, it should follow that the date of amalgamation/transfer is the date specified in the scheme. He would rely upon judgment of this Court in ***National Organic Chemical Industries and another Versus. State of Maharashtra and others***[24] delivered in the context of constitutional validity of Section 33(c) of the Bombay Sales Tax Act, 1959 in which it is held

[22] (2001) 1 Bom.C.R. 261
[23] (1997) 2 SCC 302
[24] 2004 SCC OnLine Bom 1089

that the status of the company as per the scheme sanctioned by the Company Court cannot be altered by the State even in exercise of its legislative power. He would also rely upon judgment of this Court in ***Commissioner of Income-Tax Versus. Mather and Platt (I.) Ltd.***[25] in which, according to Mr. Dani, Division Bench of this Court has held that the scheme of amalgamation comes into effect from the appointed date specified in the scheme. In support of the same contention, he would rely upon judgment of Division Bench of this Court in ***Commissioner of Income-Tax, Pune-I Versus. Swastik Rubber Products Ltd.***[26]

25) Mr. Dani would further submit that since the scheme of amalgamation specifying the date of demerger has been sanctioned by judicial order of this Court, it is impermissible for either Small Causes Court or for this Court to deny effect of such demerger even in a collateral proceedings. That Small Cause Court is a Court of limited jurisdiction and Section 19 of the PSCC Act provides that express jurisdictional bar excluding its jurisdiction in respect of suits concerning any act ordered or done by any Judge or Judicial Officer or suits or judgment of any High Court.

26) So far as the ground of fraud on statute as well as the fraud in fact sought to be canvassed by the Applicant, Mr. Dani would submit that the allegations are not only vague but there are no supportive pleadings in the plaint. It is well settled law that the fraud must be both pleaded and proved and in support he would rely upon judgment of ***Union of India and another Versus. K.C. Sharma and***

[25] 1992 SCC OnLine Bom 625
[26] 1979 SCC OnLine Bom 254

Company and others[27]. He would also rely upon judgment in ***Shrisht Dhawan (SMT) Versus. M/s. Shaw Brothers***[28] in support of his contention that fraud is essentially a question of fact, the burden to prove which is upon him who alleges it.

27) Mr. Dani would submit that both the Courts have concurrently negatived the contentions raised by Applicant and in absence of any glaring error in such concurrent findings, this Court would be loathe in interfering with the same in exercise of its revisionary jurisdiction. He would pray for dismissal of the Revision Application.

E. REASONS AND ANALYSIS

28) The core issue involved in the present case is about applicability of provisions of Section 3(1)(b) of the MRC Act to the Respondent-Company who is the tenant of Revision Applicant. The applicability of provisions of Section 3(1)(b) of the MRC Act to a tenant results in loss of protection under the Act to such tenant. The Revision Applicant contends that Respondent stands excluded from protection of its tenancy under the MRC Act and that therefore the tenancy has rightly been terminated under the provisions of Section 106 of the Transfer of Property Act and that therefore the Suit filed under Section 41 of the PSCC Act ought to have been decreed by the Small Causes Court. The Small Causes Court has however negatived Revision Applicant's contention and has held that Respondent is not covered by Section 3(1)(b) of the MRC Act and that therefore

[27] (2020) 15 SCC 209
[28] (1992) 1 SCC 534

termination of the tenancy is neither valid nor the Court had jurisdiction to entertain the suit. The Appellate Bench of Small Causes Court has dismissed the Appeal preferred by the Revision Applicant and has confirmed the decree of the Trial Court dismissing Applicant's suit.

E. 1 STATUTORY SCHEME OF MRC ACT

29) For resolving the controversy at hand, it would be necessary to make a quick reference to the statutory scheme of the MRC Act. Section 2 of the Act provides that the Act shall apply to premises let for the purpose of residence, education, business, trade or storage in the areas specified in Schedule-I and Schedule-II. Section 2 of MRC Act provides thus :

> **2. Application.**
> (1) This Act shall, in the first instance, apply to premises let for the purposes of residence, education, business, trade or storage in the areas specified in Schedule I and Schedule II.
>
> (2) Notwithstanding anything contained in sub-section (1), it shall also apply to the premises or, as the case may be, houses let out in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 and Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 were extended and applied before the date of commencement of this Act and such premises or houses continue to be so let on that date in such areas which are specified in Schedule I to this Act, notwithstanding that the area ceases to be of the description therein specified.
>
> (3) It shall also apply to the premises let for the purposes specified in sub-section (1) in such of the cities or towns as specified in Schedule II.

> (4) Notwithstanding anything contained hereinabove, the State Government may, by notification in the *Official Gazette*, direct that –
>
> (a) this Act shall not apply to any of the areas specified in Schedule I or Schedule II or that it shall not apply to any one or all purposes specified in sub-section (1);
>
> (b) this Act shall apply to any premises let for any or all purposes specified in sub-section (1) in the areas other than those specified in Schedule I and Schedule II.

30) Thus, the MRC Act applies to all premises which are let out for purposes specified in Section 2(1) as well as which are situated in areas specified in Schedule-I and II of the Act. However, Section 3 of the Act provides for exemption from application of provisions of Act to the premises covered by Section 2. Section 3 of MRC Act provides thus:

> **3. Exemption.**
> (1) This Act shall not apply ----
> (a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf, but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;
>
> (b) 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 more than rupee one crore or more.
>
> *Explanation.*- For the purpose of this clause the expression "bank" means,-
> (i) the State Bank of India constituted under the State Bank of India Act, 1955;

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;
(iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980; or
(iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.

(2) The State Government may direct that all or any of the provisions of this Act shall, subject to such conditions and terms as it may specify, not apply-
(i) to premises used for public purposes of a charitable nature or to any class of premises used for such purposes;
(ii) to premises held by a public trust for a religious or charitable purpose and let at a nominal or concessional rent;
(iii) to premises held by a public trust for a religious or charitable purpose and administered by a local authority; or
(iv) to premises belonging to or vested in an university established by any law for the time being in force.

Provided that, before issuing any direction under this sub-section, the State Government shall ensure that the tenancy rights of the existing tenants are not adversely affected.

(3) The expression "premises belonging to the Government or a local authority" in subsection (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be, and such person shall be entitled to create a tenancy in respect of such building or a part thereof.

31) For the purpose of deciding the present Revision Application, Clause (b) of sub-section (1) of Section 3 is relevant which enumerates the entities for whom applicability of provisions of MRC Act has been excluded. Section 3(1)(b) classifies such entities in four categories as under :

(i) Banks as defined under Explanation to S.3(1)(b).
(ii) Public Sector Undertakings or Corporations established by or under any Central or State Act.
(iii) foreign missions, international agencies, multinational companies,
(iv) private limited companies and public limited companies having paid up share up capital of Rs.1 crore or more.

32) Respondent is a private limited company whose paid up share capital was originally Rs.18,90,19,120/- and could thus have been easily covered by the expression 'having a paid up share capital of rupees one crore or more'. However, in the unique facts of the present case, the paid up share capital of Respondent-Company has subsequently been reduced on account of order passed by this Court on 18 April 2001 sanctioning the Scheme of Arrangement and Demerger with effect from the appointed date of 1 April 1999. Otherwise, when MRC Act came into effect on 31 March 2000, the paid up capital of Respondent-Company was undoubtedly above Rs.1 crore. Therefore, the issue for consideration is whether a tenant who has lost protection of MRC Act on account of its paid up share capital being in excess of Rs.1 crore as on the date of coming into effect of MRC Act, can regain such protection on account of subsequent reduction of its paid up share capital. In fact, this was the precise issue framed by this Court by its order dated 21 October 2011 for being determined while deciding the suit. It would be apposite to make reference to some of the observations made by this Court by directing framing of the above additional issue. In paras-24 and 25 of

the judgment in ***Depe Global Shipping Agencies Pvt. Ltd.*** (supra), this Court held as under :

> 24. Before parting with this Judgment it is also necessary to note that, based on the date of commencement of the 1999 Act, the date of filing Company Petition for accepting scheme for compromise and arrangement, the date of the order allowing the said Petition on 18/4/2011 with retrospective effect on 1/4/1999 an issue of law also arises as to whether a company which is not governed by the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 at the commencement of the said Act as on 31/3/2000 can cease to be governed by the said Section and claim protection of the said Act on account of subsequent reduction in the share capital prior to the filing of the Suit. Apart from this additional issue No. 2 as suggested by the Petitioner also needs to be recast. Mr. Madan alternatively submitted without prejudice to his first contention that none of the two additional issues arise from his pleadings, the issue cannot be framed so as to cast burden on the Defendant. Mr. Madan is justified in pointing out that the issue purported to place burden on the Respondent/Defendant rather than placing the burden on the Petitioner/Plaintiff.
>
> 25. Hence I pass the following order :
>
> (a) The impugned Judgment and Order dated 26/9/2011 is quashed and set aside. Apart from the additional issue No.1 as suggested by the Petitioner, two more issues will have to be framed by the Trial Court. Additional issue No. 2 as suggested by the Petitioner will have to be slightly modified by placing burden on the Plaintiff and issue of law as indicated above in addition to the additional 2 issues will also have to be framed.
>
> (b) The Additional issues will read thus :
>
> (i) Does the plaintiff prove that the defendant has fraudulently obtained the order dated 18th April 2001 reducing the paid up capital of the defendant ?
>
> (ii)Does the Plaintiff prove that the order dated 18th April, 2001 is not binding on the plaintiff ?
>
> (iii)Whether a Company which is not enjoying the protection of the Maharashtra Rent Control Act, 1999 as on 31/3/2000 being the date of commencement of the Act can subsequently get protection on account of reduction of its share capital below Rs. 1 Crore and whether Section 3(1)(b) of the said Act ceases to apply on account of such reduction ?

E. 2 BACKGROUND AND OBJECTIVE BEHIND EXCLUSION OF 'CASH RICH ENTITIES' FROM APPLICABILITY OF RENT ACT

33) For deciding the issue of regaining protection of MRC Act by a company subsequent to reducing its paid up share capital below Rs.1 crore, it would be necessary to understand the background in which the provision for exclusion of entities enumerated under Section 3(1)(b) of the MRC Act is enacted. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 **(Bombay Rent Act)** governed the legislative field before enactment of MRC Act. The Bombay Rent Act was enacted as a temporary measure, which was to initially operate only for two years and its application got extended from time to time until enactment of the MRC Act on 31 March 2000. Section 4 of the Bombay Rent Act provided for exemption from application of provisions of the Act, but restricted the exemption clause only to the premises belonging to Government or local authorities. There was no *pari materia* provision under Section 4 of Bombay Rent Act for exclusion of entities which are enumerated under Section 3(1)(b) of the MRC Act. The Bombay Rent Act froze standard rent payable in respect of tenanted premises and Section 7 thereof made demand of rent in excess of standard rent illegal. Considering the issue involved in the present Revision Application, it is not necessary to delve deeper into the standard rent fixation provisions under the Bombay Rent Act and it is suffice to observe that the Act virtually froze the standard rent in respect of premises governed by it. The landlords were thus neither in a position to hike the rent with passage of time nor were able to seek ejectment of a tenant unless there was default in payment of rent

under Section 12 or one of the grounds specified for eviction under Section 13 was made out. Constitutional validity of provisions of Sections 5(10), 11 and 12 of the Bombay Rent Act came to be challenged initially before this Court and later before the Apex Court in ***Malpe Vishwanath Acharya and others Versus. State of Maharashtra and another***[29] by the landlords. The Apex Court was on the verge of declaring the provisions of standard rent fixation under the Bombay Rent Act as arbitrary and was about to set them aside in ***Malpe Vishwanath Acharya***. However, it was urged on behalf of the State Government before the Apex Court that it was in the process of replacing the Bombay Rent Act with a new Act and that all the observations made by the Apex Court in the judgment would be duly taken note of while enacting the new Rent Act for State of Maharashtra. It would be apposite to make reference to observations of the Apex Court in paras-27, 29, 31 and 32 of the judgment in ***Malpe Vishwanath Acharya,*** which read thus :

> 27. It is true that whenever a special provision, like the rent control act, is made for a section of the Society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary.
>
> 29. In so far as social legislation, like the rent control act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are no exploited. At the same item such a law has

[29] (1998) 2 SCC 1

to be revised periodically so as to ensure that a disproportionately larger benefit them the one which was intended is not given to the tenants. It is not as if the government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent-the increase made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context.

31. **Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st march, 1998. The government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration.** The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good end compelling reasons in departing from the said Model Law. Mr. Nargolkar assured us that this Model law will be taken into consideration in the framing of the proposed new Rent Act.

32. **We, accordingly, dispose of these appeals without granting any immediate relief but we hold that the decision of the High Court upholding validity of the impugned provisions relating to standard rent was not correct. We however refrain from striking down the said provision as the existing Act elapses on 31.3.1998 and we hope that new Rent Control Act will be enacted with effect from 1st April, 1998 keeping in view the observations made in this judgment in so far as fixation of standard rent is concerned.** It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence. The respondents will pay the Costs.

(emphasis added)

34) It appears that L.C. Bill No. VI of 1993 was already introduced in the Legislative Council on 27 July 1993, much before delivery of judgment in ***Malpe Vishwanath Acharya*** and the Council had adopted a Motion for reference of the Bill to a Joint Committee of both the Houses. The Joint Committee had conducted series of hearing but was yet to submit its final report by the time the judgment in ***Malpe Vishwanath Acharya*** was delivered. The Committee deliberated with the stakeholders by taking into consideration the observations of the Apex Court in its judgment in ***Malpe Vishwanath Acharya*** and submitted its report. The MRC Act was accordingly enacted and brought into effect w.e.f. 31.3.2000 by not extending the provisions of Bombay Rent Act. This is how the journey of Bombay Rent Act got finally halted on account of judgment of the Apex Court in ***Malpe Vishwanath Acharya.*** Thus, MRC Act is a sequel to the judgment of the Apex Court in ***Malpe Vishwanath Acharya*** which is also an observation of the Apex Court in its judgment in ***Leelabai Gajanan Pansare*** (supra) in which it is held in para-59 as under :

> **59.** The above discussion is relevant because we must understand the reason why Section 3(1)*(b)* came to be enacted. As stated above, in our view, with the offer of an economic package to the landlords, the legislature has tried to maintain a balance. The provisions of the earlier Rent Act, as stated above, have become vulnerable, unreasonable and arbitrary with the passage of time as held by this Court in the above judgment. The legislature was aware of the said judgment. It is reflected in the report of the Joint Committee. In our view, the changes made in the present Rent Act by which landlords are permitted to charge premium, the provisions by which cash-rich entities are excluded from the protection of the Rent Act and the provision providing for annual increase at a nominal rate of 5% are structural changes brought about by the present Rent Act, 1999 vis-à-vis the 1947 Act. **The Rent Act of 1999 is the sequel to the judgment of this Court in *Malpe Vishwanath Acharya*.**
>
> *(emphasis added)*

35) In ***Leelabai Gajanan Pansare*** the issue raised before the Apex Court was whether Government Companies would be covered by the expression 'Public Sector Undertakings' occurring in Section 3(1)(b) of the MRC Act. The Apex Court formulated the point for determination in para-49 of the judgment as under :

> ***Point for Determination:***
> 49. Whether the High Court was right in holding that the words "PSUs" in Section 3(1)(b) excluded Government Companies as defined under Section 617 of the 1956 Act.

36) For giving purposive interpretation to Section 3(1)(b) of the MRC Act, the Apex Court went into the history for ascertaining the object behind enactment of the Bombay Rent Act and examined whether there was any structural change made by the legislature in the MRC Act vis-à-vis the Bombay Rent Act. More importantly, the Apex Court analysed the provisions of the Bombay Rent Act for examining the change in the economic conditions between 1947 and 31 March 2000 when MRC Act came into force. The Apex Court thereafter held in para-56 as under :

> 56. Broadly, we may state that the twin objects for enacting the 1947 Act was tenancy protection and rent restriction. In 1947, the economic scenario was different from the scenario that prevails after 31.3.2000. In 1947 rent forming provided an important source of unearned income to the landlords which led to the landlords charging exorbitant rent in urban areas. Return on investments at that time constituted considerable returns to the landlords. At that time, it was worth investing in the business of leasing. The cost of repairs was comparatively much less. The purchasing power of the rupee was relatively higher than the purchasing power of the rupee after 31.3.2000. However, by 1976, with the rise in the cost of living index, the said investments made in 1940's started giving negative returns. Coupled with the price rise and increase in cost of repairs and maintenance, municipal taxes also increased. The result was that the net asset value became negative. Consequently, old buildings started collapsing

> for lack of maintenance. Even today thousands of buildings in Greater Mumbai are in a dilapidated condition for lack of resources. Therefore, in 1976, the Legislature enacted MHADA 1976 precisely to undertake repairs and constructions of old dilapidated buildings for which cess was levied. However, with the passage of time, it appears that the position deteriorated and investments in this sector became negligible by 31.3.2000. With the price rise and with the increase in the cost of construction, certain provisions of the 1947 Act by which standard rent stood pegged/frozen as on 1.9.1940 and the provision imposing a ban on the landlords from receiving premium under Sections 18 and 19 of the 1947 Act became vulnerable to challenge as violative of Article 14 of the Constitution. Those provisions, as discussed above, were Sections 5(10), 11, 18 and 19. This position was further compounded when large premises, particularly in South Mumbai stood occupied by cash-rich entities like, statutory corporations and corporate bodies who insisted on paying meager standard rent under the 1947 Act.

37) The Apex Court in ***Leelabai Gajanan Pansare*** thereafter made extensive reference to its judgment in ***Malpe Vishwanath Acharya*** in para-57 of its judgment and held in paras-58, 70, 73, 74 and 76 as under :

> 58. Therefore, the legislature was required to keep in mind the vulnerability of fixing standard rent as on 1.9.1940. At the same time, the legislature had to keep in mind two aspects, namely, tenancy protection and rent restriction. The problem arose on account of economic factors. **However, the legislature found the solution by evolving an economic criterion.** The legislature evolved a package under which the prohibition on receiving premium under Section 18 of the 1947 Act stood deleted. In other words, landlords were given the liberty to charge premium. The second package was to exclude cash-rich body corporates and statutory corporations from the protection of the Rent Act. **This part of the economic package helps the landlords to enhance the rent and charge rent to the entities mentioned in Section 3(1)(b) who can afford to pay rent at the market rate. This was the second item in the economic package offered to the landlords under the present Rent Act.** The third item of the Rent Act was to give the benefit of annual increase of rent @ 5% under the present Rent Act. All three items constituted one composite package for the landlords. The underlying object behind the said economic package is to balance and maintain the two-fold objects of the Rent Act, namely, tenancy protection and rent protection. **The**

idea behind excluding cash-rich entities from the protection of the Rent Act is also to continue to give protection to tenants who cannot afford to pay rent at market rate.

70. According to the respondents, the words 'PSUs' in Section 3(1)(b) has to be read with the words any corporation established by or under Central or State Act. In other words, according to the respondents, only those PSUs which are established by or under any Central or State Act alone stand excluded from the protection of the Rent Act. According to the respondents, PSUs which are Government companies incorporated under Section 617 of the 1956 Act are entitled to the protection as they are not expressly excluded under Section 3(1)(b). We do not find merit in this submission. Firstly, it may be noted that several entities have been enumerated in Section 3(1)(b), namely, banks, PSUs or statutory corporations, foreign missions, international agencies, multinational companies and private limited and public limited companies having a paid up share capital of Rs. 1,00,00,000 or more. **As stated above, the said Rent Act, 1999 has brought about structural changes in the legislation.** In this case, it was open to the legislature to opt for any of the tests, namely, test of origin, test of public character of the functions performed by each of these entities, test of public character of each of the undertakings, test of agency or instrumentality, test of monopolistic status, test of mobilization of resources etc. **In the present case, we find that the legislature has opted for an economic criteria, namely, entities which are in a position to pay rent at market rates are to stand excluded from Rent Act protection. This is the test of Financial Capability. This is the golden thread which runs through Section 3(1)(a). Be it banks, PSUs. Statutory corporations, multinational companies, foreign missions, international agencies and public and private limited companies having a paid up share capital of Rs. 1,00,00,000 or more stand excluded from the Rent Act protection.** This criteria has been selected by the legislature knowing fully well that each of these entities including PSUs can afford to pay rent at the market rates.

73. Moreover, if we are to hold that PSUs do not include Government companies, as held by the High Court, we would be disturbing the package offered by the Legislature of allowing increase of rent annually at 5%, allowing the landlords to accept premium and exclusion of certain entities from the protection of the Rent Act under Section 3(1)(b). On the other hand, acceptance of the arguments advanced on behalf of the respondents on the interpretation of Section 3(1)(b) would make the Act vulnerable to challenge as violative of Article 14 of the Constitution. Therefore, we are of the view that on a plain meaning of the words 'PSUs' as understood by the Legislature, it is clear that, India's PSUs are in the form of statutory corporations, public sector companies, Government companies and companies in which the public are

> substantially interested (see: Income tax Act, 1961). When the word PSU is mentioned in Section 3(1)(b), the State Legislature is presumed to know the recommendations of the various Parliamentary Committees on PSUs. **These entities are basically cash-rich entities. They have positive net asset value. They have positive net worths. They can afford to pay rents at the market rate.**
>
> 74. Thirdly, we are of the view that, in this case, the principle of *noscittur a sociisis* clearly applicable. According to this principle, when two or more words which are susceptible to analogous meaning are coupled together, the words can take their colour from each other. **Applying this test, we hold that Section 3(1)(b) clearly applies to different categories of tenants all of whom are capable of paying rent at the market rates.** Multinational companies, international agencies, statutory corporations, Government companies, public sector companies can certainly afford to pay rent at the market rates. **This thought is further highlighted by the last category in Section 3(1)(b). Private limited companies and public limited companies having paid up share capital of more than Rs. 1,00,00,000 are excluded from the protection of the Rent Act. This further supports the view which we have taken that each and every entities mentioned in Section 3(1)(b) can afford to pay rent at the market rates.**
>
> 76. As stated above, Section 3(1)(b) strikes a balance between the interest of the landlords and the tenants; it is neither pro-landlords nor anti-tenants. It is pro-public interest. In this connection, one must keep in mind the fact that the said Rent Act, 1999 involves a structural change vis-à-vis the Bombay Rent Act, 1947. As stated above, with the passage of time, the 1947 Act became vulnerable to challenge as violative of Article 14. As stated above, the legislature has strike to balance the twin objectives of Rent Act protection and rent restriction for those who cannot afford to pay rents at the market rates.
>
> *(emphasis and underlining added)*

38) Thus, in ***Leelabai Gajanan Pansare*** the Apex Court held that the legislature evolved economic criterion while enacting the provisions of the MRC Act by offering an 'economic package'. It is held that one of the facets of such economic package is to exclude entities mentioned in Section 3(1)(b) who can afford rent at market rate. The Apex Court further held that the entities enumerated in

Section 3(1)(b) are all in a position to pay rent at market rates and are therefore excluded from the Rent Act provisions. The test applied by the legislature is the test of financial capacity and according to the Apex Court, this is the golden thread which runs through Section 3(1)(b). Thus, 'affordability to pay market rent' is the golden thread running through all the entities enumerated in Section 3(1)(b).

39) In my view therefore, while deciding whether Respondent would be included in the list of entities enumerated under Section 3(1)(b) of the MRC Act, the economic criterion of 'affordability to pay market rent' must be borne in mind. Though, Mr. Dani has sought to suggest that all the entities enumerated in Section 3(1)(b) are not cash rich entities or that cash-richness of entities is a determinative factor, I am unable to agree with his suggestion. This issue is already decided by the Apex Court judgment in ***Leelabai Gajanan Pansare*** where it is expressly held that the golden thread running through all the entities under Section 3(1)(b) of the MRC Act is 'affordability to pay market rent'. Mr. Dani's reliance on judgment of this Court in ***Shetkari Sahakari Sangh Ltd. Kolhapur*** (supra) is inapposite as this Court has not excluded cooperative societies from the purview of Section 3(1)(b) on the criterion of 'affordability to pay market rent', but such societies are held to be excluded from the purview of Section 3(1)(b) on account of the fact that they are not established by or under any Central or State Act. Therefore the judgment of ***Shetkari Sahakari Sangh Ltd. Kolhapur*** offers little assistance for deciding the issue at hand. In my view, 'affordability to pay market rent' being the golden thread running through all the entities enumerated in Section 3(1)(b),

the said economic criterion must be borne in mind while deciding the issue involved in the present Revision Application.

E. 3 SANCTION OF SCHEME FOR ARRANGEMENT FOR RESPONDENT

40) Having discussed the history and objective behind enactment of Section 3(1)(b) of the MRC Act, it is time to revert to the factual position of the present case. As observed above, Respondent's paid up share capital was undoubtedly Rs.18,90,19,120/- as on 31 March 2000 when MRC Act came into effect. It appears that before coming into effect of the MRC Act, Respondent-Company had already initiated steps for implementation of Scheme of Arrangement and Demerger. Respondent-Company had two divisions (i) Fire and Security Engineering Division and (ii) Fluid Engineering Division. Respondent sought to transfer and vest the Fire and Security Engineering Division in its sister concern with M/s. Veedip Financial Services Pvt. Ltd. and Fluid Engineering Division in M/s. Datum Trading Pvt. Ltd. The paid up share capital of Veedip was Rs.200/- divided into 20 equity shares of Rs.10/-. The paid up share capital of Datum was Rs.2,000/- divided into 200 equity shares of Rs.100/- each. The reasons for doing so, as averred by the Respondent in the Company Petition filed before this Court, were that the market for Fire and Security Engineering Products as well as for Fluid Engineering Products had become highly competitive and the company was desirous of adopting dynamic and forward looking growth strategy in order to sustain its leadership position in its products relating to Fire and Security Engineering as well as Fluid Engineering. As a part of this strategy, Respondent

sought to create focused companies for Fire and Security Engineering products and for Fluid Engineering products. This was sought to be achieved through a process of demerger of the said two divisions of the Respondent into two separate companies. The Respondent averred in its Company Petition that both Veedip and Datum were under same management as that of Respondent. The Respondent-Company apparently procured a valuation report and according to it, the net asset value of the two Divisions sought to be demerged and vested in transferee company was Rs.17.87 crores. A copy of the Scheme of Arrangement and Demerger has been placed on record, in which appointed date is specified as 1 April 1999. The Scheme provided for reduction of then existing equity share capital of Respondent-Company from Rs.18,90,19,120/- to Rs.75,60,000/- by reducing the value of paid up per share from Rs.10/- to Rs.0.40 paise per share and by transferring the balance of Rs.18,14,59,120/- to reconstruction reserve account for absorbing the book value of assets and liabilities of Fire Security Division and Fluid Engineering Division transferred to Veedip and Datum respectively.

41) The proposed Scheme came to be filed alongwith the Company Petition Nos. 381 of 2000, 382 of 2000 and 383 of 2000. By judgment and order dated 18 April 2001, this Court considered the objections to the Scheme filed by the objector and made the Company Petitions absolute in terms of prayers made therein. This is how on account of judgment and order dated 18 April 2001 passed by this Court, the Fire and Security Engineering Division of Respondent came to be merged with Veedip and Fluid Engineering Division merged with Datum resulting in reduction in paid up share

capital of Respondent from Rs.18,90,19,120/- to Rs.75,60,000/- and corresponding increase in the paid up share capital of Veedip from Rs.200 to Rs.3.40 crores and of Datum from Rs.2,000/- to Rs.11.34 crores.

42) Respondent contends that since the appointed date in the sanctioned Scheme of Arrangement is 1 April 1999, the reduction in its paid up share capital took effect from 1 April 1999 i.e. before coming into effect of the MRC Act. There is a great deal of debate between the parties about the binding nature of the Scheme sanctioned by this Court on the Applicant-landlord. While Mr. Dani submits that once the Scheme is sanctioned by this Court, it becomes binding for all purposes on all persons and entities, including the landlord, it is the contention of Mr. Jagtiani that such Scheme operates only within the sphere of corporate law and binds merely the entity and its stakeholders in addition to its regulatory authorities without having any impact outside the provisions of the Companies Act, particularly on a landlord with reference to the provisions of the MRC Act.

43) It would be apposite make reference to the provisions of Sections 391 and 394 of the Companies Act, 1956 which provide thus:

> **391. Power to compromise or make arrangements with creditors and members.-**
> (1) Where a compromise or arrangement is proposed –
> (a) between a company and its creditors or any class of them ; or
> (b) between a company and its members or any class of them,
>
> the [Tribunal] may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being

wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the [Tribunal] directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the [Tribunal], be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company :

Provided that no order sanctioning any compromise or arrangement shall be made by the [Tribunal] unless the [Tribunal] is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the [Tribunal], by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(3) An order made by the [Tribunal] under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [one hundred] rupees for each copy in respect of which default is made.

(6) The [Tribunal] may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the [Tribunal] thinks fit, until the application is finally disposed of.

394. Provisions for facilitating reconstruction and amalgamation of companies.-

(1) Where an application is made to the [Tribunal] under section 391 for the sanctioning of a compromise or arrangement proposed

between a company and any such persons as are mentioned in that section, and it is shown to the [Tribunal] –

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies ; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor-company") is to be transferred to another company (in this section referred to as "the transferee-company") ;

the [Tribunal] may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters :-

(i) the transfer to the transferee-company of the whole or any part of the undertaking, property or liabilities of any transferor-company;

(ii) the allotment or appropriation by the transferee-company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person ;

(iii) the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company ;

(iv) the dissolution, without winding up, of any transferor-company;

(v) the provision to be made for any persons who, within such time and in such manner as the 1 [Tribunal] directs, dissent from the compromise or arrangement ; and

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out :

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the [Tribunal] unless the 1 [Tribunal] has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor-company under clause (iv) shall be made by the [Tribunal] unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the [Tribunal] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to

and become the liabilities of, the transferee-company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred] rupees.

(4) In this section –

(a) "property" includes property rights and powers of every description; and "liabilities" includes duties of every description ; and

(b) "transferee-company" does not include any company other than a company within the meaning of this Act; but "transferor-company" includes any body corporate, whether a company within the meaning of this Act or not.

WHETHER SCHEME OF ARRANGEMENT FRAUDULENT?

44) Before proceeding to examine the issue of binding nature of Scheme of Arrangement, it would be necessary to first deal with the contention of Revision Applicant that implementation of the Scheme by Respondent is a fraudulent act. Mr. Jagtiani has sought to raise doubts about the *modus operandi* in which Scheme is implemented by increasing the share capital of Veedip from Rs.200/- to Rs.3.40 crores and Datum from Rs.2,000/- to Rs.11.34 crores. It is contended by Revision Applicant that the net asset value of crores of Fire and Fluid Divisions was determined by Respondent's Auditor as Rs.17.87 and that if the same was to be adjusted against the paid up share capital of Respondent of Rs.18.90 crores, still a balance of Rs.1.03 crores would have remained as paid up share capital of Respondent retaining its status as 'cash rich entity'. It is contended that though the Board resolution was adopted by considering the said

net asset value as Rs.17.87, the figure of net asset value of Fire and Fluid Divisions was later deliberately and artificially inflated by Respondent to Rs.19.88 crores in the Scheme submitted before this Court by misleading and misrepresenting this Court for sole purpose of retaining protection of the MRC Act. Mr. Jagtiani has relied upon provisions of Section 44 of the Indian Evidence Act, 1872 in support of his contention that fraud can be agitated in collateral proceedings.

45) In my view, considering the limited remit of inquiry involved in the present Revision Application, it is not really necessary to decide the contention of alleged fraud in getting the Scheme sanctioned by Respondent. The Scheme has attained finality and has taken effect on all stakeholders. For deciding the limited issue of applicability of Section 3(1)(b) of the MRC Act to Respondent, it is not necessary to conduct in-depth inquiry into the correctness of Scheme, which has been sanctioned by this Court. The issue involved in the Revision Application can otherwise be decided without going into the allegations of fraud. Also, since the Scheme is accepted by this Court, it would not be prudent to question genuineness of the Scheme in a collateral proceeding arising out of MRC Act.

46) It must also be borne in mind that this Court is exercising revisionary jurisdiction under Section 115 of the Code of Civil Procedure, 1908 and examining whether any palpable error is committed by the Small Causes Court and/or by its Appellate Bench. It was otherwise difficult for the said two Courts to institute an inquiry into correctness of order sanctioning the Scheme passed

by this Court. So what could not have been done by the Trial and Appellate Court, cannot be expected to be done by this Court in exercise of revisionary jurisdiction. I am therefore not impressed by the submissions canvassed on behalf of the Applicant that the entire Scheme for Arrangement and Demerger is not *bonafide*. Apart from the fact that it would be inappropriate for this Court to go into correctness of the Scheme sanctioned by this Court in a collateral proceeding, it is also a matter of fact that this is not the first time that the Respondent-Company has undertaken the exercise of Scheme of Arrangement. From the judgment cited by Mr. Dani in ***Commissioner of Income-Tax Versus. Mather and Platt (I.) Ltd.*** (supra), it appears that the Respondent-Company had also implemented a scheme for amalgamation on 20 February 1979 with M/s. Mather & Platt, UK under which the UK Company transferred its entire business and undertaking in India to the Respondent-Company. Also, this is a choice exercised by the Company and its shareholders to voluntarily reduce its paid up share capital by halving the same into two sister concerns by transferring the businesses in Fire and Security Engineering Products to Veedip and Fluid Engineering Products into Datum. It appears that Veedip is later renamed as 'Mather and Platt Pumps Ltd.' and Datum is renamed as 'Mather and Platt Fire Systems Ltd.' It therefore appears that instead of doing business through common Respondent-Company, the two businesses are sought to be conducted through specialized companies dealing into pumps and fire systems. In absence of any material on record, it would not be prudent to question the genuineness of exercise undertaken by the Respondent-Company. I am therefore not inclined to go into the allegations of fraud sought to be urged on

behalf of the Revision Applicant and therefore it is not necessary to discuss ratio of the judgments in ***Aswini Kumar Samaddar*** (supra)***, Seva International Fashion*** (supra) and ***Bhaurao Dagdu Paralkar*** (supra). Similarly, it is not necessary to go into the issue of requirement for pleading and proving fraud by discussing ratio of judgments in ***Shrisht Dhawan (Smt)*** (supra) and ***Union of India Versus. K. C. Sharma and Company*** (supra). For the same reasons, it is not necessary to examine the contention about applicability of provisions of Section 19 of the PSCC Act excluding jurisdiction of Small Causes Court in respect of suits concerning any act ordered or done by any Judge or Judicial Officer or suits or judgment of any High Court

E. 4 EFFECT OF SCHEME OF ARRANGEMENT SANCTIONED UNDER COMPANIES ACT ON TENANCY OF RESPONDENT-COMPANY AND WHETHER IT BINDS LANDLORD ?

47) Coming back to the issue of operation of Scheme of Arrangement for governing the landlord-tenant relationship under the MRC Act, Mr. Dani has relied upon several judgments in support of his contention that the Scheme once sanctioned by a Company Court under the provisions of Sections 391 and 394 of the Companies Act, binds all persons and entities for all purposes. In ***Sadanand S. Varde*** (supra), Division Bench of this Court has held in para-124 as under :

> 124. Even assuming that the petitioners are entitled to urge the contention that Chapter XX-C applies to the transfer of the concerned land as a consequence of the amalgamation scheme

being sanctioned by the Company Court, upon careful consideration of the detailed provisions of Chapter XX-C of the Income Tax Act, we are inclined to take the view that Chapter XX-C is not intended to apply to situation of transfer of immovable property consequent upon an amalgamation scheme being sanctioned by an order of the Court. Once the scheme is sanctioned, it has the imprimatur of the Court and operates by the combined force of the statute and the Court's authority. The scheme as such ceases to be in the realm of an 'agreement' as contemplated under Chapter XX-C of the Income Tax Act. We are, therefore, of the considered view that Chapter XX-C could not have applied to the transfer of the concerned plot at Bandra from the sixth respondent to the ninth respondent as a consequence of the scheme of amalgamation sanctioned by the Company Court by its order dated 3rd February 1993.

48) In ***Marshall Sons and Co. (India) Ltd.*** (supra), the Apex Court has held in para-14 as under :

14. Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide viz. 1-1-1982. It is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But where the Court does not prescribe any specific date but merely sanctions the scheme presented to it - as has happened in this case - it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. It must be remembered that before applying to the Court under Section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the court may take some time; indeed, they are bound to take some time because several steps provided by Sections 391 to 394-A and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the Court, both the amalgamating units, i.e., the Transferor Company and the Transferee Company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation. In the scheme before us, clause 6(b) does expressly provide that with affect from the transfer date, the Transferor Company (Subsidiary Company) shall be deemed to have carried on the business for and on behalf of the Transferee

> Company (Holding Company) with all attendant consequences. It is equally relevant to notice that the Courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer amalgamation. In such a situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the Income Tax Officer (impugned in the writ petition) were not warranted in law. The business carried on by the Transferor Company (Subsidiary Company) should be deemed to have been carried on for and on behalf of the Transferee Company. This is the necessary and the logical consequence of the court sanctioning the scheme of amalgamation as presented to it. The order of the Court sanctioning the scheme, the filing of the certified copies of the orders of the court before the Registrar of Companies, the allotment or shares etc. may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be 1-1-1982. This is also the ratio of the decision of the Privy Council in *Raghubar Dayal v. The Bank of Upper India Ltd.*

49) In ***National Organic Chemical Industries Ltd.*** (supra), Division Bench of this Court has held in para-34, 45 and 46 as under:

> 34. A company gets corporate personality or becomes a legal entity as per the provisions contained in the Companies Act, 1956. Similarly, a company loses its corporate personality or is deemed to be destroyed on amalgamation from a date declared by the competent authority under the Companies Act. There can be no dispute that the High Court is one of the competent authority under the Companies Act to approve the scheme of amalgamation from any specified day as it deems fit. Therefore, once the court under the Companies Act declares that the amalgamation of the companies shall be effective from a particular date, then, from that date the corporate personality of the amalgamated companies ceases to exist for all purposes. From that day the corporate personality of the amalgamated company is destroyed completely. Before the court approves the scheme of amalgamation, it may be open to the Legislature to declare that for the purposes of sales tax, the transferor-company carrying on business as a trustee or agent of the transferee-company is a separate identity distinct from the transferee-company and, therefore, liable to tax in respect of the transactions between the two companies up to the date on which the scheme of amalgamation is approved by the court. We are not considering that issue. However, in all cases where the

> court on perusal of the scheme of amalgamation and in public interest after taking into account the rights and liabilities of all the interested parties has declared that the effective date of amalgamation of the companies shall be from a date anterior to the date of sanctioning the scheme of amalgamation, then, from the effective date of amalgamation declared by the court the corporated personality of the amalgamated company is destroyed completely.
>
> 45. It is true, by declaring that the amalgamation shall take place from a particular date, the company court is not giving any direction to the sales tax authorities. But once the court declares that the corporate personality of a company shall be destroyed from a particular date, the corporate personality of that company cannot be restored by the State Legislature as it amounts to usurping the judicial power.
>
> 46. Although the amalgamation is the voluntary act of the parties in deciding to amalgamate from the appointed date that voluntary act acquires legal status and in law the transferee-company ceases to exist from the appointed date declared by the court. Such a legal status which flows from the High Court order cannot be altered by the State Government.

50) In ***Commissioner of Income-Tax, Pune-I Versus. Swastik Rubber Products Ltd.*** (supra), Division Bench of this Court held that legal effect of order sanctioning the Scheme of Amalgamation was that the provisions of the Scheme would come into operation on the appointed date. It is also held in para-8 that for the purpose of income tax, what is crucial is the date on which the assets and liabilities vested in the transferee company. In case involving Respondent-Company itself in ***Commissioner of Income-Tax Versus. Mather and Platt (I.) Ltd.*** Division Bench of this Court has followed the judgment in ***Swastik Rubber Products Ltd.*** and has held in para-7 as under :

> **7.** The amount of capital for the purpose of surtax is to be computed as on the first date of the accounting year. In the present case, this would be July 1, 1978. The scheme of amalgamation is with effect from July 1, 1978, and hence the shares worth Rs. 89,50,000, which were required to be issued under the scheme of amalgamation, which came into operation on July 1, 1978, formed part of the capital as on July 1, 1978. In the case of *CIT v. Swastik Rubber Products Ltd.,* [1983] 140 ITR 304, a Division Bench of this court held that the order of the court sanctioning the scheme of amalgamation in that case clearly provided that the entire undertaking and the business and the property of the assessee-company would stand transferred to the transferee-company with effect from the appointed date in the scheme of amalgamation which, in that case, was July 1, 1971. After referring to the provisions of sections 391 and 394 of the Companies Act, 1956, the court said that the legal effect of the order sanctioning the scheme of amalgamation was that the provisions of the scheme would come into operation from the appointed date.

51) Thus this Court held that once a Scheme of Amalgamation and Demerger is sanctioned, it has an imprimatur of the Court and operates by combined force of statute and Court's authority. It no longer remains a mere agreement and transforms into a legally binding arrangement by authority of the Court, which would ideally bind everyone. Faced with this situation, Mr. Jagtiani has submitted that the judgments cited by Mr. Dani are in relation to the binding nature of the Scheme, vis-à-vis regulatory authorities such as Income Tax, etc and that the same does not bind a landlord, who is neither party to the Scheme nor is entitled to challenge the same. He has relied upon provisions of Section 394A of the Companies Act, 1956 which mandates the Company Court to give notice of every application made to it under Sections 391 or 394 to the Central Government. He also relies upon provisions of Section 230(5) of the Companies Act, 2013, under which it is mandatory to give notice to Central Government, Income Tax Authorities, Reserve

Bank of India, SEBI etc. He would submit that since such Regulatory Authorities are necessary parties before the Court sanctioning the Scheme, the Scheme would obviously bind them and that therefore none of the judgments relied upon by Respondent would have application to the present case. He has relied upon judgment of Company Law Board in ***Efirst Technologies Pvt. Ltd.*** (supra) which in turn relies upon judgment of the Delhi High Court in ***Harish Bansal Versus. Moti Films Pvt. Ltd.***[30] in which the Delhi High Court, while dealing with provisions of Section 433 of the Companies Act, has held that a winding up order is not a judgment in *rem* and is not binding on strangers. Applying the analogy, the Company Law Board has held that even order under Section 391/394 of the Companies Act is not an order in *rem* to bind outsiders.

52) Mr. Jagtiani has also relied upon judgment of the Apex Court in ***M/s. General Radio and Appliances Co. Ltd.*** (supra) in which the issue before the Apex Court was about subletting of premises by a Tenant-Company in favour of the merged company. In case before the Apex Court, General Radio was the tenant who merged with National Ekco Radio & Engineering Co. Ltd. and the merged company was put in possession of the tenanted premises. In the above factual background, the Apex Court held in para-10 as under :

> 10. … There is no express provision in the said Act that in case of any involuntary transfer or transfer of the tenancy right by virtue of a scheme of amalgamation sanctioned by the court by its order under Sections 391 and 394 of the Companies Act as in the present case, such transfer will not come within the purview of Section 10*(ii)(a)* of the said Act. In other words such a transfer of

[30] (1984) 25 DLT 92

> tenancy right on the basis of the order of the court will be immune from the operation of the said Act and the transferee tenant will not be evicted on the ground that the original tenant transferred its right under the lease or sublet the tenanted premises or a portion thereof. It is important to note in this connection the definition of tenant as given in Section 2(*ix*) of the said Act which provides specifically that a tenant *does not include a person placed in occupation of a building by its tenant*. On a plain reading of this provision it is crystal clear that any person placed in occupation of a building by the tenant cannot be deemed or considered to be a tenant in respect of the premises in which the said person is to be in possession within the meaning of the said Act. Therefore, Appellant 2 i.e. National Ekco Radio & Engineering Co. Ltd., the transferee company who has been put in possession of the tenanted premises by the transferor tenant General Radio & Appliance Co. (P) Ltd. cannot be deemed to be tenant under this Act on the mere plea that the tenancy right including the leasehold interest in the tenanted premises have come to be transferred and vested in the transferee company on the basis of the order made under Sections 391 and 394 of the Companies Act.

In my view, the judgment of the Apex Court in ***M/s. General Radio and Appliances Co. Ltd.*** is rendered in the context of allegation of subletting and therefore cannot be cited in support of an absolute proposition that the Scheme of Merger is to be ignored altogether for all purposes and would not bind third parties at all.

53) In ***Hindustan Lever*** (supra), the Apex Court has examined the scope of jurisdiction exercised by the Company Court while sanctioning a Scheme under Sections 391 and 394 of the Companies Act, while examining the issue of payment of Stamp duty on order of amalgamation passed by Company Court. The Apex Court has held in paras-9, 10, 11, 12, 17 and 18 as under :

> **9.** Section 394 provides that application and order of amalgamation under Section 394 is based on compromise or arrangement which has been proposed for the purpose of amalgamation of two or more companies. The amalgamation scheme, which is an agreement between the companies is presented before the court and the court passes an

appropriate order sanctioning the compromise or arrangement. **The foundation or the basis for passing an order of amalgamation is agreement between two or more companies.** Under the scheme of amalgamation, the whole or any part of the undertaking, properties or liability of any company concerned in the scheme is to be transferred to the other company. The company whose property is transferred would be the transferor company and the company to whom property is transferred would be considered as the transferee company. **The scheme of amalgamation has its genesis in an agreement between the prescribed majority of shareholders and creditors of the transferor company with the prescribed majority of shareholders and creditors of the transferee company. The intended transfer is a voluntary act of the contracting parties. The transfer has all the trappings of a sale. The transfer is effected by an order of the court.** The proposed compromise or arrangement is subject to verification by the court as provided therein. First is that the scheme of compromise or arrangement proposed for the purposes of amalgamation or in connection therewith, shall not be sanctioned unless the court has received a report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest; and secondly, that the order of resolution of transfer of the company shall not be made unless official liquidator on scrutiny of the books and papers of the company makes a report to the court that the affairs of the company had not been conducted in a manner prejudicial to the interest of its members or to public interest.

10. By virtue of provisions of Section 391 of the Companies Act a scheme sanctioned by the court is statutorily binding on all its shareholders and creditors including those who dissented from or were opposed to the scheme being sanctioned. Since by law a procedure has been prescribed by which every shareholder and creditor in the absence of individual agreement, gets bound by the scheme, which would otherwise be necessary to give its validity, the two provisos have been introduced casting a duty on the court to satisfy itself that the affairs of the company were/are not being conducted in a manner prejudicial to the interest of its members or to the public interest. **The basic principle underlying these provisos is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties, the same being that it should not be unfair, contrary to the public policy, unconscionable or against the law.** **There is no adjudication as such**. Any modification proposed by the court in the scheme is also subject to its being accepted by the transferor and the transferee company. If any one of them objects to the modifications suggested by the court then the scheme would not be sanctioned. The scheme would be sanctioned only if there is an acceptance to the modification proposed by the court to the scheme by the transferor as well as the transferee company. On acceptance of the same it gets incorporated in the compromise or arrangement arrived at between the two companies. Modification in the scheme becomes a part of the compromise or arrangement arrived at between the parties.

11. While exercising its power in sanctioning a scheme of agreement, the court has to examine as to whether the provisions of the statute have been complied with. Once the court finds that the parameters set out in Section 394 of the Companies Act have been met then the court would have no further jurisdiction to sit in appeal over the commercial wisdom of the class of persons who with their eyes open give their approval, even if, in the view of the court a better scheme could have been framed. This aspect was examined in detail by this Court in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* [(1997) 1 SCC 579] The Court laid down the following broad contours of the jurisdiction of the Company Court in granting sanction to the scheme as follows: (SCC pp. 597-98 & 601-02, para 29)

> *1*. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(*a*) have been held.
>
> *2*. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).
>
> *3*. That the meetings concerned of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the class of voters concerned is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.
>
> *4*. That all necessary material indicated by Section 393(1)(*a*) is placed before the voters at the meetings concerned as contemplated by Section 391 sub-section (1).
>
> *5*. That all the requisite material contemplated by the proviso of sub-section (2) of Section 391 of the Act is placed before the Court by the applicant concerned seeking sanction for such a scheme and the Court gets satisfied about the same.
>
> *6*. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not unconscionable, nor contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same.
>
> *7*. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, **the Court will have no further jurisdiction to sit in appeal over the commercial wisdom** of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction. **It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority.** Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392. Of course this section deals with post-sanction supervision. But the said provision itself clearly earmarks the field in which the sanction of the Court operates. The supervisor cannot ever be treated as the author or a policy-maker. Consequently the propriety and the merits of the compromise or arrangement have to be judged by the parties who as sui juris with their open eyes and fully informed about the pros and cons of the scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement.

12. Two broad principles underlying a scheme of amalgamation which have been brought out in this judgment are:

1. **that the order passed by the court amalgamating the company is based on a compromise or arrangement arrived at between the parties**; and

2. **that the jurisdiction of the Company Court while sanctioning the scheme is supervisory only** i.e. to observe that the

> procedure set out in the Act is met and complied with and that the proposed scheme of compromise or arrangement is not violative of any provision of law, unconscionable or contrary to public policy. The court is not to exercise the appellate jurisdiction and examine the commercial wisdom of the compromise or arrangement arrived at between the parties. T**he role of the court is that of an umpire in a game, to see that the teams play their role as per rules and do not overstep the limits.** Subject to that how best the game is to be played is left to the players and not to the umpire.

Both these principles indicate that there is no adjudication by the court on the merits as such.

17. It was contended by the learned counsel appearing for the appellants that an order of amalgamation under Section 394 is not an order simpliciter of transfer of property by an act of parties with imprimatur of the court. It is an order made by the court after judicial scrutiny and transfer of the property under such an order would not be an act of parties to which the court puts its seal of approval. Stamp duty can be levied on "documents" or "instruments". The order of the court in exercise of its judicial functions is not "a document" or an "instrument". Once the court passes an order or a decree, it is required to be implemented or executed as such. The same cannot be subjected to stamp duty otherwise the orders passed by the courts would become subject to interference by the Revenue Authorities and would not be admissible in evidence unless the stamp duty is paid.

18. It is difficult to subscribe to the view propounded by the learned counsel for the appellants. As stated earlier, the order of amalgamation is based on a compromise or an arrangement arrived at between the two companies. No individual living being owns the company. Each shareholder is the owner of the company to the extent of his shareholding. By enacting Sections 391 to 394 a method has been devised to give effect to the will of the prescribed majority of shareholders/creditors. Even in the absence of individual agreement by all the shareholders and creditors the decision of the majority prescribed in Section 391(2) binds all the creditors and the shareholders. **The scheme after being sanctioned by the court binds all its creditors, members and shareholders including even those who were opposed to the scheme being sanctioned. It binds the company as well.** While exercising its power in sanctioning the scheme of amalgamation, the court is to satisfy itself that the provisions of statute have been complied with. That the class was fairly represented by those who attended the meeting and that the statutory majority was acting bona fide and not in an oppressive manner. That the arrangement is such as which a prudent, intelligent or honest man or a member of the class concerned and acting in respect of the interest might reasonably take. While examining as to whether the majority was acting bona fide, the court would satisfy itself to the effect that the affairs of the company were not being conducted in a manner

> prejudicial to the interest of its members or to public interest. The basic principle underlying such a situation is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties, the same being that it should not be unfair, contrary to public policy and unconscionable or against the law.
>
> *(emphasis added)*

54) Thus, as held by the Apex Court in ***Hindustan Lever***, the foundation or basis for passing an order of amalgamation under Sections 391 and 394 of the Companies Act, is 'agreement' between two or more companies. The intended transfer is a voluntary act of the contracting parties, which has all trappings of a sale. The Scheme is binding on all shareholders and creditors of the Company including those who dissented from or were opposed to the Scheme. It is further held that when the Court sanctioned the Scheme it does not conduct any adjudication by sitting in Appeal over commercial wisdom of the persons who give their approvals to the Scheme. That the jurisdiction of the Company Court while sanctioning the Scheme is supervisory in nature as the Court acts merely as an umpire without any adjudication on merits. In ***Hindustan Lever,*** the Apex Court rejected the contention that order of amalgamation under Section 394 is not an order simpliciter of transfer of property by an act of parties with imprimatur of the Court and that the same is an Order passed by the Court. The Apex Court therefore upheld levy of stamp duty on Scheme of Amalgamation sanctioned by Court. Mr. Jagtiani has sought to read the judgment in ***Hindustan Lever*** to mean that the Scheme sanctioned under Section 391 and 394 does not bind anyone apart from shareholders and creditors.

55) It is no doubt true that a Scheme of Arrangement or Demerger under the provision of Sections 391 and 394 of Companies Act is based on agreement between two or more companies and is an outcome of a commercial decision taken by its shareholders. The landlord obviously is not a party to the Scheme. The landlord may not even be aware about sanctioning of such Scheme as he is not a necessary party to the Scheme. Though Mr. Dani has sought to suggest that this Court had granted liberty to 'any person' to apply to this Court for any direction, as rightly indicated by Mr. Jagtiani, such person referred to in the order of this Court would obviously be a person interested in the Scheme. It would be apposite to reproduce the relevant portion of the Scheme in this regard :

> AND THIS COURT DOTH FURTHER ORDER that the parties to the arrangement embodied in the Scheme of Arrangement sanctioned herein or **any other person or persons interested therein** shall be at liberty to apply to this Honourable Court for any directions that may be necessary with regard to the working of the arrangement embodied in the Scheme of Arrangement sanctioned herein and set forth in the Schedule hereto.
>
> (emphasis added)

56) In my view, it is difficult to accept that a landlord would be covered by the expression 'any other person or persons interested therein'. It therefore cannot be contended that the landlord could have objected to the Scheme even after its sanction by applying to this Court in pursuance of the above mentioned liberty. Even otherwise, considering the limited role of acting as umpire by a Company Court without undertaking any exercise of adjudication, it is difficult to contemplate a situation where the Company Court

could have rejected the Scheme of Amalgamation voluntarily chosen by shareholders of the three companies for their better management only on account of grouse of the landlord relating to tenancy in respect of the tenanted premises.

57) Therefore though in ordinary circumstances, the Scheme sanctioned under Sections 391 and 394 of the Companies Act would effect transfer of business and reduction and increase of share capital of transferor and transferee companies for all practical purposes, the same would essentially apply in the sphere of corporate law and would not impact the right already created in favour of the landlord. In other words, a company having capacity to afford market rent as on 31 March 2000 and hence excluded from application of MRC Act would not be able to regain such protection on account of voluntary act of redistribution of its business and share capital amongst sister concerns through Scheme of Amalgamation and Demerger under Sections 391 and 394 of the Companies Act. The Scheme under Sections 391 and 394 of the Companies Act effecting reduction of paid up share capital to less than a crore of rupees would have a limited operation within the boundaries and jurisprudence of the Companies Act and an order permitting such reduction would operate in *personam* binding only the parties to the Scheme, the Company and its stakeholders such as shareholders, creditors, and contributories. The Scheme would not operate in *rem* so as to bind landlord *qua* rights and obligations between the landlord and transferor company in its capacity as tenant.

E. 5 PERMANENT LOSS OF RENT ACT PROTECTION AND IMPERMISSIBILITY TO REGAIN THE LOST PROTECTION BY VOLUNTARY REDUCTION OF PAID UP SHARE CAPITAL

58) Even if contention of Respondent about applicability of the sanctioned Scheme by this Court for all purposes, including the purpose of governance of landlord-tenant relationship under the MRC Act, is to be accepted, there is another angle from which the issue can be examined. For examining that angle I momentarily proceed by assuming the position that even for the purposes of application of provisions of Section 3(1)(b) of the MRC Act, the paid up share capital of Respondent-Company stood reduced to Rs.75,60,000/- on account of sanction of the Scheme by order of this Court passed on 18 April 2001. There is no doubt to the position that reduction of the paid up share capital by Respondent-Company is a voluntary act. It had lost the protection of rent control legislation on 31 March 2000 and seeks restoration of such protection on account of its voluntary act of reduction of its paid up share capital. The issue for consideration is whether an entity which gets covered by provisions of Section 3(1)(b) of MRC Act and loses the protection of Rent Act, can regain such protection on account of happening of a subsequent event. In the present case Respondent's paid up share capital was undoubtedly over Rs.1 crore as on 31 March 2000 when MRC Act came into effect and accordingly Respondent lost protection of Rent Act on 31 March 2000. Its Scheme of Arrangement and Demerger was sanctioned by this Court subsequently on 18 April 2001. Thus, during the period from 31 March 2000 to 17 April 2001, Respondent was covered by provisions of Section 3(1)(b) of the MRC Act and had lost the protection of the

Act *qua* its tenancy. In such circumstances, whether subsequent sanction of Scheme by this Court on 18 April 2001 resulting in reduction of paid up share capital below Rs.1 Crore would enable Respondent-Company to regain the lost protection of MRC Act, is the issue that arises for consideration.

59) As observed earlier, the issue needs to be decided by bearing in mind the history and objective behind incorporation of Section 3(1)(b) in MRC Act. Since 'affordability to pay market rent' is the economic criterion adopted by the Legislature while listing entities in Section 3(1)(b), the issue of regaining lost protection of Rent Act also needs to be decided by applying the test of 'affordability to pay market rent'. In the present case, as on 31 March 2000, Respondent-Company had paid-up share capital of Rs.18,90,19,120/- in addition to cash reserves of Rs.45 odd crores. Thus, Respondent was undoubtedly a 'cash rich' entity as on 31 March 2000. It had lost protection of Rent Act on account of its inclusion in the listed entities under Section 3(1)(b) of the MRC Act. What has been done by the Respondent-Company through the Scheme of Arrangement and Demerger is only rejig of its business activities by redistributing its Fire and Security products into Veedip and Fluid Engineering products into Datum. Both Veedip and Datum are sister concerns of Respondent, who are subsequently renamed as Mather and Platt Pumps Lt59d. and Mather and Platt Fire Systems Ltd., respectively. The business has thus remained with the same management with internal distribution thereof into sister companies. Therefore, the issue is whether Respondent, who was once a cash rich entity and had already lost rent control protection

can be permitted to regain the same on account of such voluntary rejig effected in respect of its businesses.

60) Once the history and objective behind enactment of Section 3(1)(b) of the MRC Act is borne in mind, in my view, there appears to be no scope for an entity, who has made exit from rent control provisions on account of its cash richness to make a re-entry into the sphere of rent protection by doing a voluntary act of reduction of paid-up share capital. If such re-entry is permitted, the same would not only frustrate the entire legislative object of excluding cash rich entities from ambit of rent control protection, but would then open a pandora's box for companies to devise mechanisms for the purpose of regaining the lost protection of rent control legislation. The legislative intent is such that if an entity can afford to pay market rent, it should be excluded from the ambit of rent protection. The statute has consciously not made any provision for re-entry of the entity, who has once lost rent control protection for having acquired the status of cash richness.

61) Much is argued by the parties on use of the term 'having' in Section 3(1)(b) of the MRC Act. It is sought to be argued by Respondent that if the legislature wanted to intend one time exit (without re-entry) from rent control provisions, it would have used the word 'has' in Section 3(1)(b) of the Act. It is sought to be suggested that the Legislature has consciously used the words 'having' and 'has' at different places in the Act for different purposes. It is contended that while seeking decree for eviction on grounds specified under Section 16(1)(a) to 16(1)(e), past events are

contemplated therein by using the word 'has', for eg. (a) tenant 'has' committed act contrary to Section 108(o) of the Transfer of Property Act, (b) tenant 'has' erected permanent structure, (c) tenant 'has' been guilty of conduct which is nuisance or annoyance, (d) tenant 'has' given notice to quit, and (e) tenant 'has' unlawfully sublet. It is therefore sought to be contended that since the word used in Section 3(1)(b) is 'having', what is contemplated is a present event, referable to the date of termination of tenancy or date of filing the suit. I am unable to agree. If the Legislature was to use the words 'has' or 'had' in Section 3(1)(b), the provision could have become a one-time exercise of determining eligibility of entities for exclusion of protection under the MRC Act, which is not the legislative intent. Since the test of 'affordability to pay market rent' is the economic criterion for exclusion of entities from rent control protection, all entities who would fit into the criterion prescribed under Section 3(1)(b) after 31 March 2000 would also get covered by the said provision. To illustrate, if a company which has domestic operations as on 31 March 2000 and was protected under MRC Act, decides to open offices abroad and becomes multinational company in the year 2005, the intention of the Legislature is to take such company into the sweep of Section 3(1)(b). In a similar manner, a company, whose paid up share capital was less than Rs.1 crore as on 31 March 2000 and which enjoyed protection of tenancy under MRC Act, grows with passage of time and increases its paid up share capital in excess of Rs.1 crore subsequently, will have to be necessarily included in Section 3(1)(b) of the Act by applying the economic criterion of 'affordability to pay market rent'. This is because both the types of entities discussed above become capable of

affording market rent as per the criterion fixed by the Legislature, the moment they either became multinational or increased the paid up share capital beyond Rs.1 crore. They can fend for themselves and negotiate with the landlord for fixation of fair market rent and afford to pay the same.

62) If the contention of Mr. Dani is to be accepted, the same would reduce the exercise of exclusion of cashrich entities as a one-time measure by freezing the applicability of provision as on 31 March 2000 thereby resulting in absurd situation where companies subsequently growing and achieving affordability to bear market rent would still continue to enjoy protection under MRC Act, which definitely is not the legislative intent. At the same time, this principle cannot be applied in a converse situation where an entity which was once able to pay rent at market rate and had lost protection under MRC Act, would regain such protection by either reducing paid up share capital or converting itself from multinational to domestic company. Permitting regaining of lost protection in such cases would be against the entire legislative objective.

63) In my view therefore, once an entity gets covered by provisions of Section 3(1)(b) and loses protection in respect of its tenanted premises under the MRC Act, it can never regain the same irrespective of any subsequent event resulting in change of its character or status. In short, once an exit is made from the provisions of MRC Act, re-entry therein is impermissible. The exit door however remains open for entities to qualify in the criterion laid down under Section 3(1)(b) subsequent to 31 March 2000. This

would be the correct interpretation of provisions of Section 3(1)(b) as the same seeks to fulfil the legislative object. Permitting re-entry in rent control sphere to an entity who has once lost it, would defeat the legislative objective and is therefore required to eschewed.

64) It would also be necessary to deal with Mr. Dani's submission that the reduction of paid up share capital has not taken place on 18 April 2001, but the same has been effected from the appointed date i.e. 1 April 1999. Thus, a peculiar situation is created in the present case where Respondent-Company's Scheme of Arrangement resulting in reduction of its paid-up share capital has been brought into effect retrospectively from 1 April 1999. In my view, such retrospective reduction in paid-up share capital is wholly irrelevant once it is found that the Respondent was actually and factually covered by Section 3(1)(b) on 31 March 2000 and had lost the protection of MRC Act. The landlord could have issued notice for termination of tenancy and filed a suit for eviction during the gap period from 1 April 2000 till 17 April 2001 and such suit would have been perfectly maintainable without having any effect thereon on account of subsequent event in the form of sanctioning of the Scheme on 18 April 2001. I have discussed and answered much broader issue of permissibility to regain lost protection of MRC Act on account of subsequent events and once it is held that it is impermissible to regain such lost protection, the issue of retrospective sanction of the Scheme from the appointed date of 1 April 1999 takes a backseat, and in that sense, becomes otiose.

65) Reliance by Mr. Jagtiani on the judgment of ***Carona Ltd.*** (supra), in my view, provides necessary guidance for answering the issue involved in the present case. In case before the Apex Court, the Appellant therein was a tenant in respect of premises located at Chembur, Mumbai and while defending decree for eviction passed by the Small Causes Court, the Appellant-tenant contended that its paid up share capital had substantially eroded and was less than one crore rupees, when the proceedings were initiated by the landlord. It appears that a resolution was passed by the Board of the Appellant company to decrease the share capital from Rs.8.20 crores to Rs.41 lakhs and that this 'jurisdictional fact' of reduction of paid up share capital was in existence at the time when eviction proceedings were initiated against it. Thus in ***Carona Ltd.,*** paid up share capital of the company was Rs.8.20 crores as on 31 March 2000. The only difference between the facts of the case in ***Carona Ltd.*** and that of the present case is that, the paid up share capital in ***Carona Ltd.*** continued to be in excess of Rs.1 crore even on the date of termination of tenancy whereas in the present case it had reduced to less than Rs. 1 crore as on the date of termination of Respondent's tenancy. Another difference is that BIFR had not approved reduction of paid up share capital in ***Carona Ltd.*** In my view, however the said difference is inconsequential for the purpose of application of ratio of the judgment in ***Carona Ltd.*** to the present case. The Apex Court considered its judgment in ***Gajanan Dattatraya Versus. Sherbanu Hosang Patel***[31] in which contention was raised that use of the expression 'has sublet' under Section 13(1)(e) of Bombay Rent Act was in past perfect sense requiring occurrence of event in the present

[31] (1975) 2 SCC 668

time since the word 'had sublet' was not used. The Apex Court had negatived the said contention in ***Gajanan Dattatray***. Similar argument was raised before the Division Bench of the Gujarat High Court in ***Maganlal Narandas Thakkar Versus. Arjan Bhanji Kanbi***[32] and in para-49 of judgment in ***Carona Ltd.***, the Apex Court has reproduced the findings of Division Bench of Gujarat High Court in ***Maganlal Narandas Thakkar*** and in para-50 of its judgment applied the said ratio in ***Carona Ltd.*** as well. The Apex Court held in paras-48, 49 and 50 as under :

> **48.** 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* [(1969) 10 Guj LR 837] the High Court of Gujarat had an occasion to consider a *pari materia* provision under the Saurashtra Rent Control Act, 1951 [Clause (*e*) of sub-section (1) of Section 13 of the Act reads as under:"13. (1)(*e*) that the tenant has, since the coming into operation of this Act, unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein;"
>
> **49.** A similar argument was advanced before the Court. However, considering the scheme of the Act, the Court refuted the contention. The Division Bench observed:
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> > "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' includes the element that the sub-letting 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 the verb 'sub-let' in the present perfect tense. He referred to p. 61 of *Handbook of English Grammar* by R.W. Zandvoort. In Para 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 sub-letting 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

[32] (1969) 10 Guj LR 837

the premises up to that date. Mr Desai thus urged before us that unless a sub-tenant were in possession of the property sub-let 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 fulfilment 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 sub-letting 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 sub-letting must be completed. A sub-letting is complete as soon as the sub-tenant is put in possession of the premises given to him on sub-lease. Now, this completed act of sub-letting must have a result. What would be that result in the context of Sections 12 and 13 of the Act? The result of sub-letting would be removal of the impediment in the way of the landlord to recover possession of the premises. In other words, the result of sub-letting 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 sub-letting 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 sub-letting must continue, it is 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 sub-letting unlawful. Therefore, any sub-letting 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 sub-letting was in existence on the date of suit. *It is enough that the sub-letting has taken place sometime after the Act came into operation; it does not matter that the sub-letting came to an end before the landlord gave notice or before the landlord filed a suit."*

50. 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.
>
> *(emphasis and underlining added)*

66) Though there is some factual difference in ***Carona Ltd.*** and the present case, the ratio of the Apex Court is that a unilateral act of tenant would not take away the accrued right in favour of the landlord. It is further held by the Apex Court that unless compelled, a Court of law would not interpret a provision which would frustrate the legislative intent and primary object underlying such provision. In my view, the judgment in ***Carona Ltd.*** completely answers the issue at hand and as has been observed above, interpretation of Section 3(1)(b) of the MRC Act permitting re-entry of an entity in the realm of rent protection, which has once been lost, would completely frustrate the legislative object and this Court would therefore avoid accepting such interpretation. On the contrary, prohibiting such re-entry would fulfil the legislative intent, as well as the primary object underlying the provisions of Section 3(1)(b).

67) In ***Crompton Greaves Ltd.*** (supra), Division Bench of this Court has decided the issue of constitutional validity of Section 3(1)(b) of the MRC Act. The challenge was mounted on the premise of invidious distinction between companies having paid up capital of Rs.1 crore and other commercial ventures and that classification of companies on the basis of paid up share capital was not reasonable and did not have nexus with the object of the legislation. While repelling to challenge to the constitutional validity of Section 3(1)(b) of the MRC Act, the Division Bench held in para-31, 32 and 33 of its judgment as under :

31. Turning then to the provisions of section 3(1)(b) of the present Act, the legislature has decided not to afford protection of the Rent Act to certain categories of tenants mentioned therein. It has been stated that under the Bombay Rent Act, the rents which were payable were frozen on the basis of what was known as a "standard rent" formulae which landlords contended caused tremendous hardship to them as the same resulted in inadequate returns to the landlords. The legislature felt the need of the Rent Act to bring in the necessary balance between the interest of tenants and the landlords. To bring this balance, the Rent Control Bill, when it was introduced in the State Legislature, made a deviation from the existing provisions of the rent laws and introduced an exemption provision under the new Act whereby premises let to foreign missions, international agencies, multinational companies and public limited companies having a paid up share capital of more than Rs. 1 crore were exempted from the Act. When the bill was referred to the Joint Committee of both the Houses of Legislature, the Joint Committee held as many as fifty sittings to consider and discuss the provisions of the Bill. The committee held prolonged discussions and heard views on the proposed provisions in the Rent Control Bill of the representatives of tenants and landlords before making its recommendations. It is thus seen that the legislature had applied to mind to the problem of housing and control of rents and suggested certain measures. It did not proceed on the basis that rent control legislation was meant only for the benefit of the tenants but it wanted to strike a balance between the interests of the landlord and tenants. Therefore, it cannot be said that the provisions of section 3(1)(b) have got no nexus with the object which is sought to be achieved.

32. It is urged that no reason has been given as to why only corporate tenants have been singled out for exclusion and why other tenants similarly situated i.e. having capacity to pay, are also not excluded/exempted. Even within commercial ventures no reason is discernible as to why partnership firms, HUFs and proprietory concerns having economic/financial capacity to pay are protected by the Act, whilst private and public limited companies are excluded. Therefore, there is violation of Article 14 of the Constitution. We are unable to accept these contentions. It is no doubt true that Article 14 ensures non-discrimination in State action both in the legislative and the administrative spheres in the democratic republic of India. This, however, cannot mean that all laws must be general in character and universal in application. As pointed out in *Chiranjitlal Chowdhari v. Union of India,* (1950) SLR 659, the State in the exercise of its governmental powers must necessarily make laws operating differently on different groups or classes of persons and it possess for that purpose large powers of

distinguishing and classifying persons or things subject to such laws. Further it is equally well settled that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it should embrace within the scope of legislation and merely because the categories which would stand on the similar footing are not covered by the legislature would not render the legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 unless it is palpably arbitrary or amounts to total denial of equal protection laws. (see *Sakhawant Ali v. State of Orissa*, AIR 1955 SC 166). Besides there are obvious distinctions between a company incorporated under the Companies Act on one hand and partnership firm or HUF on the other hand. It is not necessary to examine the same in detail. Suffice it to say that even for the purpose of Rent Act, a partnership firm and a company do not stand on the same footing. For example if partners in a partnership firm sell their shares to a third party, it would amount to subletting within the meaning of the Rent Act whereas in a case of a limited company whose shares are transferred may not result into sub-letting and forfeiting of tenancy since the entity remains the same. We see nothing illegal or unfair in the classification adopted by the impugned provision.

33. We also do not find any substance in the submission that the criteria of paid up share capital is arbitrary and violative of Article 14 of the Constitution. **The paid up capital of a company is the capital that it has invested into the business from its own sources. It is not necessarily the money with which it was born. Even the money credited to the paid up capital like bonus shares forms a part of the paid up capital of the company. The companies which have paid up share capital of more than Rs. 1 crore by their very nature are substantial organisations. The paid up share capital of a company is a factor which rarely fluctuates, unlike other factors like net worth which are applied while determining the financial status of a company. It is a factor which is insisted upon by various agencies, such as banks while granting loans as also for the purpose of listing on the stock exchanges. The paid up share capital also reflects the confidence which the public at large has in a particular company. It is also a fact that the paid up share capital cannot be reduced unless the procedure prescribed by the Companies Act is followed and without prior permission of the Company Court as envisaged by the provisions of the Company Act. It is therefore not possible to hold that criteria of paid up capital is wholly irrelevant.** The lack of perfection in a legislative measures does not necessarily imply its unconstitutionality. To quote the words Venkatachaliah J. as His Lordship then was, in "*Ashwathanarayana Shetty v. State of Karnataka*, 1989 Supp. (1) SCC 696 (at page 723)…." no economic measure has yet been devised

> which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of criticism, under the equal protection clause reviewing fiscal devices".
>
> *(emphasis added)*

68) The Division Bench in ***Crompton Greaves Ltd.*** thus not only upheld the criterion of paid up share capital, but also highlighted the importance of paid up share capital of a company which rarely fluctuates. Mr. Dani has sought to read observations of the Division Bench in para-33 of the judgment about permissibility to reduce paid up share capital after following of procedure and with prior permission of Company Court. However, in my view, the issue of effect of such subsequent reduction of share capital on exclusion of Rent Act protection was not before the Division Bench and therefore the judgment cannot be read in support of a proposition that in cases where there is reduction in the paid up share capital by an order of a court, such company would be able to regain protection of Rent Act.

69) Reliance by Mr. Dani on the judgment of Single Judge of this Court in ***New Era Fabrics Ltd., Mumbai*** (supra) has no application to the present case. The judgment is rendered in facts of that case where the paid up share capital of the tenant therein was above Rs.1 crore even on the date of filing of the suit. The controversy before this Court was about factual dispute about paid up share capital, which, according to the tenant was actually Rs.93,74,000/- whereas this Court arrived at the conclusion that the

same was above Rs.1 crore. The Judgment therefore would have no application to the issue at hand.

70) Mr. Dani has relied upon judgment of Single Judge of this Court in ***Pune Zilla Madhyawarti Sahakari Bank*** (supra) in support of his contention that Court cannot enlarge scope of Section 3(1)(b) by interpretation. The case before this Court involved determination of status of co-operative bank not covered by explanation under Section 3(1)(b) and it was sought to be contended that since share capital of the company was in excess of Rs.1 crore, it was covered by Section 3(1)(b). This Court repelled the contention holding that since the tenant was a Bank, it was necessary to prove that it was covered by explanation to Section 3(1)(b). The bank was not a public or private limited company and therefore its share capital was irrelevant. Thus the judgment has no application to the present case.

71) Thus entry by an entity in rent control sphere is not permissible once such entity has already lost the protection of Rent Act.

E. 6 RELEVANCE OF CHANGED STATUS OF TENANT ON THE DATE OF FILING OF SUIT

72) Another debate sought to be created by the Respondent is about its status on the date of filing of the suit. It is sought to be contended that as on the date of filing of the suit i.e. on 25 July 2003, the paid up share capital of the Respondent had admittedly reduced to less than Rs.1 crore. In my view, since broader issue is

answered in the present judgment about impermissibility to regain lost protection of MRC Act on account of happening of subsequent events, this debate sought to be raised on behalf of the Respondent is rendered unnecessary. Even otherwise, it is unfathomable that the landlord who becomes entitled to seek eviction of tenant, who is taken out of purview of MRC Act, would lose such right merely because he tolerates presence of the tenant for some time, during which the tenant unilaterally changes its status and claims regaining of protection under MRC Act. As observed above, in the present case, Revision Applicant could have filed suit for Respondent's ejectment during 1 April 2000 till 17 April 2001 (when the Scheme was sanctioned by this Court) and in that event, Respondent would not have been in a position to raise the defence of reduction of its paid up share capital. As rightly contended by Mr. Jagtiani, loss of protection of Rent Act is an event which occurred on 31 March 2000 and such event created right in favour of the Plaintiff-landlord to seek ejectment of the Defendant-tenant by serving notice under Section 106 of the Transfer of Property Act. Mere action of the Plaintiff in tolerating Respondent's presence in the suit premises would not result in permanent loss of that right. In this connection, reliance of Mr. Jagtiani on judgment of the Apex Court in ***Central Bank of India Versus. National Rayon Corporation Limited*** (supra) appears to be apposite. In case before the Apex Court, eviction notice was issued on 26 June 2007 after the tenant had lost rent act protection on 31 March 2000 on account of tenant's paid up share capital being in excess of Rs.1 crore. In the light of this position, the Apex Court has held in para-7 as under :

> **7.** As far as the present action initiated by Central Bank of India is concerned, the notice to evict was issued on 26-6-2007, much after the Maharashtra Rent Control Act came into force on 31-3-2000. This Act clearly lays down that it shall not apply to public limited companies having a paid-up share capital of rupees one crore or more. Section 3(1)(*b)* of the Act reads as follows:
>
> "**3.** ***Exemption.***—(1) This Act shall not apply
>
> (*a*) ***
>
> (*b*) 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."

73) Since it is held that it is not permissible to regain lost protection of MRC Act on account of occurrence of subsequent event, reliance by Mr. Dani on judgments in ***MST. Subhadra*** (supra) and ***Vasudev Dhanjibhai Modi*** (supra) is not relevant to the issue at hand which judgment seeks to deal with the issue of material date for ascertaining occurrence of an event.

E. 7 LIFTING OF CORPORATE VEIL

74) Mr. Jagtiani has urged this Court to lift the corporate veil and to treat the three entities viz. Respondent, Veedip and Datum as a single entity for the purpose of application of provisions of Section 3(1)(b) of the MRC Act. He has relied upon judgment of the Apex Court in ***Delhi Development Authority*** (supra) in which it is held in para-28 as under :

> **28.** The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud

> people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family *and* that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.

75) Reliance is also placed on judgment of Delhi High Court in ***Delhi Airport Metro Express Private Limited*** (supra) in which the Delhi High Court has referred to the decision of the Apex Court in ***Balwant Rai Saluja Versus. Air India Ltd.***[33] as well as the judgment in ***Delhi Development Authority***. In my view, it is not really necessary to delve deeper into the issue of lifting of corporate veil once this Court has held that it is impermissible to regain lost protection of MRC Act on account of subsequent change of status. However, as observed above, the case does not involve erosion of paid up share capital on account of any economic constraints. On the other hand, the reduction of share capital of Respondent-Company appears to have been undertaken for strengthening the company's business by distributing the same to two sister concerns. By sanction of the Scheme, the Respondent-Company and its sister concerns have gained strength and have not really lost status as a 'cash rich entity' or has become a 'cash poor entity'. To this limited extent, if the corporate veil is lifted and the real Arrangement of the Scheme is appreciated, in the context of the objective behind enacting Section 3(1)(b), it can hardly be said that after sanction of the Scheme,

[33] (2014) 9 SCC 407

Respondent, who was able to afford market rent became incapable of doing so. In my view, therefore even if the principle of impermissibility of regaining lost protection of MRC Act on account of subsequent change of status was not to be applied to the present case, the nature of the Scheme between Respondent and its sister concerns is such that the test of 'affordability to pay market rent' would still be satisfied. Respondent is otherwise occupying entire second floor of the building located in Ballard Estate area of Mumbai City admeasuring 5000 sq. ft which are used for its business purposes. Though the paid up share capital is distributed, ultimately the same management continued the same business through Veedip and Datum. It is also a matter of fact that subsequently, Veedip is later renamed as 'Mather and Platt Pumps Ltd.' and Datum is renamed as 'Mather and Platt Fire Systems Ltd.' Thus both Veedip and Datum are later given Respondent's brand name 'Mather and Platt'. This is not a case that a new management took over Veedip or Datum and that Respondent's management ceased to do business in Fire and Security Engineering products or well as for Fluid Engineering products. In that view of the matter, mere internal arrangement made by the management for strengthening its business thereby resulting in reduction of paid-up share capital of Respondent would not bring back the lost protection of rent control legislation. Therefore the corporate veil is required to be lifted for inferring affordability on the part of the management of Respondent to pay market rent for inclusion of Respondent under Section 3(1)(b) of MRC Act.

F. CONCLUSIONS

76) The conspectus of the above discussion is that once protection under the Rent Act is lost by a company on account of its paid up share capital exceeding Rs. 1 crore, mere voluntary reduction of such paid up share capital below Rs. 1 crore by it would not result in regaining the lost Rent Act protection. By applying the economic criterion of 'affordability to pay market rent', it is held that Respondent is a 'cash rich entity' and is able to fend for itself, negotiate with premises owner and pay rent at market rates. The Small Causes Court and its Appellate Bench have committed palpable error in not appreciating the statutory scheme of MRC Act in its right perceptive. Both the Courts ought to have appreciated that Respondent had paid up share capital of Rs. 18.90 and cash reserves of Rs. 45 crores as on 31 March 2000, when the MRC Act came into effect. Respondent is thus a 'cash rich entity' excluded from provisions of MRC Act, under Section 3(1)(b) thereof.

G. PLAINTIFF'S ENTITLEMENT TO SEEK RECOVERY OF POSSESSION OF SUIT PREMISES

77) Having held that Respondent is covered by Section 3(1)(b) of the MRC Act as on date of filing of the suit, and on that count, was not entitled to protection of its tenancy under provisions of Act, the next issue is whether Applicant-Plaintiff is entitled to decree for eviction against Respondent-Defendant. Once Respondent loses protection under rent control legislation, its tenancy becomes

terminable by issuance of notice under Section 106 of the Transfer of Property Act. In the present case, Applicant has issued notice of termination of tenancy to Respondent on 24 December 2002. The only defence taken by Respondent to the said termination notice was its protection under the provisions of MRC Act. In my view therefore, since tenancy of Respondent is held to be not protected by provisions of the MRC Act, termination of its tenancy by notice dated 24 December 2002 would be valid. Since termination of tenancy of Defendant is valid, Plaintiff is entitled to seek recovery of possession of suit premises from Defendant. In my view therefore there would be no point in remanding the suit for deciding the issue about validity of termination of Defendant's tenancy and Plaintiff's entitlement to seek recovery of possession of suit premises. In fact, the Trial Court has framed and answered the issue relating to validity of termination of tenancy of the Defendant against Plaintiff and in favour of Defendant. The findings recorded on the said issue both by the Trial and the Appellate Court are clearly erroneous. The said issue is answered against Plaintiff only on account of Defendant being held covered by provisions of MRC Act. If Trial and Appellate Court were to hold that Defendant is covered by provisions of Section 3(1)(b) of the Act, I am sure both the Courts would not have hesitated in passing decree of eviction against Defendant. No other defect is otherwise pointed out by the Defendant in notice of termination of tenancy. It is accordingly held that notice of termination of tenancy is legal and valid and accordingly Plaintiff is entitled to decree of eviction against Defendant.

H. ORDER

78) I accordingly procced to pass the following order :

i) Judgment and Decree dated 6 October 2016 passed by Court of Small Causes at Mumbai in T.E. & R. Suit No. 198/211 of 2003 as confirmed by the judgment and order dated 11 August 2023 passed by Appellate Bench of Small Causes Court in P. Appeal No. 508 of 2016 are set aside.

ii) T.E. & R. Suit No. 198/2011 of 2003 is decreed with costs.

iii) Defendant shall handover vacant and peaceful possession of suit premises to the Plaintiff by 31 December 2024.

iv) Plaintiff shall be entitled to inquiry under Order XX Rule 12(C) of the Code as to mesne profits w.e.f. date of termination of tenancy.

79) With the above directions, Civil Revision Application is allowed.

SANDEEP V. MARNE, J.

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