**GUJARAT HIGH COURT**

Shah Rasiklal Chunilal

Vs.

Sindhi Shyamlal Mulchand

S.A. No. 1037 of 1965 and S.A. No. 866 of 1964, C.R.A. No. 947 of 1967, S.A. Nos. 762 of 1968, 657 of 1969, 658 of 1969 and L.P.A. 106 of 1970

(J.B. Mehta J. and D.A. Desai, JJ.)

10.11.1970. 11.11.1970

**JUDGMENT**

**J.B. Mehta, J.**

1. This group of matter raises the third question which we have left open in our earlier decision in *(Hussain Dadu & Anr. v. Kunvarbhai Prabhudas*[1]) where this Division Bench had disposed of the two questions as to when a consent decree operates as a lease and when it could be said to be a penal decree so as to justify equitable relief against forfeiture or such penalty. The third question which was left open was as to when the consent decree could be treated as a nullity even by an executing Court or in a collateral proceeding. This third question has been raised in these matter because of the three latest decisions of the Supreme Court in this connection. As regards the true ratio of these decisions there has been a difference of opinion amongst the various Single Judges of this Court. Brother Sheth J. has, therefore, made a Reference in the last two referred matters by formulating the question for our answer in the following terms :

> "Whether the ratio decided of the three decisions of the Supreme Court is applicable to cases governed by sec. 13 of the Saurashtra Rent Control Act in view of the fact that the language of sec. 13 of the Delhi Act is materially different from the language of the Saurashtra Act."

As all these matters raise this common question we are disposing of all these matters by this common order.

2. Before going into the ratio of these three decisions, it would be material at the outset to examine certain settled principles on the basis of which such a contention of nullity could b-. gone into by the executing Court. In *Ahmedabad Municipal Corporation v. Joitaram*[2], speaking

for the Division bench consisting of myself and Thakore J., I had pointed out the settled legal position especially after *Hiralal Patni's case*[3], that the executing Court could go into the question of validity of a decree only on the short ground that the decree was a

[1] Letters Patent Appeal No. 35 1969 and S. A. No. 770 of 1960 decided on September 24, 1970, XI G.L.R. 610

[2] X G.L.R. 431

[3] A.I.R. 1962 S.C. 199 at page 201

nullity in the true sense. In such a case the distinction must always be kept in mind between the objections which are of a

technical nature and which could be waived. It is only the objection as to the competence of the Court over the subject matter to try the suit or over the parties, which could not be waived and which would, therefore, render a decree a nullity in the true sense and such an objection alone could be raised before the executing Court or even in the collateral proceedings. This conclusion was arrived at on the application of the settled workable test as evolved by Justice Coleridge in *Homes v. Russel*[4], as under :

> "It is difficult sometimes to distinguish between an irregularity and a nullity; but the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection; if he can waive it, it amounts to an irregularity; if he cannot, it is a nullity."

This workable test was followed by their Lordships in *Dhirendra Nath Goral v. Sudhir Chandra Ghosh*[5], In this decision I had also considered as to when this objection of nullity can be raised in the context of a consent decree which was passed under 0. 23 R. 3 of the Code of Civil Procedure. 0. 23 R. 3 in terms provides as under :

> "Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, of where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit."

The expression "so far as it relates to the suit" has been given a wide interpretation so as to include matters which form a consideration and are thereby intimately connected with the subject matter and the Court need not confine operative part of the decree only to what is strictly spending the subject matter of the suit as seen from the frame of the suit or the reliefs claimed. Besides, even if the trial Court wrongly incorporated in the consent decree even a portion which did not relate to the suit, the question would arise whether such an error was only one in the exercise of the jurisdiction or one which would make the decree a nullity in the true sense. As for the later class of errors it was pointed out at page 444 that if the Court recording compromise had

no jurisdiction for incorporating any part of the compromise into the decree, the decree would be ultra vires and, therefore, void and a nullity, because the Court would lack inherent jurisdiction to entertain the compromise. Therefore, it was held that such an objection of nullity in the context of a consent decree under 0. 23 R. 3 could be urged even before the executing Court, if the trial Court lacked inherent jurisdiction over the subject matter itself to entertain such a compromise as the matter was one on which the, Civil Court's jurisdiction was wholly excluded or because it was the Court of limited jurisdiction and it had no jurisdiction over the subject matter on which it sought to pass a consent decree or because the suit as instituted was inherently incompetent. It was, therefore, held that every Court in this

[4](1841) 9 Dowl 487

[5] I.L.R. 1964 S.C. 1300 at page 1304

connection must approach this problem on the settled principles as indicated in Hiralal Patni's case keeping in mind those objections which are of a technical nature and which can be waived and the real or substantial objection on the scope of the competence of the Court which could not be waived and which struck at the very authority of the Court to pass any such consent decree or any decree on merits as well. It is only when the Court lacked such inherent competence over the subject matter or the parties that the decree would be nullity and the question could be urged even before the executing Court. If, however, the Court did not lack such inherent competence or jurisdiction to record a compromise and the error which it had committed was one in incorporating the entire compromise in the operative decree or such an error which was merely an illegality, the error would be one in the exercise of jurisdiction. Such an objection would be one which could be waived and so if no appeal or revision or writ proceeding was filed, it would not' " be open to the executing Court, in any event to go into any such objection. In *Vasudev Modi v. Rajabhai Abdul Rehman*[6], a decree for ejectment on a lessee was passed by the Court of Small Causes under the Rent Act without any objection to its jurisdiction. Even when the question of jurisdiction of that Court to entertain such a suit depended upon interpretation of the terms of the agreement of a lease and the user to which the land was put at the date of the grant of lease, in view of the definition of the term "premises" under the Act, it was held by their Lordships that these questions could not be permitted to be raised in an execution proceeding so as to displace jurisdiction of the Court which passed it. At page 1476, their Lordships pointed out that when a decree which is a nullity, for instance, where it is passed without bringing the legal representative on record of a person who was dead at the date of the decree, or against a ruling prince without a certificate or when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding, if the objection appears on the face of the record. Where, however, the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the question raised and decided at the trial or which could have been but have not been raised, the executing Court would have no jurisdiction to entertain the objection as to the validity of the decree even on the ground of absence of jurisdiction of such a Court of limited jurisdiction. It was, therefore, held by their Lordships that the High Court could not in execution interpret-terms of the lease for finding out whether the premises in question were covered by the Rent Act. The executing Court could not go behind the decree between the parties or their

representatives and could not entertain an objection that the decree was incorrect in law or in fact until it was set aside by an appropriate proceeding in appeal or revision. A decree even if it were erroneously passed must be held to be binding, as between the parties. Therefore, even in the case of Court of limited jurisdiction it is now well-settled that the objection as to nullity can be raised before the executing Court if such an objection appeared on the face of the record and did not require any further investigation into facts to determine that question.

3. In this connection, another settled principle must also be borne in mind. As Farewell J. pointed out in *Soho Square Syndicate Ltd. v. E. Pollard & Co. Ltd*[7]*.,* prohibition against contracting out of a statute even when it is not express can be implied by considering whether the Act is ore which is intended to deal with the private rights only or whether it is an Act which is intended from the point of view of public policy, to have a more

[6] A.I.R. 1970 S.C. 1475

[7]1940(2) A. E. R. 601, at page 605

extensive operation. It is rightly not disputed that a
statute like the Rent Restriction Act even if it does not contain an express provision prohibiting contracting out would have to be read as containing this implied prohibition on wider grounds of public policy. In these days of shortage of housing accommodation and of business premises in the areas where such Rent Restriction Acts are brought into force, their object is to control rents and to protect tenants from eviction. In the context of such Rent Restriction Act therefore, which are enacted in the interest of public peace and welfare, the extension operation is clearly intended. Such statutes could not be interpreted as merely, giving individual protection. They rest on a more solid basis of the wider public policy. That is why even when an express provision prohibiting contracting out is not enacted such a prohibition would have to be read by implication consistently with the public policy underlying such a welfare measure. In *Barton v. Fincham*[8]*,* the Court of Appeal considered the scheme of the corresponding Rent Restriction Act, 1920. The relevant sec. 5 created a restriction that no order or judgment for the recovery of possession of a dwelling house to which the Act applies can he made unless one or the other ground was made out. In the context of such a Rent Restriction Act scheme, Bankes L. J. held at pages 295 -296 that the legislature had secured its object as regards claims for possession by placing fetter not upon the landlord's action but upon the action of the Court by definitely declaring that the Court shall exercise its jurisdiction only in the instances specified in the section and in no others. The legislature had in clear unmistakable language restricted the jurisdiction of the Court and, therefore, no agreement between the parties could give the Court a jurisdiction which the legislature had said it was not to exercise. The legislature had limited the exercise by Court of their full jurisdiction. Atkin L.J. at page 299 further observed that sec. 5 of the Act definitely limited the jurisdiction of the Court in making ejectment orders in the case of premises to which that Act applied and parties could not by agreement give the Courts jurisdiction which the legislature had enacted they were riot to have. Atkin L. J., however, clarifies the position by stating that if the parties before the Court admitted that one of the events had happened which

gave the Court jurisdiction, and there was no reason to doubt the bona fides of the admission, the Court was under no obligation to make further inquiry as to the question of fact; but apart from such an admission the Court could not give effect to an agreement, whether by way of compromise or otherwise, inconsistent with the provisions of the Act. In *Thorne v. Smith*[9], this decision was sought to be distinguished before the Court of Appeal on the ground that the consent decree was invalid because the relevant ground was not set out as the basis of the plaintiff's claim that he required the house for his own residence and the eviction order was obtained merely on the consent of the tenant without any inquiry by the concerned Judge. At page 314, Bucknill L. J., in terms is pointed out that if the landlord by his own statement had satisfied the tenant that he intended to occupy the house himself and that the tenant could not successfully resist the claim and in these circumstances the tenant had stated this expressly in the Court, the Judge would surely have had the jurisdiction. to make the order on that ground. As the defendant was legally represented the Judge was entitled to make an order on the assumption that this was the true position. Before making an order for possession the Judge was under a duty to satisfy himself as to the truth if there was dispute between the

[8]1921 (2) K.R. 295

[9]1947 (1) K. B. 307 at page 313

landlord and the tenant, but if the tenant had in effect
agreed that the landlord had a good claim to an order under the Act, the Judge had jurisdiction to make the order for possession under the Act without further inquiry. Somerwell L. J. at page 315 rightly pointed out that as the defendant was legally represented, the County Court Judge was rightly satisfied that the order could be properly made on the consent of the tenant. Somerwell L. J., in this context made the pertinent observation, which would be very appropriate in the present cases, as regards the expression "consent order" which would suggest some compromise or arrangement which might be inconsistent with the provisions of the Act. The learned Judge observed, "when the defendant is agreeing to submit to judgment because he is satisfied that the plaintiff can establish his right to an order under the Acts, it might be advisable to avoid the use of the word "consent", which may have a wider meaning and cover cases where the "consent" was the result an arrangement which could not properly be made the basis of an order". Therefore forbidden consent decree in violation of the latter created by the relevant Rent Act would be only those consent orders which are inconsistent with such Acts or which are in other words forbidden eviction decrees which are purely the result of an agreement which could not properly be made basis of such eviction order, because of the fetter placed by the legislature on the full jurisdiction of the Court. In *Middleton v. Baldock*[10], the strong Bench of the Court of Appeal consisting of Evershed M.R., Denning L. J. and Jenkins L. J. again considered these two authorities. Jenkins L. J. at page 669 deduced the following principle from the aforesaid two decisions:-

> "Under the Acts in question the Court only has jurisdiction to order possession on one or other of the specified statutory grounds. It is not, however, always obliged to hear a case

> out; for, if a tenant appears and admits that the landlord is entitled to possession on one of the statutory grounds, the court may act on that mission and make the appropriate order. Again-and this, I think, is an extension of what I have just said-if there is a representation made by the plaintiff landlord to the effect, for instance, that the landlord wants the premises for his own occupation- 'Which i3 one of the ingredients of a ground on which possession may be ordered- and the tenant accepts that representation and on that footing submits to an order, then the cyder can validly be made, subject to the possibility that, in the event of the representation turning cut to have been false, the efficacy of the order may be destroyed. But in my judgment the Court cannot go further than that and exercise a general jurisdiction to make a consent order without inquiry or investigation simply because the tenant appears in Court and says : "I consent to an order", or says in the witness box that he does not contest the landlord's right. I think that that necessarily follows from the principle that possession can only be ordered on one or other of the statutory grounds and that the tenant cannot waive the statutory protection by agreement."

This principle has been rightly extended both by Denning L. J. in *Smith v. Poulter*[11], and by Winn L. J. in the Court of Appeal in *Preachey Property Corporation v. Robinson*[12], to the case of judgment by default. The relevant Rent and Mortgage Interest Restriction Act

[10]1950 (1) K. R. 657, [12]1966 (2) A. E. R. 981

[11]1947 (1) A.E.R. 216

provided in the relevant sec. 3(l) as
under :

> "No order or judgment for the recovery of possession of any dwelling-house to which the principal Act apply or for the ejectment of a tenant therefrom shall be made or given unless the Court considers it reasonable to make such an order or give such a judgment, and ............"

One or other of two additional conditions is satisfied. It should be borne in mind that under sec. 17(2) both the County Courts and the High Courts had concurrent jurisdiction to entertain such suit for recovery of possession. In the High Court, however, the procedure of judgment by default prevailed. As soon as the writ was served and there was non-appearance by the defendant, the judge had to sign the judgment merely as an administrative or ministerial step in default of appearance by the defendant. That is why this statutory bar created by see. 3(l) as a fetter on the Court's jurisdiction would be ignored when the High Court signed the said judgment in default of appearance. In that context both Denning L. J. and Winn L. J. in terms held that as sec. 3 limits the jurisdiction of the Court it was the duty of the Court to see whether the conditions required by the Act were satisfied even though no plea was raised by the tenant. As the Court had not determined whether it was reasonable to make such as order or to give such judgment evicting the tenant, and as that was something which sec. 3(1) prohibited, the judgment

in default was held to be a nullity. This being a condition precedent, such a forbidden decree could not be passed. Therefore, where it is a consent decree, in this sense which is inconsistent with the Act, or which is forbidden by the Act, or where it is an ex parte decree in default of appearance, the legislature having given a mandate that this shall not be done, the decree of eviction, whether it is a consent decree or not, is in such circumstances held to be a nullity. The ratio of these decisions, however, must be clearly confined to such consent decrees, which Somerwell L. J. rightly defined by saying that these were decrees inconsistent with the Rent Act, where the Court could not be said to have been satisfied at all, so as to have any foundation for exercising the jurisdiction to pass such a decree either on the consent of the parties or otherwise. As the tenant in such a public statute could not waive protection under the Act, the parties' consent could not confer jurisdiction on the Court to do something which the legislature said it could not do. That is why such a forbidden decree is held to be a nullity in the true sense and such a plea can be raised even before the executing Court or even in a collateral proceeding.

4. On the other hand, there is another line of decisions even of the Supreme Court which clearly settles the question of the wide ambit of the jurisdiction of the Court set up under our Rent Act. Even though a fetter is created by the Legislature that a Court under the Rent Act (herein referred to as "the Rent Court") shall not pass an eviction decree, unless one or the other of the grounds specified exists and the Court is satisfied about the same, the jurisdiction of the Court is held to operate in a wider area, because of the terms of sec. 28 of the Bombay Rent Hotel & Lodging House Rates Contol Act, 1947, hereinafter referred to as `the Rent Act.' The Rent Act is interpreted as setting out a wider ambit of the Court created under the Rent Act as the Legislature empowers it with a jurisdiction, which includes jurisdiction to determine whether the ground of eviction exists, as for example, readiness and willingness to pay rent or the bona fide personal requirement, as well as the further jurisdiction on finding that such ground exists to order eviction of the tenant. That is why in view of the wider conferment of power by sec. 28 of the Rent Act to determine conclusively whether such ground of eviction exists, even such a finding as to willingness to pay rent or as to the personal requirement after demolition of the premises, is not held to involve any jurisdictional error. Even when the finding is based on a prima facie misconstruction of the relevant sec. 12(3)(b) or sec. 13(l)(g) and (hh) of the Rent Act, such misconstruction is held to be only incidental and not touching jurisdiction. (See *Vora Abbasbhai Gulamali v. Haji Gulamnabi*[13]*) R. P. Mehra v. I.A. Sheth*[14]*, Ratilal Nazar v. Rameshchandra*[15]*,.)* These cases are always held to fall in the second category of cases envisaged by Lord Esher M. E. in the classic decision in *Rex v. Income-tax Commissioner*[16]*,* The satisfaction of the Court as to the existence of the relevant ground for eviction, which is a condition for the further exercise of jurisdiction of the Court to pass a decree for eviction is not held to be a collateral question but only a question in issue which is left to the Rent Court itself. The Rent Court, therefore, would not in such cases by a wrong decision of these questions clutch at jurisdiction or refuse to exercise jurisdiction. It would be merely deciding a question of law within its jurisdiction. The legislature having conferred jurisdiction on the Rent Court to determine all the facts in issue, including existence of such preliminary or collateral facts on which further exercise of the jurisdiction depends viz. to pass a decree for eviction, such a question is always held to be falling

exclusively within its jurisdiction. Therefore, even when the Court wrongly holds that it was satisfied as to the existence of the relevant ground under the Rent Act, it could not be said to be committing an error involving or pertaining to its jurisdiction. It would only be giving a wrong decision remaining withing its mandated area. Such a decision can be challenged in appeal or in revision but it could not be challenged in a collateral proceeding because the Court had not gone outside its ambit or had done something which the legislature had forbidden it. It is only when the Court passes a forbidden decree by going outside its ambit of jurisdiction by passing a decree de hors the Rent Act or which is ultra vires the Rent Act on a ground which is not one of the grounds under the Rent Act, that the decree would lack inherent jurisdiction of such a Rent Court. In such a case it would be immaterial whether it is a consent decree or a decree in invitum and the decree would be a nullity because it is a forbidden decree. In *Misrilal Parsamal v. Sadasivah*[17], their Lordships had considered this entire question in the context of Mysore House Rent and Accommodation Control Act, 1951, which in the relevant provision empowered the Court to grant permission to evict the tenant if the Court was satisfied as regards one of the enumerated grounds that had existed. One of the grounds was that the house was reasonably and bona fide required by the landlord for carrying out repairs or reconstruction which cannot be carried out without the house being vacated under sec. 8(3)(a)(ii). At page 555 their Lordships held that the jurisdiction was conferred on the Court to order eviction of the tenant upon its satisfaction as regards the bona fide requirement of the landlord to obtain possession of the house. The condition which conferred jurisdiction upon the Court was its satisfaction about the bona fide requirement of the landlord. If the Court was not satisfied about such requirement of the landlord, it would have no jurisdiction to make an order with the aid of that clause. Their Lordships, however, pointed out that if the Court had said that it is satisfied, it could not be regarded as having committed an error pertaining jurisdiction merely because it may have reached a wrong conclusion as to the

[13] A.I.R. 1964 S.C. 1341 (1346) V G.L.R. 55 [15] A.I.R. 1966 S.C. 439 [17] A.I.R. 1965 S.C. 553 at page 555
[14] A.I.R. 1964 S. C. 1676; V G.L.R. 798 [16]1888 (21) Q.B.D. 313 (319)

bona fide of the landlord in requiring possession of the house. No illegal assumption of jurisdiction is involved in arriving at a wrong finding on this matter as to the required satisfaction under the Act and such an order could not be challenged in revisional jurisdiction under sec. 115 of the Code as involving any jurisdictional error. Again in *Brij Raj Krishna v. Shaw & Bros*[18]. their Lordships examined the same question under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, when the eviction order was challenged collaterally by a separate suit. At page 117 their Lordships referred to the classic observation of Lord Esher M. R. in the aforesaid decision in *Rex v. Commissioner for Income- tax*[19], Relying on these observations, their Lordships held that the case clearly fell within the second category mentioned by Lord Esher M. R., because the Act entrusted the controller with a jurisdiction, which included jurisdiction to determine whether there p. R 129 is any non-payment of rent or not as well as the jurisdiction on finding that there is non-payment of rent, to order of eviction of tenant. Even if the controller may be assumed to have wrongly decided the question of non-payment of rent, his order could not be questioned collaterally to a Civil Court. Therefore, it is the settled legal position that in such Rent Restriction statutes where there is a fetter created on the jurisdiction of the Rent Court

not to evict a tenant unless it was satisfied as to the existence of one or the other relevant grounds under the Act, the decree of eviction is treated as a nullity only if it is passed without any foundation for the jurisdiction of the Rent Court or by ignoring or violating the said mandate of the legislature. If, however, the Court says that it has been satisfied of the relevant grounds, it clearly remains within its ambit of jurisdiction as the Legislature has created that particular forum and conferred power on it to decide whether a particular ground under the Rent Act is made out before passing the order of eviction. In such cases even if the Rent Court is wrongly satisfied as to the existence of the relevant ground under the Act before ordering eviction, this order could not be questioned in a collateral proceeding. It would necessarily follow that in such cases this order could not be challenged as a nullity even before the executing Court because the Court, having not gone out of the mandated area and having remained within its area of jurisdiction, had merely committed an error in the exercise of jurisdiction, which can be challenged only in appeal or revision and not by collateral proceeding. It is in the light of these settled principles that we should now resolve the present controversy.

5. Before we go to the ratio of the relevant decisions of the Supreme Court which are vehemently relied upon in this connection, we would note at this stage Lord Halsbury's warning in *Quinn v. Deathem*[20], that every case is an authority for that it actually decides and it cannot be quoted for a proposition that may seem to follow logically from it because the law is not always a logical code. Every judgment must, therefore, be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. All the three cases before their Lordships were cases which were arising under the Delhi and Ajmere Rent Act. it should also be borne in mind that all these three cases are cases of consent decrees which were prohibited by the Act, and, therefore, their Lordships had applied the aforesaid raito of Winn in L. J. in *Preachy Corporation case*[21] It is true that the relevant provision of the Delhi Rent Control Act in sec. 13 is a composite section, which

[18] A.I.R, 1951 S.C. 115
[19] 1881 (21) Q.B.D. 313 at page 319
[20] 1901 A. C. 495 at page 506
[21] 1966 (2) A.E.R. 981

combines secs. 12 & 13 of the Bombay or Saurashtra Rent Act. It is also true that this relevant sec. 13(1) starts with anon-obstante clause that notwithstanding anything to the contrary contained in any other law or any contract, no decree of eviction shall be passed by any Court in favour of the landlord against any tenant unless the Court is satisfied of one or the other of the catalogued grounds. As we have already pointed out, in such a public welfare statute even on the ground of general public policy, this prohibition against contracting out would always have to be implied because such a statute is not intended only for personal or individual protection but on wider public policy ground must have an extended operation. In *Bahadur Singh v. Muni Subrat Dass*[22], the decree under execution was made on the basis of an arbitrator's award. In such a case obviously the mandate of the Act was ignored by passing the decree in term of the award. The Court could not pass such a forbidden decree, without satisfying itself of the relevant ground under the Act. In *Smt. Kaushalya Devi v. K. L. Bansal*[23], instead of an award decree, this was a

case of a forbidden consent decree which was passed on a mere compromise of the parties. The Court had only recorded an order : In view of the statement of the parties' Counsel and the written compromise, the decree is passed in favour of the plaintiff against the defendant.' The consent terms merely stated : "(a) the decree for ejectment to be passed in favour of the plaintiff against the defendant. The decree will be executable after December 31, 1958, if the defendant does not give possession till that date'. That is why it was held by their Lordships at page 839 that as per the earlier decision in Bahadur Singh's case on the plain wording of the relevant sec. 13(1) the Court was forbidden to pass such a decree. The compromise before the Court did not indicate that any of the statutory grounds mentioned in sec. 13 of the Act existed. There- fore, the Court having passed a decree merely on the basis of the consent terms without satisfying itself that the ground of eviction existed, the decree was a nullity. In the last decision in *Ferozi Lal Jain v. Man Mal*[24], the terms of compromise merely gave four years' time for delivering possession to the tenant. The order of the Court merely stated that as per compromise terms, the decree for ejectment was passed. In these circumstances, their Lordships held at page 795 that under the Rent Control Act a decree for recovery of possession can be passed by any Court only if that Court is satisfied that one or more of the grounds mentioned in sec. 13(1) are established. Without such a satisfaction, the Court is incompetent to pass a decree for possession. In other words, the jurisdiction of the Court to pass a decree for recovery of possession of any premises depends upon its satisfaction that one or more of the grounds mentioned in sec. 13(1) have been proved. In the case before their Lordships at no stage the Court was called upon to apply its mind to the question whether the alleged ground of subletting was true or not. The order made by the Court did not show that it was satisfied that subletting complained had taken place nor was there any material on record to show that it was so satisfied. In these circumstances their Lordships held that from the record it was clear that the Court had proceeded solely on the basis of the compromise arrived at in passing this eviction decree and therefore, such a decree under execution must be held to be a nullity. Referring to the earlier two decisions, their Lordships observed that in both the, cases the decree either on an award or on a compromise was held to have been passed in contravention of sec. 13(1) of the Rent Act and therefore, void. Therefore, the ratio of their Lordships does not depend, as assumed by our learned brother S. H. Sheth J., on the express prohibition enacted in sec. 13(1) of the Delhi Rent Control Act. The ratio is capable of general application to all such rent

[22]1969 (2) S.C.R. 432 [24]1970 S.C. 794

[23] A.I.R. 1970 S.C. 838

control statutes, wherein such prohibition against contracting out would have to be
implied because the Act on the ground of general public policy should be intended to have a wider operation, Therefore, in all such rent control statutes the public policy would itself require the Court to read this fetter on the rent Courts' general jurisdiction to pass a decree of eviction only if it was satisfied of one or the other of the relevant grounds under the Rent Act. No difficulty in the applicability of the ratio could be made out merely because the scheme of the Delhi Rent Control Act in sec. 13 was to enumerate all the grounds in one composite sec. 13,

while the scheme under the Bombay or Saurashtra Act was to_ split up the case in two different secs. 12 and 13. No difficulty could also be made out merely on the ground that the expression "Court is satisfied" is used in sec. 13 and is not used in sec. 12. The whole jurisdiction of the Rent Court exists only when the relevant ground exists which would permit eviction of the tenant, notwithstanding the protection of this public welfare measure. It is only if the tenant is not within the four corners of this Act that he looses protection and the Rent Court would have jurisdiction to pass a decree of eviction. In such cases the tenant could never renounce this protection by waiving the benefit of this Act and his consent equally would be immaterial to confer jurisdiction on the Court to pass a decree of eviction merely on the basis of the consent terms or in the case of a private award to confer such jurisdiction on an arbitrator. It should also be noted that their Lordships have not overruled the earlier decisions, which we have already referred to, where a clear distinction is made in such cases because they fall clearly within the second category of cases envisaged by Lord Esher M. R. If, therefore, there is foundation for the exercise of jurisdiction of the Rent Court, the eviction decree could not be treated as a nullity merely on the ground that the satisfaction of the Court could not be based on consent of the parties. This argument of the learned Advocates for the tenants clearly ignores sec. 58 of the Evidence Act which in terms provides that the facts admitted need not be proved. When there is no doubt as to the genuineness of the admission, the admission would furnish the best proof in such adversary proceedings, especially when the parties are represented by the advocates. Similarly, the terms of 0. 23. R. 3 of the C. P. Code could not be ignored from our consideration. The learned advocates for the tenant vehemently argued that the satisfaction under 0. 23 R. 3 operates in a different field than the satisfaction of the Court which is required under sec. 15(1) to see that the relevant ground set out in the plaint for eviction is established. The learned advocates ignore the fact that the satisfaction of the Court would have to be an objective decision on facts which are proved or which are even admitted by the parties. Such an admission may be found even in the consent terms. If these relevant for terms in the consent terms provide the basis or foundation by showing the existence of the relevant grounds under the Act, it would be for the Court concerned to be satisfied as to the existence of the relevant ground under the Act. Merely because the Court commits an error in so satisfying itself or merely because its satisfaction is not expressly recorded or the materials on the record are inadequate for such satisfaction, the consent decree could not be said to be a nullity, so long as there is foundation for invoking the jurisdiction of the Rent Court. It is true that at the stage of recording consent terms we have not to be guided by the Rent Courts' initial jurisdiction to entertain a suit under sec. 28. We have to further consider whether the Rent Court after having duly entered its limits remain within the area of its jurisdiction or whether it leaves the mandated area set out by the Legislature and purports to pass a decree which is forbidden by law by acting outside the provisions of the Rent Act or de hors the Rent Act merely on the basis of the consent terms. That is why in the other line of decisions, which we have already referred to, their Lordships have in terms held that even where the Court is on the prima facie misconstruction of the section satisfied of the ground of eviction under sec. 12 or sec. 13(1)(g) or (hh) and says that it is to so satisfied as to the relevant ground, its decree could not be held to be vitiated by any jurisdictional error so as to be

challenged in the revisional jurisdiction under sec. 115 of the Code. In such cases the satisfaction of the Court based on such misconstruction of the section would be an error within the exercise of jurisdiction and the Rent Court would he remaining within its jurisdiction while committing this error and it would not go outside its ambit. Therefore, this decision may be challenged in appeal but it could not be challenged on the ground that the Court had no jurisdiction to pass this eviction decree merely because it was wrongly satisfied as to the true ground of eviction. Therefore, the view of our learned brothers Divan J. and Shah J. that if the satisfaction is not indicated by the Rent Court either in the decree or in the order recording compromise terms, the decree would be a nullity, would not, with great respect, be justified on the aforesaid ratio of the three latest decisions of the Supreme Court which were only in the context of the forbidden decrees passed on the award terms or compromise terms and which we have already referred to. If the Court had not properly expressed its satisfaction, that would be no ground for treating the decree as a nullity, so long as the decree shows on the face of it that the Rent Court had remained within its mandated area and had not gone outside its area of jurisdiction. If the consent decree passed by the Rent Court is not inconsistent with the provisions of the Rent Act and if the statutory fetter created by the Rent Act has not been ignored by it but only the question within its jurisdiction has been wrongly decided, the decision of the Rent Court would be within jurisdiction and its decree would not be a nullity. Such order recording a compromise of course, can be challenged in appeal under 0. 43 R. 1(m), but the order could not be challenged on the ground of lack of competence in any collateral proceeding, either in execution or in a separate suit. The Court recording the compromise would have to be satisfied that the agreement is lawful. Lawfulness of the agreement would not be tested merely on the ground whether it is on the basis of free consent but also on the ground that the consent terms did not violate the provisions of this statute which is a public welfare measure and whose protection could not be renounced even by the consent of the parties. While being so satisfied, the Court may consider not only the illegalities which do not involve any jurisdictional error but also such an illegality which goes to the root of the jurisdiction to pass eviction decree viz. whether there is any relevant ground which would enable it to pass the consent decree of eviction. In the absence of such relevant ground, the Court even could not pass a decree in invitum and, therefore, much less, it could pass a consent decree. That is why their Lordships had emphasized in all the three cases the aspect of a forbidden decree which was wholly inconsistent with the Act. Such a case would arise only when there is no foundation for invoking the jurisdiction of the Rent Court and the eviction decree is based solely on consent terms with- out any existence of the relevant grounds. In such cases it could surely be said that the decree on the face of it shows that the Court could have never have applied its mind and could never have been satisfied of the relevant ground under the Act. Such a consent decree would have to be treated as a nullity, as is apparent from the facts of the three cases where the decree were held to nullity even at the stage of execution. While in the other line of cases, where there was foundation for the jurisdiction of the Rent Court and where the Court was merely wrongly satisfied of the existence of the particular ground of eviction, the decree was held not to be involve in jurisdictional error, so to be challenged either under sec. 115 of the Code in revisional jurisdiction or collaterally by a fresh suit. That is why

even in England, as we have already pointed out, it is the well settled legal position that the decree is a nullity when it is passed exparte or on such consent terms, which bring the case within the scope of such forbidden decrees, where there would be no foundation for the Court to exercise its jurisdiction. Such decrees would be clearly de hors the Rent Act as the Rent Court would be going outside its mandated area and such ultra vires decrees are nullities in the true sense, so that such plea can be raised both at the stage of execution or in a collateral proceeding in a separate suit. In the light of this discussion we must answer the References which are made by our learned Brother S. H. Sheth J. by stating that the application of their Lordships' ratio in these three decisions mentioned by him does not depend on any express prohibition against contracting out enacted in sec. 13 of the Delhi Rent Control Act and the said ratio is capable of a more general application to all such Rent Restriction Acts, like our Bombay or Saurashtra Rent Act, where such prohibition against contracting out would have to be implied because the more extensive operation is clearly intended by the Legislature on grounds of public policy. Therefore, the benefit under such statutes could not be renounced by the tenant and equally, the tenant's consent in compromise terms could not confer jurisdiction on the Court to pass the eviction decree. It is only in those cases where the Court merely passes a consent decree simply on consent terms, ignoring this relevant mandate of the Legislature, without any material for its satisfaction either in the form of admissions or otherwise as to the existence of the relevant ground under the Act for eviction that the consent decree would be really a for- bidden or prohibited consent decree. In other cases the consent decrees would be real consent decrees which the Rent Court would have complete jurisdiction to pass which could never be assailed as nullities, merely because the Court had not in terms recorded its satisfaction in the order or because it was wrongly satisfied as to the existence of the relevant ground of eviction. The executing Court would have to examine this question by looking to the consent terms along with the order of the Court by considering whether there was any foundation for the exercise of the jurisdiction of the Rent Court. Once the foundation exists there would be material which would justify the Rent Court in invoking its jurisdiction and once there is such jurisdiction, the consent decree, howsoever erroneous, would not he a nullity. It is in the light of these settle principles that we shall now examine the facts of the individual cases before us.

6. Our learned brother S.H. Sheth J. had merely referred the afore- said question so these two matters second Appeal Nos. 657 and 658 of 1969 shall now go back to the learned Judge for disposal in accordance with the aforesaid ratio of the Supreme Court decisions which we have now elaborately explained in our decision.

7. In Letters Patent Appeal No. 106 of 1970, a suit for eviction was filed on April 27. 1967, for this particular property in Anklav area. The written statement was filled on July 3, 1967. The notification which brought into force the provisions of the Rent Act in this Anklav village had come into force on July 13, 1757. The consent terms were filed on July 27, 1967 and the consent decree was passed. This question is now raised in execution of this consent decree of eviction passed in favour of the landlord. Our learned Brother Divan J. had in terms held that the present

consent decree would be a nullity because it does not indicate on the face of it the relevant satisfaction of the Court regarding any of the grounds specified in sec. 13(1) of the Act. With great respect to our learned Brother, we cannot agree to this line of reasoning. It should be noted that the. suit was filed on the ground of personal requirement of the suit premises by the plaintiff. During the pendency of the suit, the Rent Act had come into force by a notification issued on July 13; 1967 sec. 50 of the Act made the Act applicable to such pending suits and proceedings between the landlord and tenant relating to recovery of possession of premises to which Part II applied. That is why the statutory fetter created by the Rent Act came into operation from July 13. 1967. Even then it is apparent that when the Court applied its mind for satisfying itself as required under O. 23 R. 3 for recording the consent terms, it had material on which it could be satisfied as to the existence of the relevant ground under the Act. The plaintiff was careful enough to file this suit both on the ground of personal requirement and arrears of rent. The arrears were not paid at the time of the written statement or the date of the first hearing when the issues were settled. That is why clause 2 of the consent terms mentioned that on that date the balance amount had been paid up. In Clause 1 of the consent terms, it is stated that the defendant shall hand over possession of the suit property to the plaintiff on November 1, 1969. If the defendant did not hand over possession to the plaintiff accordingly, the plaintiff shall take actual possession by executing its decree. Thereafter it is in terms stated as under :- "The defendant has been granted the above period ex-gralia for the sake of giving relief to him and from that date the relation of landlord and tenant between the parties had been brought to an end". The stipulated period in respect of possession decided as above was declared to be the important condition of the compromise. When one looks at the consent terms, it is obvious that the tenant who was represented by a lawyer had clearly admitted the plaintiff's claim. The plaintiff had based his claim on both the relevant grounds under the Act viz., bonafide personal requirement and arrears of rent. From the admissions -which have been made in the consent terms, it is obvious that the Court had ample material before it for founding its jurisdiction in the shape of these admissions of the parties who knew about their legal position. The admission was to the effect that the plaintiff's claim was wholly justified. That is why in Clause 1 it was agreed that the period which was given to the defendant to remain in the suit premises upto November 1, 1969 was only ex-gralia by way of accommodating him by giving him the relief. The learned Advocate for the tenant vehemently argued that the tenant renounced the protection of the Act, and in any event, before he can waive any protection it must be shown that the parties knew about the Act having been brought in force in this area by the aforesaid notification. This argument of the learned Advocate is thoroughly misconceived as it misses the distinction between the waiver of the protection under the Act and the admission of the true facts. The rent Act, of-course, must be read as prohibiting contracting out of the provisions of the Act but this law never prohibits the tenant from admitting the true facts or a just claim of the landlord and there after persuading him to give some time by way of accommodation, even though the landlord would have been entitled on undisputed or admitted facts to an immediate eviction decree. In the present case the tenant knew about both the grounds which were set up in the plaint. The tenant was legally represented and he must be presumed to know the true legal position when he admitted the claim of the

landlord and made this categorical admission that the aforesaid period upto November 1, 1969, was given ex-gralia only by way of accommodating him by giving this relief. Therefore, in the circumstances of the case this admission furnishes sufficient material for the Rent Court to pass a consent decree because the Court can be satisfied from this material as to the existence of the relevant ground under the Act. The learned Advocate of the tenant also argued that even if there was an admission as to bona fide requirement, the issue about greater hardship should have been gone into by the Court. Here also the learned Advocate is under the same misconception. Proof of facts would be necessary only when the parties are disputing the relevant facts. If the tenant admits the relevant facts and in fact admits the claim of the land- lord in toto, it is obvious that there would be no dispute in such a case on both the relevant issues as to the bona fide and reasonable requirement of the landlord and as to the question of greater hardship. Therefore, as in *Thorne Y. Smith*[25] with great respect to our learned Brother, the view which he had taken that there was no indication as to the satisfaction of the Court was erroneous in view of the aforesaid settled legal position which we have interpreted. In that view of the matter, the order of our learned Brother must be set aside and the warrant for possession issued by the learned assistant Judge must be restored and the matter shall go back to the executing Court for further proceeding with the execution in accordance with law. There would be no order as to costs in the circumstances of the case. There shall be a stay of the executeon of the warrant for possession for a period only upto January 31, 1971.

8. We shall take up the other four referred matters which were referred to us because of the Letter's Patent Appeal. In S. A. No. 1037 of 1965 filed by the landlord, suit was filed on September 5, 1961, and the consent terms were arrived at on September 20, 1962. Clause I fixed the standard rent at Rs. 22/- Under Clause 2 arrears till September 3, 1962, were settled for Rs. 338 and Rs. 221/- were deposited in Court and the balance of Rs. 177/- was agreed to be paid before the March 1, 1963. In Clause 2 it was further stipulated that if the aforesaid amount was not paid within the time prescribed the plaintiff could execute this money decree from the defendant's property. Clause 3 provided for half the conservancy tax being paid by the defendant. Clause 4 which is material runs as under :

> "Monthly rent is to be paid from October 1, 1962 every month."

Thereafter the material part of this clause states that if the amount is not paid by the defendant to the plaintiff within the time, the defendant shall deliver possession of the suit house and the plaintiff shall be entitled to get possession through Court. (Vernacular Matter omitted). From the terms of the consent decree, it is obvious that clause 2 provides only a money decree for the balance of Rs. 177/- towards arrears of rent which were to be paid on or before March 1, 1963. Under clause 4 the defendant continues as a statutory tenant on payment of the standard rent fixed under this decree. If clause 4 is treated as an independent clause, it is obvious that it provides for regularity October 1, 1962 every month. If default is committed in paying this amount within the agreed time-limit, the plaintiff shall be entitled to get possession. As far as the

arrears of rent were concerned, the provision was in the other clause 2 where only money decree was provided. Therefore, even if the arrears of Rs. 177/- were paid up on April 20, 1963 the defendant was to continue to retain his protection in the absence of any eviction decree. Mr. Patel for the landlord, however vehemently argued that clause 4 covers within its embrace both the contingencies of non- payment of rent within the prescribed period, as regards arrears of rent as well as future rent from October 1, 1962, which was agreed to be paid every month. Even on that interpretation the landlord cannot argue that there was any eviction decree provided in clause 4. If both the contingencies are contemplated in clause 4, it is obvious that a statutory tenant who would not pay the rent due every month would at any

[25](1947 K. B. 307)

time be liable to face this eviction decree. Even in invitum the Rent Court cannot pass such a type of eviction decree that whenever a statutory tenant in future fails to pay rent regularly every month he shall be evicted. If such a decree could not be passed in invitum, even consent of the parties could not confer jurisdiction on the Court to pass such a decree. Therefore, such a reading of this decree would be wholly unjustified. In this context words in the last portion of clause 4 that the plaintiff shall be "entitled to get possession of the suit house through Court" will have to be interpreted only as a declaratory decree and not as an eviction decree, if it is said to cover both the cases of arrears of rent as well ate payment of future rent regularly. Besides, clause 2 clearly provided o a money decree for arrears of rent and the amount stipulated was to be paid before March 1, 1963. The defendant continued as a statutory tenant. Therefore, in any event, if the latter part of clause 4 is treated as an eviction decree it would amount to a penal decree. Therefore, on all these grounds it must be held that either there was no decree for possession or that the decree of possession would be a penal or forbidden decree which would not be enforceable. Therefore, on that short ground t is landlords' Second Appeal must fail and must be dismissed. In this case also there would be no order as to costs in the circumstances of the case.

9. In second Appeal No. 966 of 1964 which is filed by the tenant, the landlord's suit for possession was on two grounds. It was in terms stated that the house in question was a dilapidated house and was ordered to be pulled down by the Executive Engineer of the Local Board. The landlord wanted to demolish the same and to reconstruct his own bungalow for personal occupation. The suit was clearly under sec. 13(l)(g) and also on the ground of arrears of rent. On August 24, 1956, the consent decree was passed. Both the parties were duly represented by lawyers. Consent terms provide an outer limit upto August 22, 1961, when the defendant were to hand over possession and in default of which the plaintiff was entitled to take possession by filing the execution application. Even during the intervening period it was agreed in clause 2 that to keep roof over their head the defendants could repair the suit premises at their own costs and the plaintiff would allow the defendants to go to the upper floor in their possession to carry out any repair work of this nature. This is clearly a real consent decree on the tenants' admission of the relevant facts. About five years' time was given to the tenants only to accommodate themselves and further convenience was given so that they could repair the house during the intervening period. The suit for possession was, therefore, on the basis of relevant ground under

the Act and when the plaintiff's just claim was admitted, the landlord would be entitled to an immediate decree for eviction. In these circumstances if the tenants succeeded in persuading the landlord to give such a long time upto August, 2, 1961 with a further liberty to repair the house to keep roof over their head, the consent decree would only amount to a decree on proper consent terms and the Rent Court had, therefore, complete jurisdiction to pass such a decree on the consent of the parties and it could not be held to be nullity as contended by the tenants learned Advocate. Therefore. this appeal must fail and must be dismissed, except for the limited modification in the final order that the stay of the execution of the warrant for possession shall continue only up to January 31, 1971.

**C. R. A. 940 of 1967**

10. This revision application is filed by the tenant. The suit of the landlord was on two grounds (1) bona fide personal requirement under sec. 13(l)(g and (2) on the ground of six months default in payment of rent under sec. 12(3)(a) of the Act. The consent decree was passed on September 13, 1965. In clause 1 it was in terms agreed that the plaintiffs should procure for the defendant other premises of equal area in the locality from Shehara Bhagol to Bhuravav at the rent upto Rs. 10/- per month whether on the ground floor or on the upper floor. The plaintiff would have to give information in writing in respect of the premises which lie wanted to procure for the defendant which he would take as a tenant by executing rent note for this premises. It was further agreed in clause 5 that if after information the defendant failed to accept tenancy of the offered premises the plaintiff would b3 entitled to execute this decree of possession in respect of the suit premises. We have to consider whether such a consent decree is null and void. The learned Advocate vehemently contended that the consent decree was the real consent decree and not a forbidden consent decree because the tenant was given alternative accommodation and the landlord took responsibility to find out alternative accommodation. Therefore, eviction was done by the Court only on an alternative accommodation being furnished to the tenant. The Rent Court had, therefore, complete jurisdiction to pass such a decree, when the suit as based on the ground of bona fide personal requirement of the landlord and the tenant admitted the landlord's just claim by the aforesaid consent terms. The learned Advocate also pointed out that after the consent decree was passed on September 13, 1965, the written information for alternative premises was given to the tenant on September 24, 1965. When the tenant refused to accept the said offer. the execution application was filed only on November 6, 1965. Therefore, the whole thing had been completed within such a short time. Now in considering the validity of terms of this consent decree it would be wholly immaterial to consider within what time the alternative accommodation was actually found out. The construction of the consent decree would never depend on flow immediately the alternative accommodation was found out for the tenant. It should be borne in mind that the consent terms never prescribed any time limit within which the landlord was to find out the alternative accommodation. A bare perusal of the consent terms make it clear that the tenant was to continue his statutory tenancy under the protection of the Rent Act and there was a decree for eviction passed against him which could be made effective

at any time when the landlord could procure, the alternative premises for the tenant as stipulated by the consent terms. Such a decree could not be passed by the Rent Court even in invitum and if so, the consent of the parties could not confer jurisdiction on the Court to pass such a decree. The decree in that event would be a forbidden decree. If the admission of the parties is kept in mind, it is obvious that on the date of the consent decree, the parties very well knew that even though the landlord's requirement was bonafide and reasonable for the suit premises, the tenant had greater hardship and he could not be immediately evicted without any alternative accommodation. Therefore, on the date of the consent decree there was no cause of action at all and the Rent Court could not pass any such eviction decree which could be made effective at any time. When there was no stipulation as to the period during which alternative accommodation was to be found out, threat of the action decree would persist on the statutory tenant for all time till this decree was made effective. In short, the decree of eviction is such a decree where the landlord can execute the same at any length of time when he was able to procure alternative accommodation for the tenant. At that time it might happen that both the parties' position might have substantially altered, even the landlord's need might have been affected or the tenant's means might have altered and at the time when the decree would be executed, the tenant would not have the benefit of the Court's satisfaction at all. Therefore, such a consent decree would amount to a complete renunciation of the protection conferred by the Rent Act that the tenant would not be evicted, unless the Court applied its mind and was satisfied as to the existence of the relevant grounds under the Act. Here the consent decree is not on the admission of the tenant as to the relevant facts on the basis of which the decree can be passed but merely because the tenant consented that he should be evicted wherever the landlord could procure alternative accommodation. Therefore, such a decree being a forbidden decree could not be executed. Therefore, the learned Assistant Judge had clearly committed a jurisdictional error in holding that this decree was a valid decree. On that short ground this revision application must succeed and the landlord's application for execution must be dismissed with no order as to costs in the circumstances of the case. Rule is, therefore, made absolute with no order as to costs in this revision application

11. Turning to Second Appeal No. 762 of 1968, it is filed by the concerned tenants. The landlady had filed two suits against the deceased Mohanlal Jethalal, whose successors are the present appellants and against his brother Hiralal. Hiralal was occupying ground floor of the landlady, while the suit premises were occupied by the deceased Mohanlal. The suit was on the ground of bona fide personal requirement under sec. 13(l)(g) by this landlady. In the consent terms, dated September 26, 1960, it was in terms agreed that on the plaintiff's legally getting possession of the ground floor portion, the plaintiff would give the same to the deceased tenant Mohanlal for residence after providing for the convenience of the latrine. The defendant would have to go to the ground floor portion within two months from till date when the plaintiff would intimate him on getting possession of that portion. If the defendant failed to do so, the decree for possession of the suit premises would be executed in that event. In clause 4 it was provided that if the other brother Hiralal preferred an appeal or revision in the High Court against the District Court's order

of eviction of the ground floor portion, and if that order was confirmed, on the defendant's giving possession or if the said order was not confirmed, the defendant would hand over the suit premises after four years from the date of the order of the High Court. If the defendant failed to vacate the suit premises possession could be taken by execution of the decree. As regards the ground floor portion it was agreed that the defendant would pay rent of Rs. 12.50 per month with municipal taxes from the date they shifted to the said portion. It was further agreed in clause 4 that this alternative accommodation arrangement was made for the defendants for a period of four years from the time the defendants handed over possession of the suit premises and on the expiry of the said period of four years, the defendants were to hand over possession of even the said alternative premises. It was further agreed that the relation between the plaintiff and the defendants was not to be considered as that of a landlord and tenant in respect of this alternative accommodation and the defendants were not to be in possession of any other portion of the house except this ground- floor, which was given for dwelling for the four years' period under the arrangement of the alternative accommodation as aforesaid. In the last para it was further stated that the defendants had kept in tact all their contentions in the suit.

12. After the consent terms there is no dispute that the ground floor port45n of Hiralal which was vacated by him had been given by way of alternative accommodation to the defendants-tenants. At the end of four years' period, the plaintiff wants to evict the appellants even from this alternative accommodation by execution of this consent decree. In that context the present question has arisen as to the consent decree being a nullity.

13. The learned advocate for the landlord vehemently argued that in a suit for bona fide personal requirement, if the tenants agreed to the landlord's claim being just by accepting the alternative accommodation provided to them, the decree would be completely within the scope of the Rent Act and the Rent Court could not be said to have gone outside the area of his jurisdiction in passing such a consent decree. The matter is not so simple in this case. The consent decree was not simply an eviction decree from the suit premises of giving alternative premises to the tenant. Consent decree goes much further and provides that as regards the alternative accommodation, there was to be no relationship of land- lord and tenant and its monthly rent would be Rs. 12.50 and that the tenants were to hand over possession even of this alternative accommodation on the expiry of four years' period. Therefore, the consent terms clearly create a relationship of a statutory tenant in so far as this alternative accommodation is concerned as between the parties. The parties have in terms laid down that the relationship was not to be of landlord and tenant in respect of the alternative accommodation which would only mean that. there would not be a contractual relationship of landlord and tenant. Where however by a Court's order a tenant is given alternative accommodation in lieu of the suit premises on payment of the rent as stipulated by the parties, it would be clearly a continuance of statutory tenancy. Such statutory tenant even if he agrees under the consent terms that he will give up possession of the alternative accommodation at the expiry of four years period could not by his consent renounce protection under the Rent Act. Such a consent decree, even, if it is presumed to contain an express

stipulation that the possession of the alternative accommodation shall be taken by execution of this decree, would be clearly a nullity as it would be a forbidden decree. The Rent Court has no jurisdiction to pass such decree on the consent of the statutory tenant that he would give up possession after four years, because thereby a statutory tenant would be renouncing his protection under the Rent Act. In fact, in the present case, so far as the alternative accommodation is concerned, the consent terms merely create statutory tenancy at the rate of Rs. 12.50 per month for this alternative accommodation and they merely contained an agreement that the tenant shall hand over possession after a period of four years. The consent terms did not incorporate any decree for possession at all in respect of this alternative accommodation. When we turn to the judgment of the learned Assistant Judge in the last relevant para- graph he has in terms quoted the relevant clause in the consent decree which provides

**VERNACULAR MATTER OMMITTED**

This stipulation was in the context of Hiralal's appeal and for the suit premises the maximum time of four years was agreed from the date of the decision of the High Court in Hiralal's appeal, if any. The learned Judge interpreted this portion ignoring the entire context as conferring right on the decree holder to recover possession of the alternative accommodation if the defendant failed to hand over portion thereof, after four years, even though this portion refers only to a decree of possession in respect of the suit premises at the end of four years. As regards the suit premises there was no question of the execution of the consent terms on the expiry of the four years' period, because possession of the suit premises was voluntarily given up immediately when the tenant was offered alternative accommodation of the ground floor portion. As regards the ground floor premises, however, there is no decree of eviction at all. In any event, as we have earlier pointed even if such a decree of eviction were passed, it would be a forbidden consent decree on the tenant renouncing protection under the Rent Act. Therefore, on both the grounds that there is no decree of eviction in respect of the ground floor which was given by way of alternative accommodation and on the ground that such decree of eviction of the ground floor portion would he clearly null and void, the afore- said consent decree must be held to be in executable. Therefore, the tenant's appeal must succeed in this case on this ground and the landlord's execution application for evicting the tenant from the ground floor premises on the basis of the consent decree must be dismissed. Therefore. this appeal is allowed with no order as to costs in the circumstances of the case. Orders accordingly in all these matters.
Order accordingly.