Arjun Khiamal Makhijani

Vs

Jamnadas C. Tuliani and Others

Prithdayal Chetandas and Others

Vs

Jamnadas C. Tuliani and Another

Civil Appeal Nos. 4180 and 4181 of 1989

(M. N. Venkatachaliah, N. D. Ojha JJ)

05.10.1989

JUDGMENT

OJHA, J. –

1. Special leave granted.

2. These civil appeals have been preferred against a common judgment of the Bombay High Court dismissing Writ Petition No. 3313 of 1987 filed by Arjun Khiamal Makhijani who is the appellant in one of these appeals and Writ Petition No. 3417 of 1987 by Prithdayal Chetandas and others who are the appellants in the other civil appeal. Jamnadas C. Tuliani who is respondent 1 in both these appeals is the owner and the landlord of the suit premises comprising two bedrooms flat together with a garage on the ground floor and a store room on Bhulabhai Desai Road in the city of Bombay. A suit was instituted by him for ejectment from the said premises against five defendants on the ground that they were tenants of the said premises and were in arrears of rent for period of more than six months which they had not paid in spite of a notice of demand having been served on them as contemplated by sub-section (2) of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act') and were consequently liable for eviction under sub-section (3)(a) of the Act as it then stood. Two other grounds were pleaded by respondent 1 namely that the tenants had changed the user of the suit premises and that they had committed breach of terms and conditions of the tenancy. Subsequently, Arjun Khiamal Makhijani aforesaid was impleaded as defendant 6 in the suit on the assertion that the tenants had illegally sublet a portion of the suit premises namely the garage to him and were consequently liable to be evicted on this ground also. The suit was contested both by the tenants as well as by defendant 6. The trial court recorded finding in favour of the landlord insofar as the pleas of default in payment of rent and illegal sub tenancy are concerned. The other two pleas namely that the tenants had changed the user of the suit premises and had also committed breach of terms and conditions of the tenancy were decided against the landlord. On the basis of the finding on the pleas of default in payment of rent and illegal subletting, the suit was decreed. Two appeals were preferred against the judgment of the trial court, one by the tenants and the other by defendant 6. Both these appeals were dismissed and the tenants and defendant 6 aggrieved by the said decree filed two writ petitions in the High Court. Against the common judgment of the High Court dismissing these writ petitions,

the present civil appeals have been preferred.

3. Before dealing with the respective submission made by learned counsel for the parties it may be pointed out that even though the finding that the tenants were defaulters in payment of rent has been upheld by the High Court, the other finding namely that the tenants had illegally sublet the garage of the suit premises to defendant 6 has been set aside and it has been held accepting the case of the tenants that defendant 6 was a trespasser. The tenants had also claimed before the High Court the benefit of sub-section (3) of Section 12 of the Act as substituted by Amendment Act 18 of 1987 which came into force on October 1, 1987. This plea too was repelled. Defendant 6 before the High Court on the other hand took up the plea that in view of the finding in the suit that he was an illegal sub-tenant of the garage since 1967, he was entitled to the benefit of sub-section (2) of Section 15 of the Act as amended by the aforesaid Amendment Act 18 of 1987. The High Court repelled this pleas on the finding that he was not a sub-tenant but a trespasser and also on the ground that he was not in possession on February 1, 1973, the relevant date mentioned in the said sub-section. The High Court also held that benefit of sub-section (2) of Section 15 as amended, could not be given to defendant 6 in a writ petition, the same being not a proceeding contemplated by Section 25 of the amendment Act. In order to appreciate the submissions made by learned counsel for the parties, it will be useful to extract sub-section (3) as it stood at the time when the suit was instituted and sub-section (3) as it stands after its amendment. Sub-section (3) as it stood when the suit was instituted reads as here under :

> "(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted in creases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the court shall pass a decree for eviction in any such suit for recovery of possession.
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> (b) In any other case no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due and thereafter continues to pay or tender in court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court."

4. After its amendment as aforesaid, it reads :

> "(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, on the first day of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court :
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> Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant."

Sub-section (2) of Section 15, on the other hand, after its amendment as aforesaid runs thus :

"(2) The prohibition against the subletting of the whole or any part of the premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the provisions of this sub-section, be deemed to have had no effect before February 1, 1973, in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a court, any such sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub-section (1), as purported sub-lessee, assignee or transfer and has continued in possession on the date aforesaid shall be deemed to be valid and effectual for all purposes, and any tenant who has sublet any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of Section 13.

The provisions aforesaid of this sub-section shall not affect in any manner the operation of sub-section (1) after the date aforesaid."

5. Since considerable emphasis has been placed on Section 25 of the Amendment Act 18 of 1987, the same may also be usefully quoted. It reads :

"25. Nothing contained in the principal Act, as amended by this Act, shall be deemed to authorise the reopening of any suit or proceeding for the eviction of any person from any premises to which the principal Act applies as if such proceeding had been finally disposed of before the commencement of this Act.

Explanation. - For the purposes of this section, suit or proceeding, as the case may be, shall not be deemed to have been finally disposed of, if in relation to that suit or proceeding, any appeal or proceeding is pending, or, if the period of limitation for preferring an appeal or proceeding, as the case may be, had not expired before the commencement of this Act."

6. It has been urged by the learned counsel for the tenants that November 14, 1967 was the first day of hearing of the suit and since in pursuance of an order passed by the trial court on that day, the tenants had deposited the entire arrears of rent on January 9, 1968 within the time granted by the court and continued to deposit the monthly rent thereafter they could not be treated as defaulters in payment of rent even if the amendment made in sub-section (3) of Section 12 by the Amendment Act 18 of 1987 was ignored. We, however, find it difficult to agree with this submission. It is not denied that the arrears of rent which were for a period of more than six months and in respect of which a notice of demand had been served on the tenants under sub-section (2) of Section 12 of the Act had not been paid by the tenants to the landlord within one month of the service of the notice. It is also not denied that during the said period of one month, no dispute regarding the amount of standard rent or permitted increases was raised by the tenants. On a plain reading of clause (a) of sub-section (3) of Section 12 of the Act as it stood at the relevant time, the said clause was clearly attracted and the consequence provide therein had to follow namely a decree for eviction against the tenants had to be passed. Clause (b) of sub-section (3) on the face of it was not attracted inasmuch as the said clause applied only to a case not covered by clause (a). This is amply borne out by the use of the opening words "In any other case" of clause (b). In Harbanslal Jagmohandas v. Prabhudas

Shivlal ((1977) 1 SCC 575) these clauses (a) and (b) of sub-section (3) of Section 12 of the Act came up for consideration and it was held that the tenant can claim protection from the operation of Section 12(3)(a) of the Act only if he makes an application raising a dispute as to standard rent within one month of the service of the notice terminating the tenancy. In the instant case this had not admittedly been done by the tenants. The consequence of non-payment of arrears of rent claimed in the notice of demand was, therefore, inevitable. In Jaywant S. Kulkarni v. Minochar Dosabhai Shroff ((1988) 4 SCC 108) clauses (a) and (b) of sub-section (3) of Section 12 again came up for consideration. It was held : (SCC p. 112, para 3)

> "Sub-section (3)(a) of Section 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the court shall pass a decree for eviction in any such suit for recovery of possession. In the instant case, as has been found by the court, the rent is payable month by month. There is no dispute regarding the amount of standard rent or permitted increases. Such rent or increases are in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-section (2). The court was bound to pass a decree for eviction in any such suit for recovery of possession."

7. Faced with this difficulty, learned counsel for the tenants urged that since the Act was a beneficial legislation the tenants having deposited the arrears of rent within the time granted by the trial court and having continued to deposit future rent thereafter the decree for their eviction deserves to be reversed by this Court. Insofar as this submission is concerned, it may be pointed out that in Ganpat Ram Sharma v. Gayatri Devi ((1987) 3 SCC 576), while dealing with almost a similar Rent Control Legislation it was held :

> "But quite apart from the suit being barred by lapse of time, this is a beneficial legislation, beneficial to both the landlord and the tenant. It protects the tenant against unreasonable eviction and exorbitant rent. It also ensures certain limited rights to the landlord to recover possession on stated contingencies."

8. In Ganpat Ladha v. Sashikant Vishnu Shinde ((1978) 2 SCC 573) while dealing with the scope of clauses (a) and (b) of sub-section (3) of Section 12 of the Act, it was held : (SCC pp. 579-80, para 11)

> "It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf. Thus Section 12(3)(a) of the Act makes it obligatory for the court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J.) in Ratilal Balabhai Nazar v. Ranchhodbhai Shankerbhai Patel (AIR 1968 Guj 172 : 9 Guj LR

> 48). If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Section 12(3)(a) to get a decree for eviction. But where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfill those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour of the tenant can be found in Section 12(3)(b) even where the conditions laid down by it are satisfied to be strictly confined within the limits prescribed for their operation."

9. When the Act contains provisions, some of which fall under the category of beneficial legislation with regard to the tenant and the others with regard to the landlord, the assertion that even with regard to such provisions of the Act which fall under the purview of beneficial legislation for the landlord an effort should be made to interpret them also in favour of the tenant is a negation of the very principle of interpretation of a beneficial legislation on which reliance is placed on behalf of the tenants. The argument indeed is self-defeating and only justifies the cynical - Heads I win tails you lose. It is difficult to countenance the sentimental approach made by learned counsel for the tenants, for the simple reason that as pointed out in Latham v. R. Johnson and Nephew Ltd. ((1913) 1 KB 398, 408 : 108 LT 4 : 29 TLR 124) sentiment is a dangerous will-o'-the-wisp to take as a guide in the search for legal principles.

10. Reliance was placed by learned counsel for the tenants on Vatan Mal v. Kailash Nath ((1989) 3 SCC 79). In that case provisions of Amending Ordinance 26 of 1975 whereby Section 13(a) was inserted in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, came up for consideration. After pointing out that the object of inserting Section 13(a) was to confer benefit on all tenants against whom suits for eviction on ground of default in payment of rent were pending and to achieve that object, the said section had been given overriding effect, it was held that the interpretation of Section 13(a) must conform to the legislative intent and the courts should not take narrow restricted view which will defeat the purpose of the Act. In our opinion, in view of the mandatory provisions contained in Section 12(3)(a) of the Act, the decision in the case of Vatan Mal ((1989) 3 SCC 79) is not at all attracted to the facts of the instant case. Clauses (a) and (b) of sub-section (3) of Section 12 of Act are calculated to meet entirely different situations and the object of clause (b) was not to defeat the mandatory requirement of clause (a) scope of which has already been discussed above. For the same reason, the decision of this Court in B.P. Khemka Pvt. Ltd., v. Birendra Kumar Bhowmick ((1987) 2 SCC 407 : (1987) 2 SCR 559) on which too reliance has been placed by the learned counsel for the tenants is of no assistance to them.

11. It was then urged by the learned counsel for the tenants that notwithstanding the provisions contained in Section 12 (3)(a) of the Act, this Court can still grant relief to the tenants in view of the power conferred on it under Article 142 of the Constitution "for doing complete justice" in the case. Reliance in support of this submission has been placed on Kamala Devi Budhia v. Hem Prabha Ganguli ((1989) 3 SCC 145). This submission ignores the basic concept that Article 142 does not contemplate doing justice to one party by ignoring mandatory statutory provisions and thereby doing complete injustice to the other party by depriving such party of the benefit of the mandatory statutory provision. In the case of Kamala Devi Budhia ((1989) 3 SCC 145), the question arose as to whether an application under Section 12 of the Bihar Buildings (Lease, Rent and Eviction) Control Act was competent or in the circumstances of the case only a suit under Section 11 thereof could be

filed. It was pointed out that it is the same court before which both a suit under Section 11 and an application under Section 12 are to be filed and it was in this background that it was held : (SCC p. 151, para 11)

> "If it is assumed that an application under Section 12 of the Act is not maintainable in the facts and circumstances of the present case, in our opinion, the proceeding has to be treated as a suit and the judgment of the learned Munsif as a decree therein. A further question may arise as to the effect of the Judicial Commissioner, Ranchi declining to pass a formal decree of eviction and directing the appellants to make an application under Section 12(3) of the Act for that purpose. Can this Court restore the decree of the trial court in absence of an appeal by the appellant before the High Court? We think that we can and we should. The question does not affect the substantive right of the parties as the controversy was concluded by the first appellate court in favour of the appellants. What was left was only procedural in nature and inconsistent with our decision to treat the proceeding as a suit. The occasion for filing an application under Section 12(3) can arise only where the matter is covered by Section 12, and as we have made an assumption in favour of the respondents that Section 12 has no application to the present case, there is no point in asking the appellants to file such an application. As mentioned in Article 142 of the Constitution of India, this Court may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and the present case is a most appropriate one for exercise of such power."

12. The said decision apparently cannot be applied to the facts of the instant case.

13. Learned counsel for the tenants then urged, relying on Praduman Kumar v. Virendra Goyal ((1969) 1 SCC 714 : (1969) 3 SCR 950) that at all events the tenants were entitled to be relieved against forfeiture for non-payment of rent under Section 114 of the Transfer of Property Act benefit of which could be given if deposit of rent was made at any stage of the hearing of the suit. In our opinion, there is no substance in this submission either inasmuch as Section 114 of the Transfer of Property Act cannot be applied to a case where the suit for eviction of a tenant has been instituted not on the basis of forfeiture of lease under the Transfer of Property Act but on the basis of statutory provision dealing specifically with the rights and obligations of the landlords and tenants such as Section 12 of the Act. In a case where a tenant renders himself liable to be evicted on the ground of being defaulter in the payment of rent as contemplated by sub-sections (2) and (3)(a) of Section 12 of the Act, bar from the way of the landlord in instituting a suit for ejectment of a tenant is removed and he gets in right to have a decree for eviction. Such removal of bar is not in any sense forfeiture of any rights under lease which the tenant held. Section 114 of the Transfer of Property Act which provides relief against forfeiture for non-payment of rent applies to a case where a lease of immovable property has determined by forfeiture for non-payment of rent. Section 111 of the Transfer of Property Act deals with various contingencies where-under a lease of an immovable property determines. Clause (g) contains one of such contingencies being by forfeiture inter alia in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter. In a case where forfeiture of lease is claimed for non-payment rent, it would, therefore, have to be established that one of the express conditions of the lease provided that on breach of that condition namely on non-payment of rent the lessor was entitled to re-enter. It is only in those cases where such an express condition is contained in the lease and the lessee breaks the said condition and the lessor on his part gives notice in writing to the lessee of his intention to determine the lease that a lease of immovable property determines by forfeiture for non-payment of rent. In the instant

case, the suit was not based on any such forfeiture of lease under the Transfer of Property Act but was filed for the enforcement of the statutory right conferred on the landlord by sub-sections (2) and (3)(a) of Section 12 of the Act.

14. Lastly, it was urged by the learned counsel for the tenants that after clauses (a) and (b) of sub-section (3) of Section 12 were substituted by the consolidated sub-section (3) of the Amendment Act 18 of 1987, the tenants should have been given the benefit of the deposit of arrears of rent on the first day of hearing in pursuance of the order of the trial court dated November 14, 1967, and of the deposits of future rent thereafter and at all events they were entitled to make the necessary deposit after the commencement of the Amendment Act 18 of 1987. In our opinion, the tenants are not entitled even to the benefit of the amended sub-section (3) of Section 12 of the Act inasmuch as on a plain reading of the sub-section it is not possible to give it a retrospective operation. In this connection, it will be useful to notice that while amending sub-section (2) of Section 15 of the Act, it was provided by the Amendment Act 18 of 1987 that the provisions which were substituted in the said sub-section, shall be deemed to have been substituted on February 1, 1973. No such provisions was made with regard to the substitution of sub-section (3) of Section 12 of the Act. Sub-section (3) uses the words "on the first day of the hearing of the suit or on or before such other day as the court may fix". If the deposit of arrears of rent on January 9, 1968 is pleaded as compliance of the deposit contemplated by the amended sub-section (3) and even if for the sake of argument this plea is accepted, the said deposit would still not confer on the tenants the benefit of sub-section (3) for the obvious reason that the said sub-section contemplates not only the deposit of standard rent and permitted increases then due but also of simple interest on the amount of arrears of such rent and permitted increases at the rate of nine per cent per annum. Such amount of interest was admittedly not deposited by the tenants either on January 9, 1968 or on any date thereafter. We now turn to the submission of the learned counsel for the tenants that the tenants were entitled to make the deposit contemplated by sub-section (3) "on the first day of the hearing of the suit or on such other day as the court may fix" after sub-section (3) being substituted by the Amendment Act 18 of 1987. This argument ignores the difference between the terms "at the hearing of the suit" as used in Section 114 of the Transfer of Property Act and the term "on the first day of the hearing of the suit". In the case of former, it may be possible to argue that the deposit can be made at any hearing of the suit either in the trial court or the appellate court, an appeal being a continuation of the suit but the said argument is not available in the latter case where the words used are "on the first day of the hearing of the suit". In the very nature of things it is not possible to contemplate numerous dates all of which may fulfil the requirement of being "the first day of the hearing of the suit". In this connection, it would be useful to notice that the words "on the first day of the hearing of the suit or on or before such other day as the court may fix" occurring in sub-section (3) of Section 12 of the Act after its amendment by the Amendment Act 18 of 1987 occurred in clause (b) of the unamended sub-section (3) also. In S. D. Chaganlal v. Dalichand Virchand Shroff ((1968) 3 SCR 346 : AIR 1968 SC 1109) while dealing with the clauses (a) and (b) of the unamended sub-section (3) of Section 12 of the Act, it was held that the date fixed for settlement of issues was September 3, 1965 which can be taken to be the date of the first hearing of the suit for the purpose of the Act. The same meaning obviously has to be given to the aforesaid words when they have been repeated in the amended sub-section (3) of Section 12 of the Act. The date fixed for settlement of issues in a suit cannot be equated with any other date or dates which may be fixed in the suit or the appeal. The words "on or before such other date as the court may fix" occurring after the words "on the first day of the hearing of the suit" in sub-section (3) of Section 12 of the Act were obviously meant to meet a situation where for some inevitable reason the necessary deposit could not be made on the day of the hearing of the suit and the court extended the time to make such deposit. A deposit made on or

before such extended date would also meet the requirement of the sub-section. Even Section 25 of the Amendment Act 18 of 1987 would be of no assistance insofar as the interpretation of Section 12(3) of the Act is concerned. The said section provides for certain exceptions in which a suit or proceeding for the eviction of any person may be reopened. A provision containing exceptions cannot be interpreted so as to enlarge the scope of sub-section (3) of section 12 of the Act. The said Section 25 may be applicable to sub-section (2) of Section 15 as amended by the Amendment Act 18 of 1987, the Amendments whereunder were given retrospective effect as indicated earlier or also to a similar provision. Clause (a) of the unamended sub-section (3) of Section 12 of the Act conferred a substantive right on the landlord to have a decree for eviction in his favour as held by this Court in the case of Ganpat Ladha ((1978) 2 SCC 573) and such a right could be taken away only by a provision which either expressly took away that right or could be interpreted to have taken away that right by necessary intendment. We do not find any such indication either in the amended sub-section (3) of Section 12 of the Act or even in Section 25 of the Amendment Act 18 of 1987. By taking recourse to the process of reopening of proceedings one cannot put the hands of the clock back and create an artificial date as the "first day of the hearing of the suit". No other point has been urged by learned counsel for the tenants and consequently we find no merit in the appeal filed on behalf of the tenants.

15. We now turn to the appeal filed by the defendant 6 to whom the garage was found by the courts below to have been illegally sublet but who has been found to be a trespasser by the High Court. As seen above the High Court in its judgment under appeal repelled the claim of defendant 6 that he was entitled to the benefit of the amended sub-section (2) of Section 15 of the Act on three grounds - (i) that he was a trespasser and not a person to whom the garage had been illegally sublet, (ii) that he was not in possession on the relevant date namely February 1, 1973 and (iii) that the said benefit could be extended only in a suit or proceeding under the Act and not in a writ petition which did not constitute a continuation of a suit or proceeding under the Act but was an independent proceedings under the Constitution.

16. It has been urged by learned counsel for defendant 6 that since the finding of the courts below that the garage had been illegally sublet to defendant 6 was in consonance with the pleading of the landlord in this behalf, the said finding could not be reversed in a writ petition first, because it was not within the competence of the High Court to reverse that finding either under Article 227 or even under Article 226 of the Constitution and secondly, that the landlord was bound by his admission in the pleading. Insofar as the submission that the landlord was bound by his admission in the pleading is concerned, it is true that such an admission being a judicial admission under Section 58 of the Evidence Act stands on a higher footing than evidentiary admissions as held by this Court in Nagindas Ramdas v. Dalpatram Ichharam ((1974) 1 SCC 242) but on the facts of the instant case to which reference shall be shortly made, it is the proviso to Section 58 which comes into play and the rights of the parties had to be determined de hors the said admission. The said proviso contemplates that the court may in its discretion require the fact admitted to be proved otherwise than by such admissions. The scope of this proviso did not fall for consideration in the case of Nagindas ((1974) 1 SCC 242). Reverting to the facts of the instant case it would be seen that there was a triangular dispute in this case. After getting the plaint amended the landlord no doubt set up the case that the tenants had illegally sublet the garage to defendant 6. The case of the tenants, on the other hand, was that defendant 6 was a trespasser and they had never sublet the garage to him. Insofar as defendant 6 is concerned, the plea set up by him was that the came into possession of the garage in pursuance of an agreement entered into between him and Daulat, son of one of the tenants, for a period of six months. As pointed out by the High Court in its judgment under appeal no positive plea of sub-tenancy, whether lawful or unlawful was raised by defendant 6 in the trial court. It is in this

background that the controversy on the question as to whether the garage had been illegally sublet by the tenants to defendant 6 had to be resolved. First, since defendant 6 himself had disputed the contention of the landlord that the garage had been illegally sublet to him by the tenants and had set up the agreement with Daulat who apparently had no interest whatsoever in the garage apart from being the son of one of the tenants, a finding that the garage had been sublet to defendant 6 illegally could obviously not be given simply on the basis of the case set up by the landlord in this behalf. Even if defendant 6 was permitted to take a somersault and set up a plea contrary to his pleadings, admitting he case of the landlord, any finding given on the basis of such admission would not be binding on the tenants who were contesting the plea of the landlord and had set up a case that defendant 6 was a trespasser and that the garage had never been sublet by them to him. Such a finding as aforesaid vis-a-vis tenants would be a finding based on the admission of the landlord in his own favour. To resolve the controversy as between the landlord and the tenants in this behalf, therefore, and independent finding on merits based on evidence and not on the basis of the plea raised by the landlord had to be given. These are the peculiar facts of this case on account of which the proviso to Section 58 of the Evidence Act was clearly attracted and the parties had to be required to prove their respective cases by adducing evidence de hors the admission of the landlord in his plaint.

17. Insofar as the submission made by learned counsel for the defendant 6 that a finding of fact could not be interfered with in a writ petition by the High Court is concerned, by and large no exception can be taken thereto. The rule in this behalf, however, is not inflexible but has exceptions recognised by judicial decisions which being well known are not necessary to be recapitulated. For instance this rule will not apply if a finding is arbitrary or based on no evidence or is such that no one properly instructed in law could have given it the same being in the teeth of some statutory provisions or in ignorance of binding precedents. In our opinion, the instant case is one which falls within the exception to had said rule. It is true that the landlord by getting his plaint subsequently amended set up the plea that the garage had been illegally sublet by the tenants to defendant 6. It is, however, equally true that the said plea was categorically denied by the tenants and it was specifically asserted by them that they had never sublet the garage to defendant 6 and that defendant 6 was a trespasser. As regards defendant 6 himself he pleaded to have come into possession of the garage for a period of six months on the basis of an agreement entered into between him and Daulat, the son of one of the tenants. In the lifetime of his father Daulat could not have the status of a joint tenant and in the eye of law he had no interest in the garage, apart from using it in his capacity as the son of one of the tenants. He was not in a position either to sublet the garage or even to grant a licence thereof. As seen above, the High Court has emphasised in its judgment under appeal that no positive plea of sub-tenancy, whether lawful or unlawful, was raised by defendant 6 in the trial court. That apart, defendant 6 in unequivocal terms admitted in his deposition also before the trial court that he came in possession by virtue of the agreement with Daulat, the son of the defendant 1. He further admitted that he did not know that defendant 1 to 5 were the tenants of the flat, Storeroom and garage and that he did not make enquiry as to who were the tenants. This being the situation there was no scope for even drawing an inference that taking of possession of the garage for six months by defendant 6 in pursuance of the agreement entered into between him and Daulat may have been with the tacit approval of the tenants namely defendants 1 to 5. Nothing has been brought to our notice to indicate that the case of the landlord was that the tenants had sublet the garage to defendant 6 in his presence and he had personal knowledge about the transaction of subletting. The High Court has also pointed out in paragraph 25 of its judgment under appeal that in support of their plea that the defendant 6 was a trespasser defendant 1 to 5 had led evidence and that the lower court had no justification to ignore that evidence. It was apparently, therefore, a case

where no one properly instructed in law could have come to the conclusion that the tenants had illegally sublet the garage to defendant 6. In this state of affairs it cannot obviously be said that the High Court committed any error in holding that defendant 6 was a trespasser. This being so, defendant 6 indisputably could not derive any benefit out of the amended sub-section (2) of Section 15 of the Act.

18. The finding of the High Court that defendant 6 was not in possession on the relevant date namely February 1, 1973 was based on the circumstances that on that date admittedly the garage was in possession of a receiver appointed by the Court and not in possession of defendant 6. It has been urged by learned counsel for defendant 6 that possession of the receiver would enure to the benefit of defendant 6. This proposition has been contested by the learned counsel for the landlord. We, however, do not find it necessary to go into this question in view of our conclusion that the finding of the High Court that the garage had not illegally been sublet to defendant 6 and that the said defendant was a trespasser is unassailable. Even if the submission of learned counsel for defendant 6 in this behalf is accepted the nature of possession of defendant 6 on February 1, 1973 would be in no way better than that of a trespasser. For the same reason, we find it unnecessary to go into a correctness or otherwise of the view of the High Court that a writ petition being an independent proceedings was not a proceeding in relation to a suit or proceeding under the Act.

19. It was lastly urged by the learned counsel for defendant 6 that after the judgment had been delivered by the High court on July 22, 1988 dismissing the two writ petitions it was not open to the High court to reopen and hear the writ petitions on August 18, 1988 and August 29, 1988. So far as this submission is concerned it may be pointed out that the very first sentence of the order of the High Court dated August 29, 1988. So far as this submission is concerned it may be pointed out that the very first sentence of the order of the High Court dated August 18, 1988 indicates that the judgment had not been delivered earlier but had only been dictated and the transcript was read. Listing the matter again for further hearing became necessary inasmuch as while dictation the judgment a factual position was noticed that defendant 4 had died and there was nothing to show that his heirs had been brought on record. Learned counsel for the parties appeared on that date and an affidavit was taken on record. They prayed for time to make submissions on the said question. The matter was ordered to stand over till August 29, 1988 and in the meantime an affidavit in reply to the affidavit taken on record as aforesaid was permitted to be filed. Time given to the defendant 1 to file affidavit in support of the undertakings given by him earlier was also extended to August 29, 1988. This submission also made by learned counsel for defendant 6 has, therefore, no substance. In view of the foregoing discussion, there is no merit even in the appeal filed by defendant 6.

20. In the result, both the appeals fail and are dismissed. In the circumstances of the case, however, there shall be no order as to costs.

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