BOMBAY HIGH COURT

Mahalinga Bandappa

Vs

Venkatesh Waman

(Dixit, C.J. Vyas, J.)

09.10.1956

JUDGMENT

Vyas, J.

1. This in defendant's appeal from a judgment of the lower appellate Court, by which judgment the judgment of the trial Court decreeing the plaintiff's suit for recovery of possession and arrears of rent was confirmed, and it raises interesting points under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

2. The plaintiff has filed this suit for recovering possession of his premises and arrears of rent from the defendant to whom the premises were let for business or trade. The suit premises are a portion of a house let to the defendant for running a shop on a monthly rent of Rs. 25/- and they are situated in what at one time was the Shahapur Municipal District in the former Sangli State. In the notice which the plaintiff save to the defendant on the 9-2-1953, the plaintiff said that he required the suit premises for the use of his family. At the hearing he contended that he was in need of these premises as he wanted to start a cloth shop therein for his sons. The learned Third Joint Civil Judge, J. D., at Belgaum, holding that the provisions of the Bombay Bents, Hotel and. Lodging House Bates Control Act, 1947, did not apply to the suit premises and that, therefore, the defendant was "not entitled to claim the benefit" of the Act. decreed the plaintiff's suit for possession and arrears of rent to the tune of Rs. 35-5-4. On appeal by the defendant, the learned Second Extra Assistant Judge at Belgaum upheld the view of the trial Judge that "the defendant was not entitled to the benefit of the Bombay Rent Control Act, 1947" and confirmed the decree of the trial Court. Prom that decree, the defendant has filed the present appeal.

3. The suit was filed by the plaintiff on the 10-4-1952 and it was resisted by the defendant upon the contention that the plaintiff did not require possession of the suit premises reasonably and bona fide for his own use and occupation nor for starting a cloth shop for his sons and that, therefore, the provisions of Clause(g) of Sub-section (1) of Section 13 of .the Bombay Bents, Hotel and Lodging House Rates Control Act, 1947, would not be attracted in this case. The

learned trial Judge, on the merits of the plaintiff's contention that the plaintiff required possession of the suit premises reasonably and bona fide for his own use and occupation or for starting a cloth shop for his sons, held against the plaintiff, but he decreed the suit upon the ground that the provisions of Part II of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in so far as they related to the premises let for business or trade, were not made applicable to what was formerly the Shahapur Municipal District at the date 10-4-1952 upon which date the present suit was filed, that, therefore, the defendant would not be entitled to claim the benefit of the Bombay Rents. Hotel and Lodging Home Rates Control Act, 1947, and the plaintiff would not be subject to the restrictions contained in Section 13 of the Act and that the suit would be governed by the provisions of Section 111 of the Transfer of Property Act. It may be noted here that the learned trial Judge decided the suit on the basis that "it fell under Section 111 of the Transfer of Property Act"; notwithstanding the fact that the plaintiff, in his notice dated "the 9-2-1852, which ha save to the defendant before filing the suit on 10-4-1952, had made categoric statements which would suggest that he was filing the suit under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. For instance, he said in his notice:^^lnjhP;k tkxk] oknhal R;kP;k dqVqackrhy eaMyhP;k mi;ksxkhjrk o R;kP;k eqykyk nqljs nqdku yku ns.ks dfjrk ikfgts vkgs-** In making these averments, the plaintiff clearly sought to attract the provisions of Clause (g) of Sub-section (1) of Section 13 of the Act; and yet the learned trial Judge decreed the suit on the basis that "it fell under Section 111 of the Transfer of Property Act."

4. The learned Judge of the lower appellate Court also took the view that the provisions of Part II of the Bombay Rents, Hotel and Lodging Home Rates Control Act, 1947, in respect of the premises let for business or trade, did not apply to the Shahapur Municipal District, within whose limits the suit premises are situated, on the 10-4-1952 on which date the suit was filed, and that, therefore, "the defendant would not be entitled to any benefits of the Rent Control Act." Upon this ground, he confirmed the decree of the trial Court, though on merits of the plaintiff's case, he too agreed with the trial Court that the plaintiff had failed to prove his contention that the suit premises were required by him reasonably and bona fide for his own use and occupation or for starting a cloth shop therein for his sons.

5. Now, as I have already said, the suit premises are situated in what at one time was known as the Shahapur Municipal District. The Shahapur Municipal District was a part of the former Sangli State. The Sangli State merged with the State of Bombay on the 1-8-1949. On the 4-10-1949, by Notification No. 888/48-1 issued by the State Government under Sub-section (3) of Section 2 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Part II of the Act was applied to the Shahapur Municipal District, so far as the premises let for the purpose of education or residence or let to Government or Local Authority for the purpose of setting up an office or a public hospital or dispensary were concerned. The text of Notification elated 4-10-

1940 was as follows:

> "In exercise of the powers conferred by Sub-section (3) of Section 2 and Sub-section (2) of Section 6 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947), as applied by the Indian States (Application of Laws) Order, 1948, and the Kolhapur State (Application of Laws) Order, 1949, the Government of Bombay is pleased-
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> (i) to direct that all the provisions of Part II of the said Act shall extend, with effect on and from the date of this notification, to the areas specified in column 1 of the Schedule appended hereto (hereinafter called the 'said areas'); and
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> (ii) to specify that in the said areas, Part II of the said Act shall apply to the premises specified, respectively, against them in column 2 of the said Schedule."

Then, in respect of the premises situated in the Shahapur Municipal District, the Notification mentioned:

> "All premises let for residence or education or let to Government or a local authority for the purpose of setting up an office or a public hospital or dispensary."It is clear, therefore, that with effect from the 4-10-1949 all the provisions of Part II of the Bombay Rent Control Act were made applicable to the premises situated in the Shahapur Municipal District, which were let for residence or education or let to Government or a Local Authority for the purpose of setting up an office or a public hospital or dispensary. Here it may be noted that the provisions of Part II of the Bombay Rent Control Act, in respect of premises let for business or trade or storage, were not applied to the Shahapur Municipal District by the above Notification dated the 4-10-1949. In other words, by the said Notification, the provisions of Part II of the Act were applied to the Shahapur Municipal District in respect of certain premises only and not in respect of certain other premises which were situated in that area. The Shahapur Municipal District merged with the Belgaum Municipal Borough and became a part of the Belgaum Municipal Borough by virtue of Notification No. 7088 dated the 25-6-1952 which was issued by the State of Bombay in the Local Self-Government and public Health Departments. Part II of the Bombay Rents. Hotel and Lodging House Rates Control Act, 1947, had been applied to the Belgaum Municipal Borough with effect from the 13-2-1948. As I have stated above, the present suit was filed on the 10-4-1952, and the point which has arisen in this case is: "Was this suit a pending suit within the meaning of Section 50 of the Act at the date upon which the provisions of Part II were applied to the suit premises? Mr. Virkar for the plaintiff-respondent contends that the 13-2-1948, on which date Part II of the Act had

come into force in the Belgaum Municipal Borough, should be deemed to be the date upon which Part II was applied to the suit Premises, though the Shahapur Municipal District in which these premises are situated became a part of the Belgaum Municipal Borough on the 25-6-1952, whereas Mr. Mandrekar for the defendant-appellant says that the 25-6-1952, upon which date the Shahapur Municipal District in which the suit premises are situated became a part of the Belgaum Municipal Borough was the date upon which Part II became applicable to the suit premises. It is clear that if Mr. Virkar's contention is to prevail, this suit, which was filed on the 10-4-1952, would not be a pending suit within the meaning of Section 50 of the Act and the provisions of the Act would not apply to the suit, with the result that the plaintiff-landlord would not be subject to the restrictions imposed by Section 13 of the Act. On the other hand, if Mr. Mandrekar's contention is to be accepted, the present suit would be a pending suit within the meaning of Section 50 of the Act and the provisions of the Act would apply to the suit and the plaintiff-landlord's case would be subject to the limitations specified in Section 13.

6. Now, in our view, both the Courts below failed to understand the provisions of Section 50 of the Act and were influenced solely by the fact that at the date 10-4-1952, upon which date the present suit was filed, the provisions of Part II of the Act, so far as the premises let for business or trade or storage were concerned, had not been applied to the Shahapur Municipal District, within whose limits the suit premises are situated. According to Section 50, the suits which were pending at the date on which the provisions of Part II of the Bombay Rent Control Act were applied to the suit premises would be governed by the Act, though at the date upon which the suits were filed, the provisions of Part II were not applied to the suit premises. The Courts below looked at only one aspect of this legal position, namely that at the date upon which the suit was filed (10th April 1952) the provisions of Part II of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, had not been applied to the Shahapur Municipal District wherein the suit premises are situated, but overlooked entirely the essence of the provisions of Section 50, in that they failed to consider whether the suit was pending at the date upon which the provisions of Part II were applied to the suit premises. It is not possible, in our view, to accept the contention of Mr. Virkar that the date 13-2-1948, upon which date the provisions of part II of the Act were applied to the Belgaum Municipal Borough, should be deemed to be the date when part II of the Act was made applicable to the area comprising the Shahapur Municipal District wherein the suit premises are situated, though in fact the Shahapur Municipal District merged with the Belgaum Municipal Borough on the 25-5-1952. Such a contention is too artificial and is clearly against the plain language of Section 50. The words used in Section 50 are:

"Provided that all suits..... relating to the recovery ..... of..... possession of any

premises to which the provisions of Part II apply..... which are pending in any Court. ....."

It is clear that what the section provides is that it is the actual application of the provisions of Part II and not an application thereof at a future date, with reference to which it is to be determined whether a suit is a pending suit or not within the meaning of Section 50. On the date on which the provisions of Part II of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, were applied to the Municipal Borough of Belgaum, i.e., on 13-2-1948, even the Sangli State itself, of which the Shahapur Municipal District was a part, had not merged with the State of Bombay. The merger of the Sangli State with the State of Bombay took place on the 1-8-1949. Till that date, the 1-8-1949, the Municipal laws which applied to the suit premises were the Municipal laws framed by the Sangli State, and not the Municipal laws which prevailed in the Belgaum Municipal Borough. Even after the merger of the Sangli State with the State of Bombay, the Sahapur Municipal District did not merge with the Belgaum Municipal Borough till the 35-6-1952. During the period 1-8-1949 to 25-6-1952, the Shahapur Municipal District preserved its individuality as a separate Local Authority, distinct from the Municipal Borough of Belgaum. In these circumstances, we are unable to accept the submission of Mr. Virkar that Part II of the Act, which was applied to the Belgaum Municipal Borough on the 13-2-1948, applied to the Shahapur Municipal District as well as from the 13-2-1948. Section 50 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, speaks of an application of the provisions of Part II to premises. The suit premises being situated in the former Shahapur Municipal District, it is clear that unless the said Municipal District became a part of one of the areas specified in Schedule I to the Act, the provisions of Sub-section (2) of Section 2 would not be attracted and Part II would not apply to it in absence of a notification to be issued by the State Government under Sub-section (3) of Section 2; and it is an admitted position in this case that so far as the premises let for business or trade were concerned, no notification was issued by the State of Bombay under Sub-section (3) of Section 2 applying the provisions of Part II to the said premises. As I have stated above, the limits of the Belgaum Municipal Borough were enlarged by the Government Notification No. 7088 dated 25-6-1952 so as to include the former Shahapur Municipal District within the area of the said Municipal Borough. Prom the 25-6-1952, therefore, the former Shahapur Municipal District ceased to exist as a separate Local Authority and became one of the areas specified in Schedule I to the Act. since the Belgaum Municipal Borough was one of such areas. Upon the Shahapur Municipal District becoming a part of the Municipal Borough of Belgaum on the 25-6-1952 or upon its becoming one of the areas specified in Schedule I upon the abovementioned date 25-6-1952, the provisions of Part II of the Act applied to it with effect from that date. Till that date, the 25-6-1952, the Shahapur Municipal District was "other area" within the meaning of Sub-section (3) of Section 2, i.e., it was an area other than the areas specified in Schedule I. It was an area other than the area, to which the provisions of Part II of the Act were applied on the 13-2 1948. As it did not become, till the 25-6-1952, one of the

areas specified in Schedule I, but was "other area" within the meaning of Sub-section (3) of Section 2 till that date, a notification by the State of Bombay under Sub-section (3) of Section 2 was necessary before the provisions of Part II of the Act could be applied to it. It was, therefore, that when in the year 1949 the provisions of Part II, in respect of premises let for the purpose of education or residence or let to Government or Local Authority for setting up an office or a Government hospital or dispensary, were intended to be applied to the Shahapur Municipal District, the Notification No. 888/48-I dated the 4-10-1949 was issued by the State of Bombay. Upon Mr. Virkar's contention, such a notification would have been wholly unnecessary and uncalled for, since, according to Mr. Virkar, all the provisions of Part II of the Act applied to the Shahapur Municipal District as well from the 13-3-1948. In our view, therefore, since the Shahapur Municipal, District, by merging with the Municipal Borough of Belgaum on the 25-6-1952, became one of the areas specified in Schedule I upon that date, the provisions of Part II applied to it with effect from that date. So long as it was "other area" within the meaning of Sub-section (3) of Section 2 of the Act which character it had from the 1-8-1949 to 25-6-1952, the Provisions of part II of the Act were applied to it with effect, from the 4-10-1949 by the above said notification, but they were applied only in respect of premises let for the purpose of education or residence or let to Government or Local Authority for setting up an office or a Government hospital or dispensary, and not in respect of premises let for business, trade or storage. In other words, so long as the Shahapur Municipal District retained its individuality, as a separate Local Authority, i.e., separate from the Municipal Borough of Belgaum, Part II of the Act was only partially applied to it from the 4-10-1949 onward; and upon its merger with the Municipal Borough of Belgaum, all the provisions of Part II became applicable to it in their entirety. The word 'apply' in the expression "premises to which the provisions of Part II apply" means full application, and not merely a Partial application, of the provisions of Part II of the Act. For the reasons stated above. We are of the view that the provisions of Part II of the Act were applied to the suit premises on the 25-6-1953 and not on the 13-2-1948 as contended by Mr Virkar. As the suit of the plaintiff was filed oh the 10-4-1952, it was clearly a pending suit on the 25-6-1952, the date upon which the provisions of Part II became applicable to the suit premises. Accordingly, under Section 50, the suit would be governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and the plaintiff-landlord would be subject to the restrictions of Section 13.

7. Mr. Virkar's next contention is that Section 12 of the Act restricts the right of a landlord to recover possession of his permises from his tenant and that the restrictions are mentioned in Section 13 of the Act. In other words, Mr. Virkar contends that Sections 12 and 13 of the Act must be read together and that, upon a proper construction of these sections even if a tenant pays or is ready and willing to pay rent, the landlord would be entitled to recover possession of his premises from the tenant, his right in that respect being limited by the restrictions specified in

Section 13, but if a tenant refuses to pay rent or is not ready and willing to pay rent, the landlord's right to recover possession of his premises from him would be immune from the restrictions imposed by Section 13. This, as I have just stated, is the construction which Mr. Virkar puts upon Sections 12 and 13 of the Act. Mr. Virkar's construction of Sections 12 and 13, in effect, is that if a tenant has fallen in arrears of rent or refuses to pay rent, that circumstances by itself would entitle the landlord straightway under this Act to ask for possession. Such a contention is plainly against the scheme of Sections 12 and 13 of the Act. If the Legislature, in enacting this Act, had intended that non-payment of rent by a tenant to his landlord should by itself entitle the landlord to ask for possession, they would have stated so in terms in Section 13 and would not have enacted Sub-section (2) of Section 12. Section 13, which consists of several clauses, does not contain a clause saying that non-payment of rent by a tenant or unwillingness on the part of a tenant to pay rent shall entitle the landlord to ask for possession of his premises from him. On the contrary, Sub-section (2) of Section 12 of the Act lays down that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration or one month next after notice in Writing of the demand of the standard rent or permitted increases-has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882. Thus, Sub-section (2) of Section 12 makes it perfectly clear that non-payment of rent by a tenant to his landlord shall not by itself entitle the landlord under the provisions of this Act, to ask for possession of his premises from the tenant.

8. Mr. Virkar's construction of Section 12 is this: If a tenant pays rent or is ready and willing to pay rent, the landlord shall not be entitled to ask for possession of his premises from him. Conversely, says Mr. Virkar, if a tenant docs not pay rent the landlord would, upon that ground by itself, be entitled to ask for possession. Then Mr. Virkar goes one step further and says that Section 13 should be read subject to the provisions of Section 12 and that upon that construction the restrictions imposed by Section 13 would not apply to a case where a tenant does not pay rent to his landlord Or is unwilling to pay rent to him. In our view this contention of Mr. Virkar is based upon wrong assumptions. The first incorrect assumption which Mr. Virkar has made is about what he calls a converse of the legal position laid down by Sub-section (1) of Section 12, the said converse being that if a tenant does not pay rent or is not ready and willing to Pay rent, the landlord shall be entitled to ask for possession straightway. That this assumption is wholly untenable is clear from the provisions of Sub-section (2) of Section 12. Sub-section (2) provides that even if a tenant is guilty of non-payment of rent, the landlord is not entitled, under the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, to ask for possession of his premises from the tenant straightway. He is required to give a notice of demand of rent to the tenant and wait thereafter for a month before instituting a suit. Even if a suit is thereafter filed upon the tenant's failure to pay rent demanded of him by the landlord by a notice of demand,

even so no decree for eviction shall be passed against a tenant provided that on the 1st day of the hearing of the suit the tenant pays or tenders in Court the amount of the rent duo from him. So, under the provisions of the Bombay Rents, Hotel and Lodging House Rates, Control Act, 1947, a landlord is not entitled to recover possession of his premises from his tenant as soon as the tenant commits an act of non-payment of rent. He has to follow the provisions of Sub-section (2) of Section 12.

9. The second incorrect assumption which Mr. Virkar makes is when he contends that Section 13 of the Act is to be read subject to Section 12. Section 13 is an independent section entitling a landlord to recover possession of his premises from his tenant upon his satisfying the Court as to the existence of certain conditions. The provisions of Section 13 are independent of anything contained in the Act, save that they are subject to the provisions of Section 15 only. Under Section 15 of the Act, if a tenant sublets the whole or any part of the premises let to him by the landlord or if he assigns or transfers in any other manner his interest in the premises let to him it would be open to landlord to ask for possession under Clause (e) of Sub-section (1) of Section 13. Upon such a contingency arising, i.e., upon a tenant subletting the whole or any part of the premises let to him, or upon his assigning or transferring in any other manner his interest in the said premises, the landlord's right to recover possession of his premises from him will immediately come into existence under Clause (e) of Sub-section (1) of Section 13. Subject to these provisions of Section 15 the landlord's right to recover possession arises under Section 13 and this right is irrespective of whether his tenant pays him the rent or does not pay it. It is subject only to his satisfying the Court that his case is governed by the provisions of Section 13. It is important to bear in mind that Section 12 provides that in certain circumstances the landlord shall not be entitled to recover possession, whereas Section 13 says that the landlord shall be entitled to recover possession upon his satisfying the Court as to certain matters. The language of Section 12 is negative and it negatives the right of a landlord to claim possession so long as the tenant fulfils certain conditions, while the language of Section 13 is positive and it affirms the right of a landlord to ask for possession provided he fulfils certain conditions to the satisfaction of the Court. That being so, we are of the view that the absence of grounds disentitling the landlord from claiming possession would be no ground entitling him to ask for possession. If he wanted to ask for possession, his, case must fail under Section 13 and it would not be enough to base it upon the absence of grounds which would disentitle him under Section 12 from claiming possession.

10. Upon this view of Sections 12 and 13 which we take, we are unable to accept the contention of Mr. Virkar that the provisions of Section 13 should be read subject to the provisions of Section 12. Such a construction would be opposed to the plain language of Section 13. Section 13 opens with the words : "Notwithstanding anything contained in this Act." The words "anything

contained in this Act", would certainly include what is contained in Section 12. The expression "notwithstanding any thing contained in this Act, but subject to the provisions of Section 15," upon a natural construction, must mean "notwithstanding anything contained in Section 12 and other sections of the Act, but subject to the provisions of Section 15." If the position as envisaged by the contention of Mr. Virkar had been intended by the Legislature, namely the position conferring a right upon the landlord to recover possession of his premises from the tenant upon the tenant's failure to pay rent or unwillingness to pay rent, the Legislature, in Clause (a) of Sub-section (1) of Section 13, would have added the words "Clause (L)" and after the words "provisions of" and before the words "Clause (O) of Section 108". But there is no reference to Clause (L) of Section 108 of the Transfer of Property Act in any of the clauses of Sub-section (1) of Section 13. It is clear, there-fore, that the Legislature in expressly referring to Clause (O) and not referring to Clause (L) of Section 108 of the Transfer of Property Act in any of the clauses of Sub-section (1) of Section 13, intended that the act of a tenant in not paying rent to his landlord at the proper time and place should not by itself entitle the landlord under this Act to recover possession of his premises from his tenant. As I have mentioned above, the only section, to which the provisions of Section 13 are subject, is Section 15 and not Section 12. This, as I have just pointed out, is clear from the opening words of Section 13 itself.

11. Control of rents of premises let for residence, education, business, trade or storage is one of the objects of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and it is in relation to that object that the provisions of Part II of the Act, under which part Sections 12 and 13 of the Act occur, are to be construed. Section 12, to which I have already referred in the course of this judgment, provides that a landlord shall not be entitled to recover possession of his premises so long as the tenant pays or is ready and willing to pay the standard rent and permitted increases. In other words, Section 12 imposes restraint upon a landlord's desire to earn higher rent and prevents him from recovering possession of his premises just for that purpose. But, so far as the provisions of this Act are concerned, this does not mean that if a tenant does not pay rent to his landlord, the landlord is entitled to recover possession of his premises Just upon that ground, namely, the ground of non-payment of rent. In case a contingency of a tenant not paying standard rent as denned in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, arises, the landlord, before instituting a suit for recovery of possession, is required under Sub-section (2) of Section 12 to wait "until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant" and even in such a case no decree for eviction shall be passed if, on the first day of hearing of the suit, the tenant pays or tenders in court the standard rent. The point is that under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, a landlord does not become entitled to recover possession of his premises from the tenant just upon the ground of the latter's failure to pay rent or unwillingness to pay rent. Admittedly, in this case,

no notice as required by Sub-section (2) of Section 12 was given by the plaintiff-landlord to the defendant-tenant. The notice which was given by the plaintiff to the defendant was not a notice demanding rent, but it was a notice asking the defendant to vacate the premises as the plaintiff, as alleged by him, required them reasonably and bona fide for his own use and occupation or for starting a cloth shop therein for his sons. Thus, there is no substance in Mr. Virkar's contention that because there was non-payment of rent by the defendant-tenant to the plaintiff-landlord, the plaintiff-landlord could claim to recover possession of his premises from defendant-tenant, irrespective of the restrictions Imposed by Section 13.

12. Besides, it is to be noted that in his plaint, the plaintiff specifically relied upon Clause (g) of Sub-section (1) of Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, when he said in paragraph 2 of his plaint:^^lnjhP;k tkxk] oknhal R;kP;k dqVqackrhy eaMyhP;k mi;ksxkhjrk o R;kP;k eqykyk nqljs nqdku yku ns.ks dfjrk ikfgts vkgs- ** When the plaintiff made this averment in paragraph 2 of his plaint, he clearly intended to rely upon the provisions of Clause (g) of Sub-section (1) of Section 13 as a basis for his suit. Such being the case, the view which the learned trial Judge took that the suit fell under Section 111 of the Transfer of Property; Act was beyond the scope of the plaint itself. It was clearly a suit in which the plaintiff, relying upon the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, asked for recovery of possession of his premises from the defendant. So far as the plaintiff's contention that he required possession of the slut premises reasonably and bona fide for his own use and occupation, or for starting a cloth shop therein for his sons was concerned, the learned Civil Judge found against him. The learned Judge of the lower appellate Court confirmed that view. In the view of the learned trial Judge, the plaintiff varied his case from time to time so far as the point of his requiring possession reasonably and bona fide was concerned. In the context of this aspect of the case, as the learned Civil Judge pointed out in the course of his judgment, the plaintiff's case as stated by him in his notice, as put forward by him in his plaint and as deposed to by him in his evidence was not a uniform case. For this reason and for certain other reasons mentioned by the learned Civil Judge in his judgment, he held that the plaintiff had failed to prove that he required possession of the suit premises reasonably and bona fide for his own use and occupation or for starting a cloth shop therein for his sons. This finding of fact is conclusive and it is not open to this Court to go behind it in second appeal.

13. The result, therefore, is that the plaintiff having failed to prove that his case is covered by the provisions of Clause (g) of Sub-section (1) of Section 13 of the Act, cannot now take a contention that he is entitled to succeed in this suit, irrespective of whether he is or is not able to show to the satisfaction of the Court that the premises are required by him reasonably and bona fide for his own use and occupation or for starting ft cloth shop therein for his sons. In our view, the present suit would be governed by the provisions of Part II of the Act and the defendant

would be entitled to claim protection of Section 13 of the Act. As the plaintiff failed to prove that his case was covered by Clause (g) of Sub-section (1) of Section 13 of the Act, his suit should have been dismissed by the learned trial Judge. The learned trial Judge was in error in decreeing the suit and the learned Judge of the lower appellate Court was in error in confirming that decree.

14. For the reasons stated above, we modify the decrees passed by the trial Court and the lower appellate Court, partially allow the appeal of the defendant and order the suit of the plaintiff, so far as the prayer for recovering possession of the suit premises is concerned, to be dismissed. The decrees of the Courts below, directing the defendant to pay Rs. 35-5-4 to the plaintiff, are confirmed, but in so far as they direct the delivery of possession of the suit premises by the defendant to the plaintiff, they are set aside. The defendant-appellant will get his costs both of the appeal and of the suit from the plaintiff who will bear his own costs throughout.

15. Decree modified.