सत्यमेव जयते

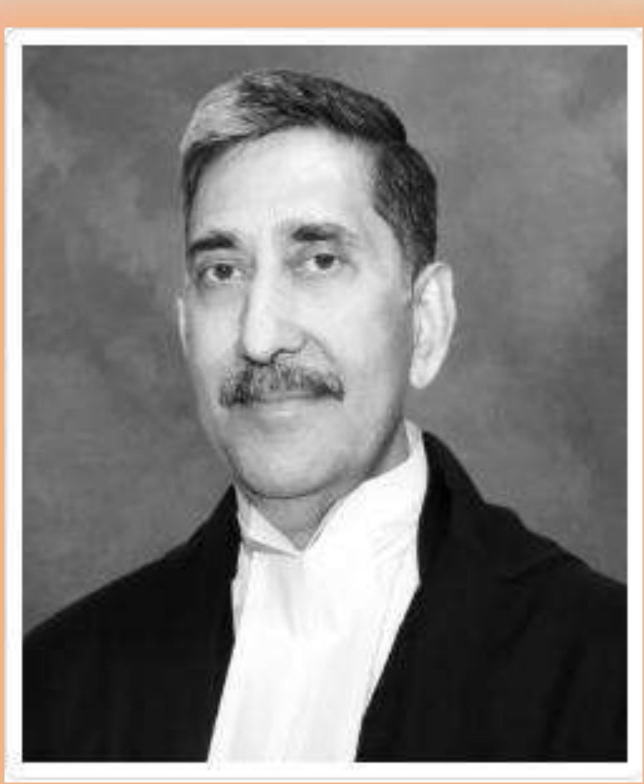
लघुवाद न्यायालय, मुंबई

Court of Small Causes, Mumbai

Handbook on Rent Laws

A Comprehensive Commentary Compiled by Judges of Court of Small Causes, Mumbai.

Patron-in-Chief & Source of Inspiration

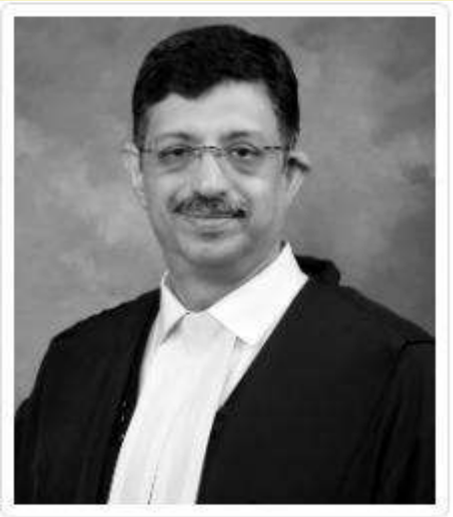


Honourable The Chief Justice

Honourable Shri. Justice Shree Chandrashekhar

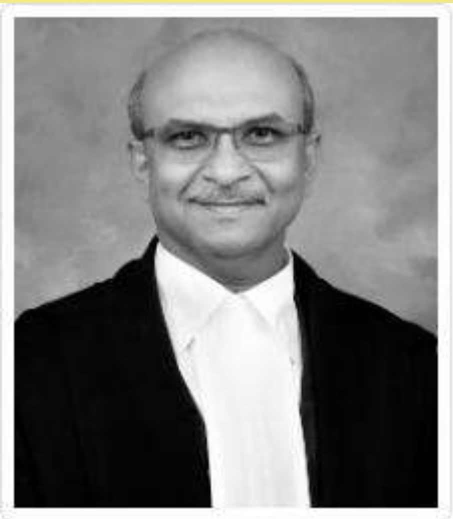
(Bombay High Court)

Conceptualized, Guided and Monitored by



Honourable Shri. Justice Makrand S. Karnik

Judge, Bombay High Court and
Guardian Judge for Court of Small Causes, Mumbai



Honourable Shri. Justice Kamal R. Khata

Judge, Bombay High Court and
Guardian Judge for Court of Small Causes, Mumbai

Key Note

Shrikant L. Anekar
Chief Judge, Court of Small Causes, Mumbai

Whenever Judges who have worked in other districts of Maharashtra are posted as Judges of the prestigious Court of Small Causes, Mumbai, they require some time to get acquainted with the working of this Court. Even the categories of suits and appeals which are registered in this Court are far different than those in rest of Maharashtra. So, the new assignment to work in this Court is challenging for everyone. In addition to it, no authentic document was available, where every answer can be found to every problem or difficulty.

As I present this 'Handbook on Rent Laws' to everyone today, a milestone and profound achievement, I want to take a moment to acknowledge the origin of this initiative. Before we access this 'Handbook on Rent Laws' and dive into it, I want to highlight how we got here.

First and foremost, I express our profound gratitude to the Reverent Head of our institution, **Honourable the Chief Justice of Bombay High Court, Honourable Shri Justice Shree Chandrashekhar**, for the incessant encouragement and the standard of leadership that inspires us all, always, to do better and better.

This project was born from original vision of **Honoruable Shri. Justice Makrand S. Karnik** (Judge, Bombay High Court and Guardian Judge for Court of Small Causes, Mumbai) and **Honourable Shri. Justice Kamal R. Khata** (Judge, Bombay High Court and Guardian Judge for Court of Small Causes, Mumbai) for betterment of the judges working at Court of Small Causes, Mumbai. Honourable Lordships saw the vacuum and the emergent need of such comprehensive document.

From the first brainstorming session, where the idea of this brainchild book was put into words, **Honoruable Shri. Justice Makrand S. Karnik** and **Honourable Shri. Justice Kamal R. Khata** provided the creative spark and the strategic roadmap that made this possible. It's rare to work under leaders who can see the finished product before the first brick is even laid.

For me, the first and primitive objective was to prepare a comprehensive and one stop solution for every Judge working on this establishment.

Accordingly, a team of handpicked Judges was constituted and the task was assigned to them. A brief meeting was sufficient to trigger the work. Today, I proudly say that my team not only took up the challenge but completed it by distinguished efforts. I must say that their tireless efforts gave true meaning and tangible existence to the concept of Honourable Lordships, in form of this Handbook.

It's been an incredible experience turning high-level vision of Honourable Lordships into the reality today. It's indeed a privilege to take the foundational concept of Honourable Lordships ahead and bring it to life. The strategic foresight of Honourable Lordships has been our North Star throughout the project, ensuring that every detail aligns with the long-term goals behind the project. My team and I have essentially acted as the architects for the original blueprint conceptualized by Honourable Lordships.

It gives me immense pleasure to present the 'Handbook on Rent Laws' which is indeed 'A Comprehensive Commentary' on the Rent Laws, compiled by them who were privileged to work as Judges of Court of Small Causes, Mumbai. It must be added here that my team worked on this project, without hampering their judicial work and duties.

I must mention here that only softcopy of this present handbook will be circulated to everyone, as one more step to be paperless.

I once again express my sincere gratitude to Honourable The Chief Justice Honourable Shri Justice Shree Chandrashekhar, Honourable Shri Justice Makrand S. Karnik, Judge, Bombay High Court, and Honourable Shri Justice Kamal R. Khata, Judge, Bombay High Court, for inspiring me and my team throughout this project. I am equally thankful to everyone who contributed to this collective effort.

13th January 2026, Mumbai

(Shrikant L. Anekar)

Chief Judge

Court of Small Causes, Mumbai

Acknowledgement

This book is the result of collective efforts of the dedicated team whose commitment brought it to life, and without their collaboration, this book would not have been possible.

Sincere Thanks to

Shri. Asgar H. Baig

Shri. Kareem I Khan

Shri. Atul M. Kulkarni

[Former Judges of Small Causes Court, Mumbai]

Shri. Rijwan U. Shaikh

Shri. Paresh V. Kulkarni

Shri. Amolkumar A. Deshpande

[Present Judges of Small Causes Court, Mumbai]

Table of Contents

PART – B
LEGAL FRAMEWORK

PART – C

PRACTICAL ASPECTS

PART – D USEFUL BARE ACTS (indexed in alphabetical order) Click on the name of Enactment to open it	
Sr. No.	**Name of Enactment/Bare Act**
1.	Bombay Rents, Hotel and Lodging House Rates Control Act, 1947
2.	Central Provinces and Berar Letting of Houses Rent Control Order, 1949
3.	Easements Act, 1882
4.	Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954
5.	Indian Evidence Act, 1872
6.	Limitation Act, 1963
7.	Maharashtra Court-Fees Act, 1959
8.	Maharashtra Rent Control Act, 1999
9.	Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971
10.	Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975
11.	Mumbai Municipal Corporation Act, 1888
12.	Presidency Small Causes Courts Act, 1882
13.	Provincial Small Causes Courts Act, 1887
14.	Public Premise (Eviction of Unlawful Occupants) Act, 1971
15.	Transfer of Property Act, 1882

PART – E **USEFUL ADMINISTRATIVE REFERENCES** **Click on the heading to open relevant file**	
Sr. No.	**Heading**
1.	**Various Officer Circulars** **(which are useful for day-to-day work)**
2.	**Various Officer Orders** **(which are useful for day-to-day work)**

Disclaimer

This book is based on research, compilation, analysis, and interpretation of information available at the time of writing/preparing. While every effort has been made to ensure accuracy, completeness, and reliability, the creators and publisher make no representations or warranties of any kind regarding the content.

FOR INTERNAL CIRCULATION ONLY

UNAUTHORISED ACCESS AND USE IS PROHIBITED

Abbreviations used in the Handbook (in alphabetical order)		
1.	Bombay Rents, Hotel and Lodging House Rates Control Act, 1947	**Bombay Rent Act**
2.	Central Provinces and Berar Letting of Houses Rent Control Order, 1949	**CP & Berar Order**
3.	Code of Civil Procedure, 1908	**Civil Code**
4.	Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954	**Hyderabad Rent Control Act**
5.	Indian Easements Act, 1882	**Easements Act**
6.	Indian Evidence Act, 1872	**Evidence Act**
7.	Limitation Act, 1963	**Limitation Act**
8.	Maharashtra Rent Control Act, 1999	**MRC Act**
9.	Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971	**Slum Areas Act**
10.	Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975	**Vacant Lands Act**
11.	Presidency Small Causes Courts Act, 1882	**PSCC Act**
12.	Provincial Small Causes Courts Act, 1887	**ProSCC Act**
13.	Public Premise (Eviction of Unlawful Occupants) Act, 1971	**PPE Act**
14.	Transfer of Property Act, 1882	**TP Act**

PART A
Fundamentals & Basics

Evolution and Historical significance of Court of Small Causes, Mumbai

The Court of Small Causes, Mumbai has been established under the provisions of the Presidency Small Causes Courts Act, 1882. The procedure of this Court is governed by the provisions of the Presidency Small Causes Courts Act, 1882, Civil Manual, 1986 and the Code of Civil Procedure, 1908, as it is applicable to this Court by the rules framed by the Hon'ble High Court under the said Act.

Court of Small Causes has interesting history. It was the oldest Court in British Empire. **It was established by the Charter of George II, on 08th January 1753**. Such Courts were established in three presidency towns of Calcutta, Madras and Mumbai. They were initially known as 'Courts of Requests'. When the Presidency Small Causes Courts Act was brought in the year 1882, these Courts were named as 'Court of Small Causes'. The Judges of this Court were being appointed by the Governor in Council. These Courts were to follow practice and procedure, subject to approval of respective Supreme Courts in the presidency towns. Judge of Supreme Court was to act as Judge of Small Causes Court. Jurisdiction of Supreme Court was concurrent with Court of Small Causes. Thus, these Courts were considered as Courts of special significance. However, the nomenclature used for these Courts is a misnomer, in the humblest view.

These Courts have been vested with powers to deal with the cases under Rent Acts and the disputes between landlord and tenant, as well as in between licensor and licensee. The prices of properties in Mumbai have reached to sky. Therefore, litigation in this Court is viewed as prestigious litigation involving high stakes. Fairly competent class of Advocates appear in this Court to conduct the cases. The Judges posted here get an opportunity of learning various niceties and nuances of the Rent Laws.

Court of Small Causes Mumbai has another special feature. The appeals are heard by a Bench consisting two Judges. The Chief Judge has power to constitute such Benches. As per the Bombay High Court Judicial Officers Recruitment Rules, 1956, the Judge to be appointed in the Court of Small Causes shall be of the cadre of Senior Civil Judge. The Chief Judge and the Additional Chief Judges are from the cadre of District Judges. This Court is housed in heritage edifice. The construction was completed in year 1918.

Later on, the present New Annex building was constructed, to meet the growing needs.

Mahtma Gandhi, whom we know as 'Father of our Nation' was a lawyer. But, many of us do not know about his professional career, the places at which he practiced as a lawyer and the Courts where he appeared. In his Autobiography, he has mentioned about it all in detail. Most of us skip over this part. Being readers, we are interested in knowing Mahatma Gandhi more, after his entry in the politics of India during British Empire.

It is a moment of pride and privilege that Mahatma Gandhi has left his foot prints at our Court of Small Causes, Mumbai. Some of notes of Mahatma Gandhi about his experience as a lawyer in Mumbai are exciting and fascinating, especially with reference to our Court.

Reverting to the experiences worded by Mahatma Gandhi in his Autobiography, they are reproduced hereunder.

> "This was my debut in the Small Causes Court. I appeared for the defendant and had thus to cross-examine the plaintiff's witness. I stood up, but my heart sank into my boots. My head was reeling and I felt as though the whole Court was doing likewise. I could think of no question to ask. The judge must have laughed and the vakils no doubt enjoyed the spectacle. But I was past seeing anything. I sat down and told the agent that I could not conduct the case, that he had better engage Patel and have the fee back from me. Mr. Patel was duly engaged for Rs. 51. To him, of course, the case was child's play."

Dr. Babasaheb Ambedkar also appeared in some matters in this Court. The souvenirs of such historic moments are fondly preserved.

Basic Information about Court of Small Causes, Mumbai

The 'Head of the Administration' of this Court is the **Chief Judge**. As per the provisions of Section 13 of the PSCC Act, the 'Registrar' is the 'Chief Ministerial Officer' of this Court. Besides, there are 4 Additional Registrars on the establishment of this Court. The Registrar and Additional Registrars to look after the Administrative Side. The Registrar is also empowered to hear and dispose of undefended suits and interlocutory applications and matters under section 9(i) (aa) of the PSCC Act. He also exercises Judicial Powers like Judge under Sections 14, 33, 34, 35, 53, and 61 of the PSCC Act. The Registrar also deals with Rent Act matters up to the stage of filing of Written Statement by the Defendant/s.

The Chief Judge of this Court is Controlling Officer, whereas, Registrar is Drawing and Disbursing Officer of this Court. The Registrar, Court of Small Causes, Mumbai is the Public Information Officer and the Additional Chief Judge, Court of Small Causes, Mumbai is the First Appellate Authority, as per the provisions of The Maharashtra District Court Right to Information (Revised Rules), 2009 framed by the Hon'ble High Court under Right to Information Act, 2005.

The Judges of the Small Causes Court at Mumbai are empowered to hear and dispose of the money suits, wherein, the claim does not exceed ₹ 10,000 subject to exception laid down under Section 19 of the PSCC Act. The said Pecuniary Jurisdiction of ₹ 10,000/- has been enhanced to ₹ 25,000/- by the Government of Maharashtra, vide Maharashtra Act. No. XV of 1987. However, the said Act of enhancement of Pecuniary Jurisdiction of Bombay City Civil Court and Court of Small Causes, Bombay has not been implemented till today.

The Judges who are posted here are also empowered to hear and dispose of suits under Section 41 of the said PSCC Act. As per the provision of Section 38 of the PSCC Act the Full Court Applications are heard by a Bench consisting of two Judges of this Court. The Bench consisting of two Judges also hears the Appeals and Revision Applications under Section 42 of the PSCC Act.

The Court of Small Causes, Mumbai has exclusive Jurisdiction under Section 28 of the Bombay Rent Act irrespective of value of the subject matter and as such, hears all the suits under the said Act in Greater Mumbai. An Appeal/Revision from a decision of a Judge under the Bombay Rent Act is heard by a Bench consisting of the two Judges under Section 29 of the Bombay Rent Act. The Court of Small Causes, Mumbai hears all applications under Section 11 of Bombay Rent Act for the fixation of the Standard Rent and all application under Section 24 for restoration of Essential Service or supply. This Court has also exclusive jurisdiction in the matters under the MRC Act which came into force with effect from 31st March, 2000.

The appeals and proceedings under Sections 217,218_A, 218_B, 218_C and 394 (5) of the Mumbai Municipal Corporation Act, 1888 are heard by the Chief Judge or any of the Additional Chief Judge. The applications under Sections 503, 504 and 507 are also heard by the Chief Judge or any of the Additional Chief Judge. Similarly, the Election Petitions under Section 33 of the said Act are heard and disposed of by the Chief Judge or any of the Additional Chief Judge. The Government, vide its Notification, Law and Judiciary Department, No.SSC-2964/2175-H, dated 3rd January, 1968 has empowered the Additional Chief Judge to exercise the powers and performed the duties of the Chief Judge.

The Chief Judge is empowered to hear and dispose of applications, Anti-Corruption matters under the provisions of Section 3 read with Section 4 of the Criminal Law (Amendment) Ordinance, 1944. The appeals under the Payment of Wages Act, 1936 are heard by single Judge of this Court.

The Court of Small Causes, Mumbai has also following Jurisdictions :-

a. Section 12-A of the Maharashtra Ownership Flats (Regulations of the Promotion or Construction, Sale, Management and Transfer) Act, 1963.
b. Section 23 of the Maharashtra Debt Relief Act 1975.
c. Appeals under Section 42 of the Bombay Rent Act, from an order passed by the Controller.
d. The Judges of this Court have also exercised the powers to entertain and try the Applications under the Displaced Persons Act, 1954.

Head Office and Branch Office

The Head Office of this Court is situated in **Old and New Annex Building, at Dhobi Talao, Lokmanya Tilak Marg, Mumbai – 400 002**. The Territorial Jurisdiction of Head Office is from Colaba to Mulund on Central Suburban Railway Side, up to Mankhurd on Harbour Railway Side and up to Mahim on Western Suburban Railway Side. There are 31 Court Halls, which include 5 Appellate Benches, 26 Trial Courts including Registrar's Court.

The Branch office of this Court is situated in **Bhaskar Building, Anant Kanekar Marg, Bandra (East), Mumbai-400051.** In the Bhaskar Building, 3rd floor to 8th floor are in use, occupation and possession of this Court. The said Branch has been started functioning with effect from 6th August, 1990. The Territorial Jurisdiction of Bandra Branch is from Mahim to Dashisar on the Western Suburban Railway Side. There are 11 Courts at Bandra, out of which 2 are Appellate Benches and remaining 9 are Trial Courts including Registrar's Court.

Niceties of Presidency and Provincial Small Causes Courts Acts

- **Presidency Small Causes Courts Act, 1882 [PSCC Act][1]**

  The PSCC Act (Act No. 15 of 1882) consolidates and amends laws for civil Courts handling minor disputes in India's presidency towns of Calcutta (Kolkata), Madras (Chennai), and Bombay (Mumbai). Enacted on March 17, 1882, and effective from July 1, 1882, it establishes specialized Courts for speedy, summary adjudication of small claims to ease the burden on higher judiciary.

  Establishment and Structure:

  These Courts operate under the superintendence of respective High Courts, with a Chief Judge and other judges appointed by the State Government. The High Court frames rules for their powers, procedure, and practice, including empowering the Registrar for undefended suits. Support officers like bailiffs, appraisers, and ministerial staff assist in summons, executions, and records.

  Jurisdiction and Pecuniary Limits:

  Courts handle suits up to prescribed monetary limits (e.g., originally small-value claims like ₹ 2,000, subject to amendments). Local limits cover presidency town areas where defendants reside, work, or businesses operate.

  Excluded suits include:

  - Immovable property recovery, partition, foreclosure, or specific rights therein.
  - Probate, administration, injunctions, specific performance, or contract rescission.
  - Government suits or judicial officer acts.

  Procedure and Powers:

  Summary procedures apply: abbreviated trials, no pleadings complexity, and quick decrees executable across Courts. High Court may remove certain cases; new trials allowed for contested suits

[1] GIST WITH THE HELP OF AI

under specific conditions. Chapter on distresses (Sections 50-68) covers rent recovery via bailiff seizure, appraisement, and sale, with safeguards against illegal distress.

Appeals and Execution:

Decrees are generally final, barring limited appeals or High Court revisions. Possession recovery for immovable property has dedicated provisions (Sections 41-49). Costs, fees, and poor persons' aid are regulated.

Amendments and Applicability:

Adapted post-independence (e.g., via 1950 Orders), it remains relevant in Kolkata, Chennai, and Mumbai for small causes Courts, with rules updated for modern needs like digital filings.

Section 41 (1) of the PSCC Act applies only when the following conditions stand satisfied :

a) It must be a suit or proceeding between the licensee and licensor; or between a landlord and a tenant;
b) such suit or proceedings must relate to the recovery of possession of any property situated in Greater Bombay;
c) or relating to the recovery of licence fee or charges or rent thereof.

The expression 'all suits and proceedings' means and includes 'all suits' against 'Licensee' either relating to recovery of possession of any immovable property or relating to the recovery of any licence fee or both. Apparently, this provision does not make any distinction between the 'licensee' with and without material consideration. Sub-section (2) of Section 41 of PSCC Act states that nothing contained in Sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges or rent thereof, to which the provisions of Bombay Rent Act apply.

Prior to the amendment of Subsection (1) of Section 41 by Maharashtra Act 24 of 1984, the words 'notwithstanding anything contained in elsewhere in this Act' in Sub-section (1) were followed by the words 'or in any other law for the time being in force'. Effect of sub clause (2) can be demonstrated thus: Where the Bombay Rent Act, 1947 applied, then the provisions for jurisdiction were to be traceable to the statutory provisions contained in that Act. That is why Sub-section (1) of Section 41 was required to be made subject to Sub-section (2). By the Amending Act of 1984, the Legislature noted a 'minor inconsistency' between Sub-sections (1) and (2), if Sub-section (1) were to contain a non-obstante provision overriding any other law for the time being in force. That inconsistency was sought to be removed by the Amending Act. By the Amending Act of 1984, Sub-section (2) was also amended so as to substitute the Maharashtra Housing and Area Development Act, 1976 for the Bombay Housing Board Act, 1948 and to incorporate a reference to any other law for the time being in force.3

Section 41 of the PSCC Act falls within the ambit of Section 2 (3) of the Act of 1996. As a result of which, even if the Licence Agreement contains Arbitration Agreement, the exclusive jurisdiction of the Courts of Small Causes under Section 41 of the PSCC Act is not affected in any manner. Whereas, Arbitration Agreement in such cases would be invalid and inoperative on the principle that it would be against public policy to allow the parties to contract out of the exclusive jurisdiction of the Small Causes Courts by virtue of Section 41 PSCC Act.

That Bombay Rent Act gave considerable right and protection to the tenants. The landlords were prohibited from recovering any amount in excess of standard rent which was pegged down at the level of rent in September, 1940 or on the date of first letting. Similarly, the landlord's right of evicting tenant was severely curtailed. The landlords could recover possession only on proof of grounds enumerated under the Bomba Rent Act. Several restrictions were placed on the landlord's right by the Bombay Rent Act. As a result thereof the landlord started giving their premises under an agreement of leave and licence.

The PSCC Act is a general Act while the Bombay Rent Act is a special Act which deals with a special topic i.e., claims and questions between landlords and tenants. By the opening words 'notwithstanding any other law to the contrary' in Section 28, the special provisions of Section 28 of the Bombay Rent Act override those of PSCC Act pro tanto notwithstanding the fact that in Sections 47 and 48 of the latter Act the High Court and Bombay City Civil Court have been referred to in express words. These sections are procedural sections and the special Act is entitled to affect these sections even though the PSCC Act is a Central Act.

It appears that to overcome this mischief of multiplicity of the proceedings, that large scale amendments were carried out in 1976 and the Chapter VII was substituted for the original chapter VII (sections 41 to 49) by the 1976 Amendment. It may be noticed that under Chapter VII of the 1976 Amendment, the proceedings for recovery of possession under Section 41 no more remained summary and they were given status of regular suits. The underlying purpose of the amendment was to cure the mischief of multiplicity of proceedings by investing one Court with exclusive jurisdiction irrespective of the value of the matter in all the suits between the landlord and tenant or the licensor and licensee.

In the first place it is not a tribunal but a Court and has all the powers of a Court but its procedure is intended to be shortened. The power given to the Court to decide and deal with all questions between landlord and tenant relating to recovery of rent or possession or those arising under the Act necessarily carries, the ancillary powers for creatively implementing its decision. Court has power to decide all matters which are incidental or ancillary to the determination of the questions which it is entitled to decide.

There are other provisions as to procedure viz. revision, review, appeal specifically prescribing procedure for subjects which are covered under this Act. This Act still gives every liberty to litigant to file independent suit in Court of Competent Jurisdiction where material dispute relates title despite the issue of title is incidentally decided by Small Causes Court. There are rules framed under this Act by Parent High Court which are often useful in the matter of procedures and subtle issues arising in the proceedings. The legislation is Central Legislation and still based on British Judicial Hierarchical System.

- **Provincial Small Causes Courts Act, 1882[ProSCC Act][2]**

  The ProSCC Act (Act No. 9 of 1887) consolidates and amends laws for civil Courts handling minor disputes in areas outside India's presidency towns like Calcutta, Madras, and Bombay. Enacted on February 11, 1887, it establishes Courts of Small Causes across provinces for efficient resolution of low-value civil suits using summary procedures.

  <u>Establishment and Structure</u>:

  State Governments establish these Courts beyond presidency-town limits, defining local jurisdictions and sitting places. Each Court has a Judge appointed by the State Government, with possible additional judges. Registrars handle ministerial duties and limited powers for low-value undefended suits.

  <u>Jurisdiction</u>:

  Courts take cognizance of civil suits up to ₹ 1,000/- (enhanced from original ₹ 500/- via amendments; varies by state notification), excluding suits listed in the Second Schedule like immovable property recovery, probate, injunctions, partnerships, or malicious prosecution. They have exclusive jurisdiction over eligible small causes suits, overriding other civil Courts.

  <u>Procedure</u>:

  Summary trial under modified Civil Code is adhered to. No formal pleadings, quick hearings, Registrar powers for admissions, decrees on confession, and executions. Plaints returned if title questions arise; adjournments limited. High Court rules govern practice.

[2] GIST WITH THE HELP OF AI

Key Exclusions (Second Schedule)	Description
Immovable property suits	Ejectment, partition, foreclosure
Probate/administration	Wills, letters of administration
Injunctions/partnerships	Equitable relief, firm disputes
Malicious prosecution	Damage claims over ₹ 1,000/-

Appeals and Revisions:

No appeals from decrees in suits up to ₹ 300/- (or notified limits), but appeals allowed from certain orders; Revisions for jurisdictional errors or material irregularities before Honourable High Court. Decrees generally final to ensure speed.

Amendments and Relevance:

Post year 1947 adaptations renamed "provincial" to apply nationwide (except presidency Courts under separate 1882 Act); state-specific enhancements like Tamil Nadu amendments for rent/possession suits irrespective of value.

Need and Key highlights of MRC Act

The first rent legislation which was introduced was the **Bombay Rent Act, 1938** which came into force on 13th February 1938. This Act was meant to be a temporary measure. The original Act was enacted only for two years with a power to the Government to extend the same by notification in that behalf. This Act was extended from time to time at least on 22 occasions till it was replaced by the present Act.

There were three different Acts which were in force in the State of Maharashtra. In the areas of erstwhile Bombay State, **Bombay Rents, Hotel and Lodging House Rates Control Act, 1947** [Bombay Rent Act] was in operation. In the areas of Central Provinces and Berar, namely, Vidarbha Region, the **Central Provinces and Berar Letting of Houses Rent Control Order, 1949** [CP & Berar Order] which was under the Central Province and Berar Regulation of Letting of Accommodation Act, 1949 was in operation. In Marathwada areas, which was formerly in the State of Hyderabad, the **Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954** [Hyderabad Rent Act] was in operation.

As a result of these legislations, many problems have cropped up. These problems have been discussed by various committees appointed by the Central Government and State Governments. The reports of such committees indicate that freezing of rentals at old historic levels, the excessive protection of tenancy rights and the extreme difficulties of recovering possession even for the owner's own use hit hard the houseowners of modest means; rendered investment in housing for rental unattractive; inhibited the letting out of available accommodation and thus had aggravated the acute scarcity of accommodation for hire. It was felt that the laws were being often abused by the rich tenants against the poor or middle-class landlords.

So, with the **Maharashtra Rent Control Act, 1999** [MRC Act] these three Rent Laws were unified. It came into force since 31st March 2000.

The Key Highlights of the MRC Act can be summarized as follows-

- It governs landlord–tenant relationships across the state.
- It provides protection to tenant against arbitrary eviction, except on the eviction only on specific grounds like non-payment, illegal use, or landlord's bona fide need.
- It regulates rent fixation and increases and ensures fair returns for landlords, balancing housing security with investment incentives.
- It applies to all of Maharashtra, covering residential, educational, business, trade, and storage premises.
- Government-owned properties, banks, public sector companies, foreign missions, and large companies are exempted from applicability of the Act.
- In provided that Courts can fix standard rent if disputes arise.
- It provided that landlords may raise rent by 4% per year.
- It allowed Additional increases for major repairs, improvements, or municipal-mandated works.
- It defined the statutory duty of landlord's duty to maintain the property in good condition. At the same time, the Act mandates that tenants must allow necessary repairs and cannot obstruct maintenance.
- It recognized landlord to be entitled to fair rent, possession in genuine cases, and recovery of arrears.
- It replaced older fragmented tenancy laws with a uniform framework across Maharashtra. It encouraged housing development by balancing landlord incentives with tenant protections.

- The Act is a balancing law, protecting tenants from exploitation while ensuring landlords receive fair compensation and can reclaim property under genuine circumstances.
- It provides that the MRC Act shall not apply to:
  - any premises belonging to the Government or a local authority or against the Government, but shall apply in respect of premises let out to the Government or a local authority;
  - any premises let or sub-let to banks, Public Sector, Undertakings (PSU), foreign missions, international agencies, multinational companies, private and public limited companies having paid-up share capital of Rs. 1 crore or more.
  - Any premises let or sub-let to banks, Public Sector Undertakings (PSU), foreign missions, international agencies, multinational companies, private and public limited companies having paid-up share capital of Rs. 1 crore or more.
- It provides that the State Government may direct that all or any of the provisions of the Act shall, subject to such conditions and terms as it may specify, not apply to premises held by religious or charitable institutions administered by a local authority and to premises held by an university, provided the tenancy rights of the existing tenants in such premises are not adversely affected.
- It does not apply to the premises, which are let or given on license for less than 12 months.

- **Recovery of Possession:**
  - No eviction suit can be filed on the ground of arrears until the expiration of 90 days next after notice of demand served upon the tenant.

- No decree for eviction shall be passed in an eviction suit on the ground of arrears, if the tenants pays up within 90 days from the date of service of the summons of the suit the arrears of rent with 15% interest and continues to pay the standard rent and permitted increases till the suit is finally decided and also pays the costs of the suit.

- **Landlord entitled to recover possession from licensee:**
  - On expiry of license; in default can apply to the Competent Authority. Such licensee liable to pay damages at double the rate of the license fee
  - an arrangement of license in writing shall be consclusive evidence of the fact stated therein.

- **Time Limit for disposal of suits/appeals**:
  - For suits: 12 months from the date of service of summons
  - For appeals: 6 months

- **Pending Suits:**
  - Pending suits and proceedings not to be affected by the new Act and to be heard and disposed of as if the new Act had not been passed.

- **Offences** (Section 53):
  - Charging rent in excess – non cognizable – imprisonment 3 months – fine ₹ 5000/- or both (Section 10);
  - Failure to commence the work of repairs after the tenant has vacated by the date specified in the decree or fails to comply with the Court's Order of repossession after repairs – cognizable imprisonment up to 3 months – fine ₹ 1000/- or both (Section 17);

- Failure to occupy the premises recovered on the ground of bona fide requirement – cognizable – imprisonment up to 3 months – fine ₹ 5000/- or both (Section 18);
- Failure to carry out any undertaking given to Court or failure to comply with Court's Order under a decree obtained on the ground of bona fide requirement by the landlord for the demolishing the premises for the immediate purpose of erecting new building – cognizable – imprisonment up to 30 days – fine ₹ 5000/- or both (Section 19);
- Failure to intimate to tenant the date on which the erection of the erection of the new building shall be completed – cognizable – imprisonment up to 3 months or fine ₹ 5000/- or both (Section 21);
- To cut-off withhold essential supply or service – up to ₹ 100/- for each day during which the default continues (Section 29);
- Failure to restore any essential supply or service – imprisonment up to 3 months, fine ₹ 1000/- or both (Section 29);
- Conversion of residential into commercial premises by landlord – imprisonment up to 6 months – fine ₹ 10000/- or both (Section 30);
- Failure to issue the rent receipt – fine ₹ 100/- for each day of default (Section 31);
- Failure to enter into a written agreement of tenancy or leave & license or have the same registered – imprisonment up to 3 months – fine ₹ 5000/- or both (Section 55).

- **<u>Tenancy agreement to be compulsorily registered (Section 55)</u>**:
  - Agreement of tenancy or agreement of leave & license to be in writing and shall be registered
  - Responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered

agreement, the contention of the tenant about the terms and conditions on which the premises were given shall prevail, unless proved otherwise.

- Stamp duty on Tenancy Agreement (Art. 5 of Stamp Act)
    - for non-residential premises = ₹ 1000/- per sq. m.;
    - for residential premises = ₹ 100/- per sq. m. (in Mumbai).

- **Right of Tenant & Landlord to received lawful charges** (Section 56) famous as 'Pugdi (पगडी)':
    - It is lawful for the tenant to receive any pugdi as a condition of relinquishment, transfer, assignment of his tenancy;
    - It is lawful for the landlord to receive any pugdi for grant or renewal of a tenancy or for giving his consent to transfer the tenancy to any other person.

Exclusive Jurisdiction of Rent Courts

Introductory:

Jurisdiction means the authority with which a Court has to decide the matter before it or to take cognizance of matters presented in the formal way for its decision. The limits of this authority are imposed by statute, charter, or commission under which the Court is constituted and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. Jurisdiction is key question for the Court which goes to the root of the case and decide the fate of matter either at preliminary stage or on merit. If any order passed without jurisdiction, it becomes nullity and not enforceable by law.

'Exclusive Jurisdiction'

The phrase was explored by Honourable Supreme Court in case of **Modi Entertainment Network Vs. W.S.G. Cricket Pte. Ltd.**[3] It was observed that-

> "11. In regard to jurisdiction of Courts under the Code of Civil Procedure (CPC) over a subject-matter one or more Courts may have jurisdiction to deal with it having regard to the location of immovable property, place of residence or work of a defendant or place where cause of action has arisen. Where only one Court has jurisdiction, it is said to have exclusive jurisdiction; where more Courts than one have jurisdiction over a subject-matter, they are called Courts of available or natural jurisdiction."

Notably, these observations were only about the Courts under Civil Code. But, in case of **Natraj Studios (P) Ltd. v. Navrang Studios**[4], Honourable Supreme Court already observed with reference to Small Causes Court that-

> "18. Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other Courts (1) to entertain and try any suit or proceeding between a landlord and a tenant

[3] (2003) 4 SCC 341
[4] (1981) 1 SCC 523

relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and, (4) to deal with any claim or question arising out of the Act or any of its provisions. Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions does not necessarily mean exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the Court where the jurisdictional question falls to be decided, and the question may fall for decision before the Court of exclusive jurisdiction or before the Court of ordinary jurisdiction. A person claiming to be a landlord may sue his alleged tenant for possession of a building on grounds specified in the Rent Act. Such a suit will have to be brought in the Court of Small Causes, which has been made the Court of exclusive jurisdiction. In such a suit, the defendant may deny the tenancy but the denial by the defendant will not oust the jurisdiction of Court of Small Causes. If ultimately the Court finds that the defendant is not a tenant the suit will fail for that reason. If the suit is instituted in the ordinary civil Court instead of the Court of Small Causes the plaint will have to be returned irrespective of the plea of the defendant. Conversely a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute the suit, on the plaint allegations, in the ordinary civil Court only. In such a suit the defendant may raise the plea that he is a tenant and not a trespasser. The defendant's plea will not straight away oust the jurisdiction of the ordinary civil Court but if ultimately the plea of the defendant is accepted the suit must fail on that ground. So the question whether there is relationship of landlord and tenant between the parties or such other jurisdictional questions may have to be determined by the Court where it falls for determination — be it the Court of Small Causes or the ordinary civil Court. If the jurisdictional question is decided in favour of the Court of exclusive jurisdiction the suit or proceeding before the ordinary civil Court must cease to the extent its jurisdiction is ousted."

These observations precisely define the 'exclusive jurisdiction' of Small Causes Court.

Source provisions as to such jurisdiction:

The 'exclusive jurisdiction' of Small Causes Court is provided under Section 41 of PSCC Act read with Section 33 MRC Act and Section 28 of Bombay Rent Act; in respect of all the disputes between landlord and tenant. Honourable Supreme Court in case of **Mansukhlal Dhanraj Jain And others Etc Vs. Eknath Vithal Ogale Etc.**[5], had considered the situation where the plaintiff had contended that he was the licensee of the said premises and the defendant was the licensor and on that basis he wanted assistance of the Court to protect his possession. In the said proceedings, the plaintiff had claimed right of possession in the suit premises as a licensee against the licensor, who was threatened to disturb the possession of the plaintiff licensee without following due process of law. It is held by the supreme Court that the phrase "relating to recovery of possession" as found in section 41(1) of the Small Cause Courts Act, 1882 is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and thus the suit would fall under section 41(1) of the Small Cause Courts Act.

In case of **Mahadev P. Kambekar Vs. Shree Krishna Woolen Mills Private Limited**[6], considered a situation where the plaintiff had claimed to be licensee of the suit land whereas the defendant claimed to be the owner/licensor of the suit land. The dispute had arisen between the parties. The plaintiff had filed a civil suit against the defendant in that case claiming specific performance of the contract (lease deed) in relation to the suit land. The issue before the Honourable Supreme Court was that if the tenancy is determined whether the said suit would still come within the purview of section 41 of the Small Cause Courts Act or not. Honourable Supreme Court approved the view taken by the Honourable Bombay High Court in

---

[5] (1995) 2 SCC 665 : AIR 1995 SC 1102

[6] AIR 2019 SC 913

case of **Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel**[7], rejecting the contention that once the tenancy is determined, such suits would not come within the purview of section 41 of the Small Cause Courts Act.

Honourable Supreme Court in famous case of **Prabhudas Damodar Kotecha & others Vs. Manharbala Jeram Dmodar & another**[8]**,** had considered the question whether the suit filed by the licensor against gratuitous licensee under section 41 (1) of the PSCC Act as amended by Maharashtra Act 19 of 1976 was maintainable before the Small Cause Courts, Mumbai or not. Honourable Supreme Court considered the statement of objects and reasons of 1996 Amendment and held that clubbing of the expression "licensor and licensee" with "landlord and tenant" in section 41 (1) of the PSCC Act and clubbing of causes relating to recovery of license fees is only with a view to bring all the suits between the "landlord and tenant" and the "licensor and licensee" under one umbrella to avoid unnecessary delay, expenses and hardship. In that context, Honourable Supreme Court held that the act of Legislature was to bring all suits between "landlord and tenant" and "licensor" and licensee" whether under the Rent Acts or under the PSCC Act, under one roof.

A full Bench of Honourable Bombay High Court in case of **Central Warehousing Corporation, Mumbai Vs. Fortpoint Automotive Pvt. Ltd.**[9]**,** has answered the question referred to the Full Bench i.e. "Whether in view of the provisions of section 5 of the Arbitration & Conciliation Act, 1996, if any agreement between the licensor and licensee contains a clause for arbitration, jurisdiction of the Small Cause Courts under the Presidency Small Causes Court Act, 1882 would be ousted?". Full Bench of the Honourable Bombay High Court answered the said question by holding that section 41 (1) of the PSCC Act is Special law in turn has constituted special Courts for adjudication of disputes specified therein between the licensor and licensee or landlord and tenant. It is held that the expression "or any other law for the time being in force" appearing in section 41 (2) will have to be construed to mean that such law should provide for resolution of dispute between the licensor and licensee or landlord or tenant in relation to immovable property or licensee fee thereof, to which immovable

[7] AIR 1980 Bom 123
[8] (2013) 15 SCC 358
[9] 2010 (1) Mh. L. J. 658

property, provisions of that Act at applicable. Honourable Full Bench accordingly held that even if the license agreement contains arbitration agreement, exclusive jurisdiction of the Court of Small Causes under section 41 of the PSCC Act is not affected in any manner and such arbitration agreement in such cases would not be valid and inoperative on the ground that it would be against the public policy to allow parties to contract out of exclusive jurisdiction of the Small Cause Courts by virtue of section 41 of the PSCC Act.

In the case of **Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore[10]**, a Full Bench of the Honourable Bombay High Court had occasion to consider following questions:

i. Whether the City Civil Court, Bombay has jurisdiction to entertain a suit for a declaration that a sub-tenancy was created in favour of the plaintiff by the defendant tenant before the commencement of the Bombay rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, and for an injunction restraining the defendant from interfering with his possession as a sub-tenant?
ii. Whether the City Civil Court, Bombay has jurisdiction to entertain a suit for a declaration that the plaintiff is a tenant or sub-tenant of the defendant and for an injunction restraining the defendant from proceeding with or from obtaining an order for eviction of the plaintiff in the application made by the defendant under section 41 of the PSCC Act or from executing the order for eviction obtained by him in such application?

Honourable Bombay High Court held that the Court of Small Causes has jurisdiction over a suit between a landlord and tenant, as well as over a question raised between landlord and sub-lessee. A suit for possession can be brought by either a landlord or tenant, subject to conditions specified in the Rent Act. The Honourable Bombay High Court further held that Section 28 of the Bombay Rent Act does not apply to the suits filed in Civil Court or a Special Court. However, Section 28 of the Bombay Rent Act confers exclusive jurisdiction on the Special Court to adjudicate claims to possession between landlord and tenant. The Honourable Bombay High Court also held

[10] AIR 1965 Bom 177

that decision of Special Court on question of ownership does not bar a suit under Section 29-A of the Bombay Rent Act.

To conclude the exclusive jurisdiction of the Small Causes Court, it is essential to refer to the observations made by the Honourable Bombay High Court in **Mehersingh Sethi Vs. Khurshed Nadirshaw Satarwalla**[11], which are as follows:

> "Once there is a suit between the landlord and a tenant relating to the recovery of rent or possession of the premises, the Small Cause Court acquires the jurisdiction not only to entertain that suit but also to deal with any claim or question arising out of the Act or any of its provisions which may properly be raised in such a suit."

In the aforesaid case of **Mansukhlal Dhanraj Jain**, it was held that

> "12. A mere look at the aforesaid provision makes it clear that because of the non-obstante clause contained in the section, even if a suit may otherwise lie before any other Court, if such a suit falls within the sweep of Section 41 (1) it can be entertained only by the Court of Small Causes. In the present proceedings we are not concerned with the provisions of sub-section (2) of Section 41 and hence we do not refer to them. For applicability of Section 41 (1) of the Small Cause Courts Act, the following conditions must be satisfied before taking the view that jurisdiction of regular competent civil Court like City Civil Court is ousted:
> (i) It must be a suit or proceeding between the licensee and licensor; or
> (ii) between a landlord and a tenant;
> (iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or
> (iv) relating to the recovery of the licence fee or charges or rent thereof."

[11] 1954 SCC OnLine Bom 30: (1954) 56 Bom. LR 540

The Honourable Bombay High Court held in **Smita Rajeev Sah and another Vs. Roop Narain Sah and another**[12] that a suit for declaration of title cannot be entertained by the Court of Small Causes under Section 41 of the PSCC Act.

Jurisdiction: with reference to some special laws and with some prerequisites (in brief):

There are few provisions in some special laws which oust the jurisdiction of Small Causes Court or which lay down some pre-requisites for such jurisdiction. All those provisions must be addressed to, in order to complete the study of exclusive jurisdiction of the Court.

- **Sections 3T, 22 and 42 of Slum Areas Act**:
    1. Section 3T of Slum Areas Act bars a suit or proceedings against the Competent Authority for anything done in good faith or intended to be done under the said Act, rules or Regulations. It also means that the grant or rejection of permission cannot be challenged in any suit or proceeding.
    2. Section 22 (1) starts with non obstante clause and it is clear from the provision contained in Clause (a) thereof that no person shall institute any suit or proceeding for obtaining any decree or order for eviction of the occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier or for both without the previous written permission of the Competent Authority. **The use of words 'no' and 'shall' in Sub-section (1) of Section 22 makes it abundantly clear that prior written permission of the Competent Authority for an action under Clause (a) thereof is a must.**
    3. Section 42 of Slum Areas Act provides that, no civil Court shall have jurisdiction is respect of any matter which the Appellate Authority, Competent Authority or Grievance Redressal Committee or Tribunal is empowered by or under this Act, to determine. It is also provided that no injunction shall be granted by any Court or other authority in respect of any action taken or

[12] 2013 (5) Mh. L. J. 211

to be taken in pursuance of any power conferred by or under this Act

4. **There were conflicting views on the point of declaration of slum area, during pendency of suit. However,** Honourable Bombay High Court over the reference in case of **Satish Shahu Bane & Another Vs. Dattatraya Tanaji Padam & Another**[13] has set the issue of maintainability of the suit in case of recovery of property declared as slum at rest. It was observed that when the suit was filed, the statute contemplated prior permission of the Competent Authority and since it was the mandate of statute, the suit filed without the permission of Competent Authority is bad-in-law. Thus, when a declaration is made under the statute declaring the area to be slum is set aside, at a subsequent point of time, it cannot be automatically held to be nonexistence and it it was a condition precedent under Section 22 of the Slum Act to institute a suit, it will not have an effect of wiping out a short fall at that point of time i.e. when the suit was instituted without permission of Competent Authority.

- **Section 17 (4A), 34 and 35 of SARFAESI Act:**

1. Section 17 (1) of the SARFAESI Act provides remedy to the aggrieved person. He may make an application to the Debts Recovery Tribunal [DRT] having jurisdiction in the matter within forty-five days from the date on which such measure had been taken. In view of section 34 of SARFAESI Act jurisdiction of Civil Court is barred. It provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

[13] 2020 (5) Mh. L. J. 245

2. In **Vishal N. Kalsaria Vs. Bank of India**[14]**,** the Honourable Supreme Court held that the Rent Act being social welfare legislation must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Act. The two legislations, that is the SARFAESI Act and the Rent Act operate in completely different fields. While SARFAESI Act is concerned with Non-performing Assets of the Banks, the Rent Act governs the relationship between a tenant and the landlord. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Act. It was further held that a tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act, as that would amount to stultifying the statutory rights and protection given to the tenant. A non obstante clause (appearing in text of Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Act.
3. In view of the Amended section 17 (4-A) of SARFAESI Act, the Small Causes Court has no jurisdiction to decide tenancy or lease matter, which is related to the SARFAESI Act. The DRT should first decide whether tenant is inducted prior to any mortgage deed or not. Moreover purchaser of secured asset may come in the shoe of landlord or lessor, if DRT held that Small Causes Court has jurisdiction. In the light of section 17 (4-A) of SARFAESI Act, it can be concluded that DRT has prima facie jurisdiction in the tenancy and lease matters, which are related to secured asset or secured debt.

- **Provisions of Insolvency Bankruptcy Code [IBC]:**
  1. Section 63 of IBC provides that no Civil Court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter, on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Section 231 of IBC further provides that no Civil Court shall have jurisdiction in respect of any matter, in which the Adjudicating Authority is empowered by, or under this Code to pass any order. It is further provided that no injunction shall

[14] (2016) 3 SCC 762

be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority

2. In the case of **Adinath Jewellery Vs. Mr. Brijendra Kumar Mishra, Liquidator of Shrenuj & Co. Ltd.** [Company Appeal (AT) (Insolvency) No. 748 of 2022, decided on 24.04.2023][15], the issue was whether National Company Law Tribunal does not possess jurisdiction in relation to matters relating to landlord and tenant i.e Eviction of tenant and payment of rent, which are matters to be dealt under the Rent Act, for which jurisdiction vests only with the Court of Small Causes. It was held that NCLT possesses the correct jurisdiction in considering an application for vacation of the premises in question and that the NCLT was correct in passing the impugned Order which would be necessary to put the premises in question with the Liquidator.

- **Provisions of Arbitration Act:**

1. A Full Bench of the Honourable Bombay High Court also dealt with applicability of Arbitration clause in agreement between licensor and licensee in the case of **Central Warehousing Corporation** (cited earlier). It was observed that even if the license agreement contains Arbitration Agreement, the exclusive jurisdiction of the Courts of Small Causes under section 41 of the PSCC Act is not affected in any manner. Whereas, as observed further that, Arbitration Agreement in such cases would be invalid and inoperative on the principle that it would be against public policy to allow the parties to contract out of the exclusive jurisdiction of the Small Causes Courts by virtue of section 41 of the PSCC Act.

2. Later in the case of **Vidya Drolia Vs. Durga Trading Corporation**[16], the Honourable Supreme Court overruled the judgment in case of **Himangini Enterprises Vs. Kamaljeet Singh Ahuwalia**[17]. It was observed that the tenancy dispute

[15] [MANU/NL/0375/2023]
[16] (2021) 2 SCC 1
[17] (2017) 10 SCC 706

governed by the T. P. Act only can be referred to the Arbitration but the exclusive jurisdiction of the Small Causes Court cannot be ousted by Arbitration clause in the agreement. Thus, in spite of Arbitration Agreement between the parties and non-obstante clause in section 5 of the Arbitration Act, the exclusive jurisdiction of the Small Causes Court to try and decide the dispute specified in section 41 of the PSCC Act is not ousted.

Conclusions:

Thus, the Small Causes Court has exclusive jurisdiction not only to resolve disputes between landlords and tenants but also to decide claims or questions related to the recovery of rent or possession of premises between landlords and tenants. At the same time, the Courts must keep an eye on the relevant provisions of other special laws and prevalent laws; to ensure that the exclusive jurisdiction is not ousted or pre-requisites are absent.

Jurisdiction of Rent Courts: Trial and Appellate Courts

- **Of Trial Courts**

Section 17 of PSCC Act deals with the local limits of jurisdiction of Court. Section 18 of PSCC Act stipulates that subject to the exceptions in Section 19 thereof Small Causes Court shall have jurisdiction to try all types of suits of a civil nature, when the amount or value of the subject matter does not exceed ₹ 25000/- and three other conditions specified in clause (a), (b) and (c). Section 41 of the PSCC Act deals with the provisions of recovery of possession of immovable property by filing suits or proceedings **between licensors and licensees or landlords and tenants for recovery of possession of immovable property and license fees or rent**, except to those to which other Acts apply to lie in Small Cause Court.

Section 15 of The ProSCC Act, cognizance of suits by Courts of Small Causes. A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes. Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court of Small Causes. Section 16 of the ProSCC Act mandates the exclusive jurisdiction of Courts of Small Causes.

Section 28 of Bombay Rent Act dealt with Jurisdiction of Trial Courts and Section 33 MRC Act [analogous] deals with Jurisdiction of Trial Courts. They actually defined the outline of jurisdiction of Rent Court. The text of section 33 of MRC Act must be reproduced hereunder for clarity and useful reference

33. Jurisdiction of Courts -
(1)
Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim, or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction-

a) in Brihan Mumbai, the Court of Small Causes, Mumbai,

b) in any area for which a Court of a Small Causes is established under the Provincial Small Causes Courts Act, 1887 (IX of 1887), such Court, and
c) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction,

shall have jurisdiction to entertain and try any suit of proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the application which are to be decided by the State Government or an officer authorised by it or the Competent Authority) and subject to the provisions of sub-section (2), no other Court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

(2)

a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 (IX of 1887), and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;
b) where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceeding or application, as the case may be, may either retry it or proceed from the stage at which it was withdrawn;
c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.

If the section is analyzed, it is clear that the 'non-obstante' clause makes it clear that the other laws will not have any bearing or applicability about the jurisdiction aspect. It necessarily means that irrespective of upper limit to the power and extents of a Judge in cadre of Civil Judge Junior Division has jurisdiction and authority to deal with any such suit. Interesting point to be noted is the if there is no Civil Judge of Junior Division, then the suit can be dealt with by the Civil Judge Senior Division, as the section mandates. Sub-section (2) provides for the time limit for preferring appeal before the Appellate Bench. Moreover, it is clear that there is no further appeal against the judgment of Appellate Bench of this Court.

- **Appellate Courts**

It is one of the distinguishing features of Small Causes Court, Mumbai that the appeals, revisions challenging the orders and decrees (along-with judgments) of the Judges of Trial Court are heard and decided by an Appellate Bench of this Court itself. The Appellate Bench comprising of two Additional Chief Judges or of Additional Chief Judge and Judge (Senior Civil Judge/Civil Judge Senior Division) is constituted by the Chief Judge of Court of Small Causes, Mumbai. So, even while working as a Judge of this Court in the cadre of Civil Judge Senior Division, he/she gets the opportunity to deal with appeals and revisions. Such enriching experience helps the Judge in the promotional cadre.

The basis of this mechanism is section 29 of Bombay Rent Act, which is analogous to section 34 of MRC Act, and section 42 of PSCC Act as well. It is necessary to reproduce the text of section 34 of MRC Act, for clarity and reference. The text is as under-

34. Appeal.
(1) Notwithstanding anything contained in any law for the time being in force, an appeal shall lie-

a) in Brihan Mumbai from a decree or order made by the Court of Small Causes, Mumbai exercising jurisdiction under section 33, to a bench of two judges of the said Court which shall not include the Judge who made such decree or order;
b) elsewhere, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887 (IX of 1887), or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 33 or by a Civil Judge exercising such jurisdiction, to the District Court:

Provided that no such appeal shall lie from-

a) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908 (V of 1908);

b) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent in respect of any premises and amount or value of the subject matter of which does not exceed-
   (i) where such suit or proceeding is instituted in Brihan Mumbai, Rs. 10,000; and
   (ii) where such suit or proceeding is instituted elsewhere, the amount upto which the Judge or Court specified in clause (b) is invested with jurisdiction of a Court of Small Causes, under any law for the time being in force;

c) an order made upon on an application for fixing the standard rent or for determining the permitted increases in respect of any premises except in a suit or proceeding in which an appeal lies;

d) an order made upon an application by a tenant for a direction to restore any essential supply or service in respect of the premises let to him.

(2) Every appeal under sub-section (1) shall be made within thirty days from the date of the decree or order, as the case may be:

Provided that, in computing the period of limitation prescribed by this sub-section the provisions contained in sections 4, 5 and 12 of the Limitation Act, 1963 (XXVI of 1963) shall, so far as may be, apply.

(3) No further appeal shall lie against any decision in appeal under sub-section (1).

(4) Where no appeal lies under this section from a decree or order in any suit or proceeding in Brihan Mumbai, the bench of two Judges specified in clause (a) of sub-section (1) and elsewhere, the District Court may, for the purpose of satisfying itself that the decree or order made was according to law, call for the case in which such decree or order was made and the bench or Court aforesaid or the District Judge or any Judge to whom the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

If the section is analyzed, it is clear that the 'non-obstante' clause makes it clear that the other laws will not have any bearing or applicability about the jurisdiction aspect. Sub-section (2) provides for the time limit for preferring appeal before the Appellate Bench. Moreover, from the sub-section (3), it is clear that there is no further appeal against the judgment of Appellate Bench of this Court.

The sub-section (4) defines the jurisdiction of the Appellate Bench of the Court of Small Causes Mumbai, to entertain Revisions. Where no appeal is provided against any decree or order, the Appellate Bench can satisfy itself that the decree or order was according to law. This is nothing but the exercise of Revisional Jurisdiction.

Statutory Exemptions

The legislature in its wisdom has decided and thought it fit not to extend the protection of the MRC Act to certain class of tenants. However, the Legislature has carved out some exemptions directly in the statute and some by delegating powers to the State Government.

Exemptions – Total and Subjective:

Section 3 of the MRC Act and formerly Section 4 of the Bombay Rent Act; exempts certain premises from the application of these Acts. These provisions are similar. Section 3 Sub-clause (1) of MRC Act deals with total exemptions to premises belonging to the Government or the local Authority. Whereas, section 3 Sub-clause (2) deals with subjective exemption, that is to say, subject to the terms and conditions which may be specified or notified by the State Government i.e premises used for public purpose of a charitable nature or public trust for a religious purpose etc. The Honourable Bombay High Court in the case of **M/s. Crompton Greaves Ltd. Vs. State of Maharashtra and others[18],** upheld the Constitutional validity of these provisions.

Exemptions and objects behind them:

Exemption under Section 3 (1) (a) of MRC Act:

The immunity is granted to the Public Authority so that it must act validly and not whimsically or for ulterior purpose. The primary object of giving this exemption is to protect the interest of the Government or a local Authority and this protection requires that the immunity should be held to attach to the premises itself.

Exemption under Section 3 (1) (b) of MRC Act:

Section 3(1) (b) of MRC Act deals with exemption to certain class of tenants like multinationals scheduled banks, public sector undertakings and private and public limited companies having share capital of more than Rs.1 crore. The underlying object behind the exemption is to restore balance between interests of landlord and tenants. Therefore, the object of

[18] 2002 (2) Mh. L. J. 305

introduction of section 3(1) (b) needs to be interpreted in the light of these developments.

Subjective Exemptions:

The last and third exemption is subjective empowering the State Government to make provision in respect of the premises used for a public purpose of a charitable nature.

It is well deserved and needs to be emphasized that whenever there is a power it is to be exercised for the object to be sought. The said powers cannot be considered as unguided or arbitrary. Always there are some legitimate expectations that when the Government uses its power, said should be used rationally. The said powers can be exercised having regard to the paramount interest of the premises Trust specified in the sub-section (2) so that their interest should not suffer by the rigors of the Act. That at the same time the trust or institutions cannot be permitted to abuse the exemption.

The act of Government of exempting from operation of the Rent Act is not a Judicial Act. Definitely, the MRC Act is a kind of remedial legislation giving an additional protection to the tenant but it cannot be possibly be regarded as creating a vested right in tenants to continue in occupation. Once the premises are exempted from the provision of the MRC Act, even by notification tenant occupying such premises cease to enjoy the protection and cannot complain of being deprived of vested Right.

State government is not under obligation to issue prior notice to the tenant before granting an exemption of the said premises. Section 3 (2) of MRC Act does not contemplate grant of prior hearing to the tenants of the trust property. Useful reference can be made to observations in case of **Vijaya Irappa Kattimni Vs. State of Maharashtra**[19]**.**

In a case of **Leelabai Gajanan Pansare and others Vs. The Oriental Insurance Co. Ltd. and others**[20] the Honourable Supreme Court considered

[19] 2005 (1) Mh. L. J. 194
[20] (2008) 9 SCC 720

the question "Whether a Government Company falls within the compendious expression "any public sector undertakings or corporation established by or under any Central or State Act" in Section 3(1)(b) of the MRC Act?". It was held by the Honourable Supreme Court that OIC, UIC and BPCL and such other Government companies as defined under Section 617 of the Companies Act are not entitled to protection of the MRC Act in view of the provisions of Section 3(1) (b).

In the case of **Pune Zilla Madhyawarti Sahkari Bank Vs. Urmila Chandrakant Patil**[21]**,** it was held by the Honourable Bombay High Court that provision of Section 3(1) (b) of MRC Act has to be read along with explanation thereto. Such reading makes it clear that only the banks which are specified under the explanation to Section 3 (1) (b) are exempted and no other banks.

As regards to paid up share capital, the Honourable Apex Court in the case of **Carona Ltd. Vs. Parvathy Swaminathan & Sons**[22], observed that-

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

[21] 2006 (3) Mh. L. J. 53
[22] (2007) 8 SCC 559

It was further observed by the Honourable Supreme Court at paragraph no. 12 of the said judgment that-

> "through the so called resolution was said to have been passed, it had not been approved by the Board for Industrial and Financial Reconstruction (B.I.F.R). In the eye of law, therefore, there was no decrease of share capital. The High Court, was, hence, wholly right in observing that even on that ground, the tenant was not entitled to any relief."

Different kinds of matter nomenclature/registration category in Court of Small Causes, Mumbai

The matters which are registered in Court of Small Causes Mumbai are significantly different as compared to the other Courts in rest of Maharashtra. By and large, depending upon the relationship in between parties and also the reliefs so sought, the matter nomenclature changes. The following table will give insight and clearer idea of the kinds of matters which are registered in this Court, alongside the kinds of respective reliefs. The nomenclature is in alphabetical order, starting with the matters before Trial Courts followed by matters before Appellate Bench.

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
Before the Trial Courts (Single Judges)			
1.	**A. C.**	**A. C. Matters**	Anti-Corruption matters
2.	**Appeal Hotel Lodging**	**Appeal Hotel Lodging**	Appeals about Hotel and Lodging. But nowadays no such matters are pending or coming.
3.	**Contpt Nt.**	**Contempt Notice**	Notices with allegations of Contempt of Court
4.	**Ejct. Apln**	**Ejectment Application**	Application for ejectment of licensee
5.	**Ele. Petn.**	**Election Petition**	Matters about elections, under section 33 of Mumbai Municipal Corporation Act, 1888
6.	**Exe. Appln.**	**Execution Application**	Any application for execution of a decree where the decree holder prays for various modes of execution of decree
7.	**F. C. A.**	**Full Court Applications**	Applications under section 37 of PSCC Act.

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
8.	**Garnsh. Nt.**	**Garnishee Notice**	Matters relating to Garnishee in view of section 46-A to 46-I of Civil Code
9.	**Int. Plead**	**Interpleader Suit**	Interpleader suits in view of Order XXXV of Civil Code.
10.	**LC**	**Licensee Compensation**	A suit for recovery of licensee fees or compensation from the licensee.
11.	**LD**	**Licensee Declaration**	A suit for declaration of status as licensee
12.	**LE**	**Licensee Ejectment**	A suit for ejectment of a licensee, the including 'gratuitous licensee' and for possession of the licensed premises.
13.	**LEC**	**Licensee Ejectment & Compensation**	A suit for ejectment of a licensee, the including 'gratuitous licensee' and for possession of the licensed premises with recovery of license fees or the compensation.
14.	**MANRJI**	**Miscellaneous Application Not Requiring Judicial Inquiry**	Any application as specified in paragraph 342 onwards in Chapter XX or Civil Manual
15.	**M. Appln S. 507**	**Miscellaneous Application under section 507**	Application under section 507, to be dealt with in view of sections 507 to 512 of Mumbai Municipal Corporation Act, 1888.

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
16.	**MARJI**	**Miscellaneous Application Requiring Judicial Inquiry**	Any application as specified in paragraph 337 onwards in Chapter XIX or Civil Manual
17.	**Mis. Apln. N**	**Miscellaneous Application Notice**	Any miscellaneous application to be heard and disposed of by the Court.
18.	**Mis. Apln. RA**	**Miscellaneous Application (Rent Act Matters)**	Any miscellaneous application in Rent Act matters, to be heard and disposed of by the Court.
19.	**Misc. Appln.**	**Miscellaneous Application**	Miscellaneous notices for consideration of the Court.
20.	**Misc. Notice**	**Miscellaneous Notice**	
21.	**M. Nt. NRA**	**Miscellaneous Application (Not of Rent Act Matters)**	
22.	**M. Nt. RA**	**Miscellaneous Notice (Rent Act Matters)**	
23.	**M. Profit. NRA**	**Mesne Profit Notice (Not Rent Act Matters)**	Application for inquiry into mesne profits, in matters other than under the Rent Acts, in view of Order XX Rule 12 (c) of Civil Code.
24.	**M. Profit R**	**Mesne Profit Notice (Rent Act Matters)**	Application for inquiry into mesne profits, in matters under the Rent Acts, in view of Order XX Rule 12 (c) of Civil Code.

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
25.	**Mun. Appeal**	**Municipal Appeal**	Appeals under various sections of Bombay Municipal Corporation Act, 1988.
26.	**Municipal Reference**	**Municipal Reference**	Refence under Bombay Municipal Corporation Act, 1988.
27.	**Ob. Notice**	**Obstructionist Notice**	Application by decree-holder for removal of obstruction to the execution work, in view of Order XXI Rule 97 of Civil Code or such application by the obstructionist
28.	**PW Appeal**	**Payment of Wages Appeal**	Appeal under Payment of Wages Act, 1936
29.	**RAD**	**Rent Act Declaration**	Person claiming tenancy rights, contending existence of landlord and tenant relationship, seeks declaration of the tenancy rights. Sometimes, suits by tenants with simplicitor prayer of injunction
30.	**RAE**	**Rent Act Eviction**	Landlord institutes suit for recovery of possession of the tenanted premises, citing existence of facts constituting grounds under section 13 of Bombay Rent Act or section 16 of MRC Act. In these suits, the ground of arrears of rent is generally not included.

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
31.	**RAER**	**Rent Act Eviction & Recovery**	When the landlord seeks recovery of possession of the tenanted premises, citing ground of arrears of rent, under section 12 of Bombay Rent Act or under section 15 of MRC Act, along-with for decree of arrears of rent.
32.	**RAN**	**Rent Act Notice**	Application for fixation of standard rent and permitted increases.
33.	**Regular**	**Regular Suit**	Regular Civil suits.
34.	**RES**	**Restoration of Essential Services**	Application for restoration of Essential Services under section 29 of MRC Act are registered under this category seeking directions to the landlord to restore such disconnected services.
35.	**Review Appln.**	**Review Application**	Review applications under section 114 of Code of Civil Procedure, read with Order XLVII.
36.	**Summary**	**Summary**	Suits for recovery of amounts, below the pecuniary jurisdiction of this Court.
38.	**TD**	**Tenancy Declaration**	Suit for declaration of tenancy, the premises and cases where MRC Act is not applicable.

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
39.	**TE**	**Tenant Eviction**	Suit for eviction of tenant and possession of the tenanted premises, where MRC Act is not applicable.
40.	**TER**	**Tenant Eviction & Recovery**	Suit for eviction of tenant and possession of the tenanted premises, along-with recovery where MRC Act is not applicable.
Before the Appellate Bench			
1.	**A. C. Matters**	**Anti-Corruption Matters**	Anti-corruption matters
2.	**Appeal (2a)**	**-**	Appeal against decrees in view of Order XLI of Civil Code, where the ground of eviction was arrears of rent and except the grounds of bona fide requirement, additions & alterations and section 108 (o) of TP Act.
3.	**Appeal (A1)**	**-**	Appeal against decrees in view of Order XLI of Civil Code, where the ground of eviction was of bona fide requirement, additions & alterations and section 108 (o) of TP Act.
4.	**Cont. Nt**	**Contempt Notice**	Notices with allegations of Contempt of Court
5.	**Ele. Petn.**	**Election Petition**	Matters about elections, especially of the Municipal Corporation of Greater Mumbai [MCGM]

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
6.	**Ex. Appeal**	**Execution Appeal**	Appeal arising out of any orders passed in Execution Proceedings and/or Obstructionist notices.
7.	**F. C. A.**	**Full Court Application**	Applications under section 37 of PSCC Act are registered in this category.
8.	**MANRJI**	**Miscellaneous Application Not Requiring Judicial Inquiry**	Any application as specified in paragraph 342 onwards in Chapter XX or Civil Manual
9.	**MARJI**	**Miscellaneous Application Requiring Judicial Inquiry**	Any application as specified in paragraph 337 onwards in Chapter XIX or Civil Manual
10.	**Misc. Appeal**	**Miscellaneous Appeal**	Appeals against orders in view of Order XLIII of Code of Civil Procedure Code, 1908
11.	**Misc. Notice**	**Miscellaneous Notice**	Miscellaneous application for consideration of the Appellate Bench.
12.	**Mun. Appeal**	**Municipal Appeal**	Appeals under various provisions of Bombay Municipal Corporation Act, 1988.
13.	**P. Appeal**	**Presidency Appeal**	Appeal in view of section 42 of PSCC Act, against decrees in the suit where the Trial Court exercised jurisdiction in view of section 41 of PSCC Act.

Sr. No.	Matter Nomenclature (Abbreviated)	Matter Nomenclature (Full)	Matters which are registered under the captioned category
14.	**R. Appeal**	**-**	Appeal against the judgment in declaratory suit as well as suit for injunctions.
15.	**Review**		Review under section 114 of Civil Code.
16.	**Revision**	**Revision**	Revisions under section 29 (3) of Bombay Rent Act and/or section 34 (4) of MRC Act, challenging legality and propriety of any order of the Trial Court.
17.	**Trf. Matters**	**Transfer of Matters**	Application for transfer of matter from one Court to another, necessarily to be made by Honourable Chief Judge.

It is necessary to understand these different categories and the relevant nomenclature. From day one in this Court, one may be startled due to such different categories. Therefore, the fundamental concepts must be understood. By passage of time, Judges of this Court become used to it.

Necessary parties in suits before Small Causes Court

Introduction:

The general rule of impleadment of parties is that the plaintiff, being *dominus litus*, may choose the persons against whom he wishes to litigate. It is also general rule that plaintiff cannot be compelled to sue a person, against whom he does not seek any relief. Consequently, a person who is not a party, has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Rule 10 (2) of Order 1 of the Civil Code, which provides for impleadment of proper and necessary parties.

Thereby, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order for striking out the name of any party improperly joined as plaintiff or defendant and for adding the name of any person, who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

Object:

The object of this rule is to discourage contests on technical pleas and to save honest and bonafide claims from being non-suited and to bring before the Court all the persons interested in a suit, so that all the disputes may be finally determined in the presence of all the parties. It also enables the Court to adjudicate effectually and completely and settle all the questions involved in a suit without much delay, inconvenience and expense. The power may not be exercised merely to avoid fresh litigation. The person to be added must have a direct interest, as distinguished from a commercial interest in the subject-matter of litigation.

However, this rule may be relaxed, in cases of suits regarding declaration of status or a legal character, if the Court is of the opinion that by adding the party it would be able to adjudicate more effectually.

The power of the Court to add parties under this rule came up for consideration before the Honourable Supreme Court in **Razia Begum Vs.. Anwar Begum[23],** and the law was thus summed up:

1. That the question of addition of parties under o.1, r. 10 of Civil Code, is a matter of judicial discretion, which has to be exercised in view of all the facts and circumstances of a particular case;

2. That in a suit relating to property, a person should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation before his addition;

3. Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case, where Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.

So, for exercise of power under this rule, the Court has to come to a finding that the party is a necessary party or proper party.

Necessary Party:

A necessary party is one whose presence is essential, against whom relief is sought and, in whose absence, no effective decree can be passed or order can be made. The important and necessary tests to be applied to determine whether a particular party is a necessary party to the proceeding, are; a] there must be a right to some relief against the party in respect of the matter involved in the proceedings in question and b] it would not be possible to pass an effective decree in absence of that party.

Proper Party:

A proper party is one without whom, a decree can be passed or order can be made, but whose presence is necessary for an effectual or complete adjudication of the matter. Such a person is called a proper party, as distinguished from a necessary party. A person may not be a necessary party and yet he may be a proper party.

---

[23] AIR 1958 SC 886

<u>When parties need not be added</u>:-

In the case of **Laxmanlal Jee Mandir Vs.. Laxmiram Agarwalla and another**[24] the case of **Ramesh Hiranand Kundanmal Vs.. Municipal Corporation of Greater Bombay**[25] was referred, wherein the Honourable Supreme Court pointed out that if the addition of the party means the addition of new cause of action and widening of particular issue formed or if joining of the party would embarrass the plaintiff and is not germane to the suit, then such party should not be added in the proceeding. So also, the mere fact that the fresh litigation could be avoided, is also no ground to add such party to the proceeding.

<u>Co-owners</u>:

Co-owners have equal rights to possession of the property, the right to use and right to dispose of his share of the property. The term 'Co-owner' is not defined under Rent Act. However, Co-owner is a person who claims to be a co-sharer, with the plaintiffs, of the suit property. He is a co-landlord in respect of the tenanted premises. It is pertinent to note that under Rent Act, even a rent collector is landlord within meaning of Section 7 (3) of Rent Act. If this simple analogy is considered, then a suit by any one of the co-landlords is maintainable. Impleadment of another co-owner or co-landlord is not necessary. It is to be presumed that all co-owners have impliedly given consent for filing of the suit, unless defendant proves otherwise. In **K. D. Dewan Vs. Harbhajan S. Parihar**[26]**,** the Honourable Bombay High Court has held that one of the co-owners who is collecting rent on behalf of other co-owners, is competent to institute eviction suit, even in the absence of all the co-owners.

In the case of **Sk. Satar Sk. Mohd. Choudhari Vs.. Gundappa Bukate**[27]**,** it is held that in partition between lessors and co-lessors, suit for eviction by co-lessor is maintainable, in whose share the portion of leased property has been allotted. In **Ramsukh Mishrilal Jadiya through his LRs.**

---

[24] AIR 1998 Guwahati 89
[25] MANU/SC/0493/1992
[26] 2002 Bom. R. C. 187(SC)
[27] AIR 1997 SC 998

Vs. Hangamabai Jawaharmal Jain and others[28], it was observed that the suit filed by one co-owner was maintainable in law and it was not necessary for the co-owner to show before initiating the eviction proceedings, before the Rent Controller, that he had taken option or consent of other co-owners.

Dissenting Co-owner:

In case of **V. Prabha & Co. Pvt. Ltd. & Another Vs. Kuljit Sing Chadha & Another[29],** Suit was filed only by two of three co-owners without consent of third co-owner. It was held that co-owner can file suit against tenant by joining dissenting co-owner as party defendant to suit. In **Sri Ram Pasricha Vs. Jagannath and others[30], Kanta Goel Vs. B. P. Pathan and others[31],** and **Pal Singh Vs. Sunder Singh (dead) by LRs and others[32],** it was held that one of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant to question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit.

In the landmark case of **Dhannalal Vs. Kalawatibai and others[33],** it was ruled down that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners and this principle is based on the **Doctrine of Agency.** In the case of **Mohinder Prasad Jain Vs. Manohar Lal Jain[34],** the Honourable Supreme Court held that a suit filed by co-owner is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceedings that he had taken option or consent of the other co-owners. In case of **Dattatraya Krishnaji Asalekar Vs. Shravana Dhonu More & others[35],** the Honourable Bombay High Court held that it is not necessary to reiterate that a co-owner in the absence of any objection of other co-owners can maintain a petition for eviction against the tenant. One of the co-owners cannot withdraw his consent midway the suit

[28] 2011 (6) Mh L.J. 307
[29] 2007(2) All MR 352
[30] (1976) 4 SCC 184
[31] (1977) 2 SCC 814
[32] (1989) 1 SCC 444
[33] (2002) 6 SCC 16
[34] (2006) 2 SCC 724
[35] 2008 (4) Bom CR 684 : 2008 (3) Mh.L. J. 785

so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallized on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event, the right of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

Co-landlord:

It is not necessary that all the co-owners/landlords should be joined in filing the eviction suit against the tenant. In case of **Kasthuri Radhakrishnan & others Vs. M. Chinniyan & another**[36]**,** the Honourable Supreme Court held that, if there are co-landlords of the suit premises, then a co-landlord can file a Suit for Eviction against the tenant. Thus, all the landlords need not join in for filing the Eviction Suit against the Tenant.

Legal Heirs and Legal Representative:

As per section 7 (4) of the MRC Act, 'legal representative' means a legal representative as defined in the Civil Code and also include, in case of joint family property, the joint family of which deceased person was a member. Whereas, in view of section 2 (11) of Civil Code, as a person who in law represents the estate of deceased person and includes any person, who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. Legal heir is an individual, who has the right and entitlement to succeed to the wealth and property of deceased under the signed legal Will or personal succession law. Legal heirs of an original tenant can be evicted on order of eviction against any one of them. In the case of **H. C. Pandey Vs. G. C. Paul**[37], it was held that, when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenants is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. An eviction petition against one of the joint tenant is sufficient against all the joint ten-

[36] (2016) 3 SCC 296

[37] (1989) 3 SCC 77

ants and all joint tenants are bound by the order of the Rent Controller, as joint tenancy is one tenancy and is not a tenancy split into different legal heirs, as held in **Suresh Kumar Kohli Vs. Rakesh Jain[38].** It is well settled that upon death of tenant, the legal representatives become joint tenants and not the tenants in common. The tenancy right is indivisible. Therefore, notice of eviction served on one of the joint tenants is binding on all the joint tenants. In that case, the suit against some of the joint tenants would also bind the remaining joint tenants. It was held and observed in case of **Rameshchandra Daulal Soni Vs. Devichand Hiralal Gandhi[39].**

<u>Trustees</u>:

As per the provisions of Order XXXI, Rule 2 of the Civil Code all the trustees are necessary parties to the suit. The property of a Trust vests in the trustees and, therefore all the trustees are necessary parties. In the case of **Shrikrishna Annaji Sonatake Vs. Ramnarayan Pannalal Lathi and others[40],** the Honourable Bombay High Court has held that all the trustees should be before the Court, when the question of liability of trust properties is involved. Although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions as enumerated in case of **J. P. Srivastava & Sons (P) Ltd. and others Vs. Gwalior Sugar Co. Ltd. and others[41].**

In a case of **Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and others[42],** the Honourable Gujarat High Court has held that, unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to

---

[38] (2018) 6 SCC 708
[39] 2015 (6) Mh. L. J. 309
[40] AIR 1982 Bom. 487
[41] (2005) 1 SCC 172
[42] AIR 1973 Guj 113

join them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court.

Partners:

Order XXX of Civil Code deals with the suits by or against the Partnership Firms. The Firms has no separate legal entity. Therefore, no suit can be instituted only in the name of firm. Two or more partners of the firm need to be impleaded in the suit in view of the above provision. In the case of **Nariman Irani Vs. Adi Merwan Irani[43],** after considering the provisions of the Indian Partnership Act, it was held that partners hold the partnership property as tenants in common and not as joint tenants. While holding so, reliance was placed on the judgment/observations in **Mohammad Jusab Abdulla Vs. Farimabi Jusab Abdulla[44],** wherein it was held that the presumption must always be in favour of tenancy in common rather than joint tenancy.

In the case of **Richard Lee Vs. Girish Soni and others[45],** Honourable Supreme Court held that, partners of firm are not necessary parties form the point of view of the Eviction Petitioners, but the Court has a duty to see whether the presence of the proper parties would facilitate the complete determination of the matter in dispute.

Order XXX Rule 4 of Civil Code provides that notwithstanding anything contained in Section 45 of the Indian Contract Act, 1872 where two or more persons are sued in the name of the firm and any such person dies whether before the institution of the suit or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased as a party to the suit. Secondly death of a proper party would have no impact on the suit, more so where on death of a partner, the partnership may stand dissolved or heirs do not desire to join the firm.

Sub-tenant:

[43] AIR 1989 Bom 362
[44] 49 Bom LR 505
[45] 2017 (4) Mh. L. J. 48

In all cases for eviction, sub-tenant is not a necessary party, he may be a proper party. However, if sub-tenancy is created with the consent of the landlord, then sub-tenant is a necessary party. In **Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala and others**[46]**,** Honourable Supreme Court held that in a suit for possession by a landlord against a tenant, sub-tenant is merely a proper party and not a necessary party. Afterwards, in the case of **Rupchand Gupta Vs. Raghvanshi (Pvt.) Ltd. and another**[47]**,** Honourable Supreme Court held that the law does not require that the sub-lessee be made a party and the decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act, as observed in the said case.

Co-tenant:

In case of co-tenants, all the co-tenants are not necessary parties to the suit for eviction, it is sufficient if the co-tenant who is in occupation of tenanted premises is being impleaded. The decree against such co-tenant is binding upon all the other co-tenants. In the case of Suresh Kumar Kohli (cited earlier), Honourable Supreme Court explained the concept of joint tenancy and tenancy in common and held that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants.

Developer/Builders:

The inter-se rights and obligations of the landlord and tenant are regulated and controlled by Rent legislation. Basically, it is a suit between landlord and tenant. Therefore, developer and builders are not necessary parties to decide the suit under Rent Act. However, if suit property undergoes redevelopment and if the owner/landlord assigns the rights in favour of the developer or builder, then in such cases the developer or builder becomes necessary party.

Conclusion:

[46] AIR 1953 SC 73
[47] AIR 1964 SC 1889

The general rule in respect of impleadment of parties is that plaintiff, being *dominus-litis*, may choose the party, against whom he wishes to litigate and can not be compelled to sue a person, against whom he does not seek any relief. Consequently, a person who is not a party, has no right to be impleaded against the wishes of plaintiff. But this is subject to the provisions of Order I Rule 10 (2) Civil Code, by which a discretion is given to the Court to add any person as a party in a suit, who is found to be necessary party or a proper party.

Suits against Unknown Legal Heirs of deceased tenant

There are cases wherein a landlord does not know the names or addresses or both of the heirs of a deceased tenant. None come forward when the tenant dies. What is the process that a landlord should follow to recover his property? Is it at all permissible for the landlord to bring a formal eviction action in the names of, for instance, the heirs and legal representatives, if any of the late tenant? In our system and procedure, this seems to present procedural difficulties. In whose name would a Writ of Summons be issued? Where and how would it be served? What procedure should that Court of competent jurisdiction adopt? What safeguards are necessary to ensure that an unscrupulous landlord does not deliberately try and undermine or bypass legitimate statutory tenancy inheritance rights to the prejudice of the deceased tenant's family?

Using present Rent laws, a landlord can recover possession of tenanted premises only in certain specified modes and no other. There must be a decree for possession or there must be a surrender of the tenancy. It is never open to a landlord to simply walk in and resume possession of tenanted premises.

While assessing this, one must also understand the historical background to the legislation. The original Bombay Rent Act was a time-limited provision during World War II. It was meant at first to ensure that during the time of World War II and the hardships that then existed, there was no artificial shortage created of affordable accommodation. Building materials were of course expensive. Construction had slowed. The obvious purpose was to ensure the people were not put out on to the streets by property owners taking advantage of these shortages. The Bombay Rent Act introduced tenant protection, including rent control, protection against eviction except for statutorily defined cause, and, importantly, introduced the concept of heritability. The protection to tenants continued for several decades thereafter and more or less became an entrenched right. There were periodic amendments, including important ones to the issue of heritability. The Act itself was challenged. Ultimately, the present MRC Act was brought in 1999. What rent control legislation has done since the inception is to specify and set out the grounds on which a landlord may recover possession or, to put it differently, to set out the grounds on which, and the circumstances in which, a tenant protected by the rent control legislation runs the risk of losing possession. Obviously, what the rent control legislation contemplates is that there has to be a lis brought before a Court of competent jurisdiction. That lis between the landlord and tenant must relate to the tenancy premises, questions of rent and questions of recovery of possession of the tenanted premises. Rent control legislation also provides that tenancies are heritable. There is a structured transmission and devolution of tenancy interest stipulated in the Rent Act. This proceeds not according to the law of succession but according to the Rent Control law. A tenancy can never be the subject of a testamentary bequest. The tenant's heirs at law (as specified in the succession law that applies to their heirship) will, when succession opens, succeed to the tenancy although exclusive priority is given to a member of the tenant's family residing with the tenant at the time of his or her demise.

This graphically illustrates the present landlords' problem. If that tenancy goes down to the next generation, a landlord, especially one who is not a landlord-in-residence, one i.e. living in the same building, or a landlord which is a body such as a trust, may never actually know of the deceased tenant's heirs. This becomes necessary for the landlord in order to recognize the heirs to begin with, or for inheritance, and also to enable the landlord to recover possession on the limited grounds available to a landlord under the Rent Control legislation.

What is the landlord to do if he/she simply does not know who the deceased occupant's or tenant's or licensee's heirs are? Can it be suggested that a landlord can never recover possession of such premises? What then in law would be the position of those premises? They cannot remain in perpetuity without a possessory right. If that right is denied to the landlord and there is no tenant nor any descendant of the tenant to claim it, those premises cannot be left in a legal or jurisprudential vacuum. There are several cases where tenants of long standing pass on without leaving any lineal descendants or heirs at law. This is most certainly not unknown. A landlord in such a case cannot effectively be deprived of his property. It must be in the possession of some person and the landlord cannot be told that although he is the owner of the property, he cannot have it and it will remain forever to the last syllable of recorded time in this twilight zone of possession of neither landlord nor tenant.

Legal Framework to be considered in the context

To understand the importance of this topic, following provisions must be looked into.

Order I Rule 3 of Civil Code	**3. Who may be joined as defendants-** All persons may be joined in one suit as defendants where- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, **whether jointly, severally or in the alternative**; and (b) if separate suits were brought against such persons, any common question of law or fact would arise.
Order II Rule 5 of Civil Code	**Claim by or against executor, administrator or heir**- No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.
Order VII Rule 1 (c) of Civil Code	The plaint shall contain the following particulars: (a) ... (b) ... (c) **the name, description and place of residence of the defendant, so far as they can be ascertained**;
Section 2 (11) of Civil Code	**'legal representative'** means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or issued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

Order XXII Rule 4A of Civil Code	4A. Procedure where there is no legal representative. (1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may be order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit. (2) Before making an order under this rule, the Court-- (a) may require notice of the application for, the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and (b) shall as certain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.
Section 7 (4) of MRC Act	**'legal representative'** means a legal, representative as defined in the Civil Code, 1908, and includes also, in the case of joint family property, the joint family of which the deceased person was a member.
Section 7 (15) of MRC Act	(15) "tenant" means any person by whom or on whose account rent is payable for any premises and includes,- (a) such person,- (i) who is a tenant, or (ii) who is a deemed tenant, or (iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or (iv) who has derived title under a tenant, or (v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts; (b) a person who is deemed to be a tenant under section 25;

	(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26; (d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,- (i) where they are let for residence, is residing, or (ii) where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court.

Conjoint reading of all these provisions make it clear that the plaint must disclose precisely about the parties; especially the defendants and reliefs so sought. However, the phrase '<u>so far as they can be ascertained</u>' as appearing in Order VII Rule 1 (c) are of huge significance to the present topic. Thereby, plaintiff/landlord is enabled to include the unknown legal heirs of a deceased tenant in array of defendants. Whosever amongst them can be ascertained, they must be in the array. But in case the plaintiff/landlord is not aware of details of such heirs of a deceased tenant, then the legislative solutions are not shutting doors.

Besides these provisions, there are interesting precedential observations in the context.

<u>Important Precdents</u>

In **B. P. Kapadia Vs. Nirmala[48],** (referred to as 'V. B. Kapadia Vs. Nirmala' in various cases), a question arose before the Honourable Bombay High Court whether a decree sought against unnamed legal representatives of the tenant is nullity. In the said case a landlord sought to serve a notice in the name of the person who held the tenancy. The notice was refused and returned unserved. A few months later, the landlord filed an ejectment suit. He could not find the names of the legal representatives. He brought the suit

[48] <u>Civil Revision Application No. 543/1961</u>, decided on 22.01.1962 by Honourable Bombay High Court [<u>Copy of Judgment only available in original record and proceedings</u>]

in the name of unnamed legal representatives of the last recorded tenant. An application for affixing the summons then followed, and this was granted. The suit resulted in an exparte decree. Then, application for setting aside the exparte decree came three years later, and it was urged that the summons was not properly served and, therefore, there was no proper decree**.** The learned Trial Judge concluded that service was not proper. In appeal, it was held that the service was improper and the Appellate Court then noted that the decree was ineffective because the legal representatives of the tenant were not named in the suit. The order was challenged in the said Revision. It was held that no notice was given by the tenant to the landlord of any heirs who might have an interest in the property. A notice by the landlord was refused. None of the heirs were shown to have had any interest in maintaining possession. It was held that, ordinarily, it is true that the heirs or legal representatives must and ought to be named in order to obtain a proper decree against a person or his estate. There are, however, circumstances which may necessitate a suit being filed in the manner it is done. **In view of the peculiar circumstances of the case, the decree was held not a nullity.**

However, recently in case of **The Trustees of the N. M Petit Charity Fund Vs. Jal Minocher Unwala[49],** Honourable Bombay High Court observed that where a landlord does not know the names or addresses or both of the heirs of a deceased tenant or none comes forward when the tenant dies the landlord faces procedural difficulties, in whose name would a Writ of Summons be issued? Where and how would it be served? What procedure should that Court of competent jurisdiction adopt? The question also arose what safeguards are necessary to ensure that an unscrupulous landlord does not deliberately try and undermine or bypass legitimate statutory tenancy inheritance rights to the prejudice of the deceased tenant's family? In the said case the alone occupant of the premises died. The Petitioners as trustees were unaware of any heirs. The obituary in the newspapers disclosed no heirs or legal representatives against whom the Petitioners could have proceeded to recover the premises. Thus, when the Petitioners brought suit, they joined 'the unknown heirs and legal representatives' of the deceased. Other defendants who were known and identified were joined as unlawful

[49] 2018 (5) Bom. C. R. 137

occupants. The trial Court rejected the plaint on the ground that unless there is at least one known identifiable defendant, the suit is not maintainable. The Appellate Bench dismissed the appeal on the basis of the decision in **Shrikant S. Volvoikar Vs.. Narendra Pandu Chatim[50].** In the said case it was held that no such Suit was maintainable because personal service cannot be effected on an unknown and unnamed defendant. However, in the matter of **Mrs. Vasudha Dnyaneshwar Jawalkar Vs.. Mrs Nanuben Devasi Gada & others[51],** the law declared in the Volvoikar's case was held not good**.** In Vasudha's case, original tenants died leaving behind no surviving heirs**.** Defendant No. 2 was joined as an unauthorized occupant. On the demise of the original tenants, no one approached to the plaintiff to claim rights of tenancy of the suit premises. Therefore, it was difficult for the plaintiff to give names of the legal representatives of the deceased tenant. The trial Court relied on rule 4A of Order XXII of the Civil Code and appointed the Additional Registrar of the Court to represent the estate of the deceased tenant. It was held that the Court is justified to appoint the Court officer under the said Rule 4A. In Vasudha's case, it was observed that asking the landlord to find an heir is an inconceivable situation. Where tenants pass on without leaving any lineal descendants or heirs at law, a landlord in such a case cannot effectively be deprived of his property. Order XXII Rule 4 and 4-A of the Civil Code deal with contingency where there is no legal representative. If, in any suit, it shall appear to the Court that any party who died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

In case of **Yusuf Hussein Vs. Kalawanti G. Mehtani (deceased) through LRs Bhagwandas P. Gandhi & Others[52],** such suit was held to be

---

[50] 2010 (4) Bom CR 336
[51] 2016 SCC Online Bom 9708
[52] Civil Revision Application No. 330 of 2013, decided on 25.04.2013.

maintainable. The said view was discussed and followed in case of N. M. Petit Fund.

Conclusion:

Thus, it can be concluded no Court is bound to accept at face value a statement of a landlord that he does not know the heirs of a tenant. A Court may well require a landlord, having regard to the facts of the case, the nature of the tenancy, the place where the premises are located, the family relations of the tenant and other factors, to join a particular person. The Court may appoint the Administrator General or other officer of that Court, or direct the landlord plaintiff to take other reasonable steps. However, such suits are maintainable.

PART B

Legal Framework

Important definitions and Concepts

- **Landlord**:
  - The term is defined under section 5 (3) of Bombay Rent Act
  - The term is defined under section 7 (3) of MRC Act.
  - Similar definitions are there.

- It means and includes-
  - Any person who is for the time being, **receiving, or entitled to receive rent** in respect of any premises whether on his own account or on account or on behalf, or for the benefit, of any other person or as a trustee, guardian, or receiver, for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant;
  - Any person not being a tenant **who from time to time derives title under a landlord**,
  - In respect of his sub-tenant, a tenant who has sub-let any premise;
  - In respect of a licensee deemed to be a tenant under the provisions of the Bombay Rent Act, the licensor who has given premises on license;
  - In respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (2) deemed to be a tenant by section 27 the person who was entitled to receive the rent if the premises were let to a tenant immediately before the 7th December 1996, that is before the coming into force of the Bombay Rent Act, Bombay Land Requisition and the Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Mah. XVI of 1997).

- **<u>Tenant</u>**:
    - The term is defined under section 5 (11) of Bombay Rent Act
    - The term is defined under section 7 (15) of MRC Act.
    - Similar definitions are there.

- It means and includes-
    - Any person by whom or on whose account rent is payable for any premises, including such person
        - (i) who is a tenant, or
        - (ii) who is a deemed tenant, or
        - (iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or
        - (iv) who has derived title under a tenant, or
        - (v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, under the provisions of, any of the repealed Acts;
    - A person who is deemed to be a tenant under section 25;
    - A person to whom interest in premises has been assigned or transferred as permitted under section 26;
    - In relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of MRC Act,
        - any member of the tenant's family, who,
            - (i) where they are let for residence, is residing, or
            - (ii) where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death, OR
            - **in the absence of such member**,
        - any heir of the deceased tenant, as may be decided, in the absence of agreement by, the Court.
    - As per the Explanation, the provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

- **<u>Licensee</u>**:
    - The term **was not** defined under Bombay Rent Act
    - The term is defined under section 7 (5) of MRC Act.

- It means and includes-
    - The person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for a licence given for a licence fee or charge;
    - Any person in such occupation of any premises or part thereof in a building vesting in or leased to a Co-operative Housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961);

- It **does not** include
    - a paying guest,
    - a member of a family residing together,
    - a person in the service or employment of the licensor, or
    - a person conducting a running business belonging to the licensor or
    - a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital or sanatorium or
    - a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises, belonging to or held by an employee or his spouse who on account of exigencies of service or provisions of residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increase for such premises, and any additional sum for service supplied with such premises or

- a person having accommodation in any premises or part thereof for conducting a canteen, crèche, dispensary or other services as amenities by any undertaking or institution;

- **Gratuitous Licensee**:
  - The term **was not** defined under Bombay Rent Act
  - The term **is not** defined under MRC Act.
  - The term **is not** denied under PSCC Act.

- Gratuitous Licensee is a person who is allowed/permitted to enter into property of other, without any consideration.

- **<u>Government Allottee</u>**:
    - The term **was not** defined under Bombay Rent Act
    - The term is defined under section 7 (2) of MRC Act.
    - Relevant provision is section 27 of MRC Act.

- It means and includes-
    - In relation to any premises requisitioned or continued under requisition which are allotted the State Government for any non-residential purpose to any Department or office of the State Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961) or any foreign consulate, by whatever name called, and on the 7th December 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Mah. XVI of 1997) were in their occupation or possession, means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or corporation or society or consulate; and
    - In relation to any premises requisitioned or continued under requisition which were allotted by the State Government for residential purpose to any person and on the 7th December 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Mah. XVI of 1997); such person or his legal heir was in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir;

- **<u>Standard Rent</u>**:
    - ➢ The term is defined under section 5 (10) of Bombay Rent Act.

- It means and includes-
    - Where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or
    - Where the standard rent is not so fixed; subject to the provisions of section 11
        - (i) the rent at which the premises were let on the first day of September, 1940, or
        - (ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or
        - (iii) where they were first let after the first day of September 1940, the rent at which they were first let, or
        - (iv) in any of the cases specified in section 11, the rent fixed by the Court;

    - ➢ The term is defined under section 7 (14) of MRC Act.

- It means and includes-
    - Where the standard rent is fixed by the Court or, as the case may be, the Controller under the Bombay Rents Restriction Act, 1939 (Bom. XVI of 1939), or the Bombay Rents Hotel Rates and Lodging House Rates (Control) Act, 1944 (Bom. VII of 1944) or the Bombay Rent Act, or the C.P. & Berar Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 (C. P. and Berar No. XI of 1946), or the Hyderabad Rent Act, such rent plus an increase of 5 per cent., in the rent so fixed; or
    - Where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8,-
        - (i) the rent at which the premises were let on the 1st day of October 1987; or

- (ii) where the premises were not let on the 1st day of October 1987 or the rent at which they were last let before that day, plus increase of 5 per cent. in the rent of the premises let before the 1st day of October 1987, or

- in any of the cases specified in section 8, the rent fixed by the Court;

- **<u>Premises</u>**:
    - ➢ The term is defined under section 5 (8) of Bombay Rent Act.

- It means and includes-
    - Any land not being used for agricultural purposes,
    - Any building or part of a building let separately (other than a farm building) including-
        - (i) the garden, grounds, garages and out-houses, if any. appurtenant to such building or part of a building,
        - (ii) any furniture supplied by the landlord for use in such building or part of a building,
        - (iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,
    - but **does not include** a room or other accommodation in a hotel or lodging house;

    - ➢ The term is defined under section 7 (9) of MRC Act.

- It means and includes-
    - Any building or part of a building let or given on licence separately (other than a farm building) including,
        - (i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
        - (ii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof,
    - but **does not include** a room or other accommodation in a hotel or lodging house;

- Notably, the clause pertaining to any furniture supplied by the landlord for use in such building or part of building is not part of the definition of 'premises' under MRC Act.

- **<u>Local Authority</u>**:
    - ➢ The term was not specifically defined under Bombay Rent Act.
    - ➢ However, section 4 (1) of Bombay Rent Act exempted premises belonging to them, relying upon the general understanding of 'local authority' with reference to the General Clauses Act.

    - ➢ Section 7 (6) of MRC Act defines the term.
- It means and includes-
    - The Mumbai Municipal Corporation constituted under the Mumbai Municipal Corporation (Bom. III of 1888) or the Nagpur Municipal Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948 (C. P. and Berar II of 1950) or any Municipal Corporation constituted in respect of any city under the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949),
    - Municipal Council, constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965),
    - Zilla Parishad and a Panchayat Samiti constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Mah. V of 1962),
    - Village Panchayat, constituted under the 3Bombay Village Panchayats Act, 1958 (Bom. III of 1959),
    - Cantonment, constituted under the Cantonments Act, 1924 (Act 2 of 1924),
    - The Nagpur Improvement Trust, constituted under the Nagpur Improvement Trust Act, 1936 (C. P. and Berar Act XXXVI of 1936),
    - The Maharashtra Housing and Area Development Authority or a Board, constituted under the Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977),
    - The City and Industrial Development Corporation,
    - The Pimpri and Chinchwad New Township Development Authority;

- Notably, the Board of Port Trust (now known as 'Mumbai Port Trust Authority' and famous as 'BPT' is not in part of the said definition.

- **<u>Paying Guest</u>**:
    - The term **was not** defined under Bombay Rent Act
    - The term is defined under section 7 (7) of MRC Act.

- It means and includes a person, not being a member of the family, who is given a part of the premises, in which the licensor resides, on licence;

Fixation of Standard Rent & Permitted Increases

Introduction:

The primary goal of rent control legislation is to protect tenants from exorbitant rents and arbitrary rent increases, as well as to ensure tenure security. Section 7 (14) of the MRC Act defines standard Rent, and Section 8 to 13 of the MRC Act deals with the standard rent and permitted increases, whereas Section 15 the MRC Act deals with the effect of default of non-payment of permitted increases.

What is Standard Rent?

The Rent Control Act forbids the owner from charging more than the prescribed rent, regardless of market rent. The standard rent is the rent that is legally permissible to be charged from a tenant.

Definition of Standard Rent

Section 7 (14) of MRC Act provides a self-explanatory definition of the term 'Standard Rent', which is hereinabove stated.

Court may fix Standard rent and permitted increases.

Section 8 of the MRC Act empowers the Court to fix the standard rent. It also laid down the grounds to fix standard rent and permitted increases. It provides that the Court may subject to the provisions of Section 9, upon an application made to it fix the standard rent in following cases-

a. Where the Court is satisfied that there is no sufficient evidence to ascertain the rent.
b. Where the premises having been let at one time as a whole or in parts at another time.
c. Where any premises have been or are let rent free or, at a nominal rent.
d. Where there is any dispute between the landlord and tenant regarding the amount of standard rent.

On an application under Section 8 of MRC Act by a tenant, the Court is duty bound to specify the amount of rent or permitted increases forthwith, which are to be deposited in the Court by the tenant. Court can permit landlord for withdrawal of reasonable sum out of deposited rent. If the tenant fails to deposit, his application shall be dismissed. Section 8 (4) empowers the Court to direct the tenant by way of order to deposit reasonable rent in the Court, if it found that rent claimed or charged by landlord is excessive. If the tenant fails to comply with order, he shall not be entitled to appear or defend the suit except with leave of the Court.

No Appeal-

As per Section 8 (5) of the MRC Act there is bar for preferring an appeal against orders of fixation of standard rent under sub-section (3) and (4) of Section 8 of the MRC Act.

Theories for determination of standard Rent-

As far as the determination of standard rent, there are two main methods, namely '**Theory of Comparison**' and '**The Investment Theory**'.

Theory of Comparison-

In this theory, the exercise can be carried out by comparing the premises in question with the other similarly situated premises in the locality of which the rent is already fixed. While making the exercise of comparison the following factors should be considered-

a. Premises should more or less be similarly situated in the same locality with the same user.
b. Relevant period for letting of the comparable premises.
c. Whether the rents of the comparable premises are fair and reasonable.
d. The amenities and facilities provided in such a building.

The Investment Theory-

It is subject to the outgoing in the nature of maintenance expenses, expenses for having basic facilities such as making provision for water, the municipal taxes, the required annual repairs, insurance etc. The rents arrived at by the structural method would be generally consistent with the assessments valued on the comparative method. Both these methods are useful and complimentary to each other. The costs of the building may be ascertained either by actual cost or by applying per cubic foot a rate according to the materials used and the quality of construction.

In the case of **Dr. Balbir Singh Vs. MCD**[53], It was held that Court can fix the standard rent after considering the outgoing in the nature of maintenance, expenses for having basic facilities such as making provisions for water, the municipal taxes, the required annual repairs, insurance, etc. If there is a disagreement between the landlord and the tenant about the rent or an increase in rent, then either party can approach the Court for fixation of standard rent. Similarly, if the rent is excessive, the Court will determine the standard rent.

<u>Increase in rent when allowed</u>:

Section 11 allows the landlord to increase the rent or the standard rent in the following circumstances or cases.

i. after the commencement of this Act, 4% annual increase in rent is permitted,
ii. reasonable increase for any improvement or structural alterations made by the landlord to the property (this does not include the repairs which the landlord is bound to make under sub-section 1 of Section 14 of MRC Act.)
iii. increase in rent not exceeding 15% as may be prescribed on account of any expenses incurred for any special additions to the premises or special alteration made or special amenities provided in the premises or on account of improvement or structural alteration,
iv. a temporary increase in rent will be allowed to be made on account of any special or structural repairs made by the landlord at the rate of not exceeding 25% of the standard rent as may be prescribed for the period commencing from the completion of repairs till the amount of expenditure for such repairs is recovered from the tenants, subject to the provisions of clauses (b) & (c) of sub-section (4).

<u>Permitted increases</u>:

As per section 12 of MRC Act, where a landlord is required to pay to Government or to any local authority or statutory authority in respect of any premises any fresh rate, cess, charges, tax, land assessment ground rent of land or any other levy or increase, he shall be entitled to make an increase in the rent of such premises. The rent shall not exceed the amount of such rates,

---

[53] <u>AIR 1985 SC 339</u>

cess and charges. For the purpose of calculating the said amount of tax, recourse must be taken of the Mumbai Municipal Corporation Act, 1888 Chapter VIII. As per Chapter VIII of Mumbai Municipal Corporation Act, 1888 under section 140 the taxes are levied on each building which include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax, betterment tax. The reference to water tax or a *halalkhor* tax after the year 1973 were considered as water benefit tax, sewerage tax or sewerage benefit tax.

As per section 146 of the said enactment, the property tax shall be leviable primarily on the actual occupier of the premises. If the premises are let, then the said tax are primarily leviable from the lessor. According to section 147 of the said Act, the apportionment of responsibility for property tax is prescribed, when the premises are let or sublet. The landlord is entitled to receive from his tenant, the difference between the amount of property tax leviable from him and the amount which would have boon leviable from him, if the said taxes were calculated on the amount of rent payable to him. Therefore, the tenant is liable only to the proportionate share of the tax out of the whole suit building, to the extent of premises in his possession.

<u>Recurring Outgoings</u>:

In ascertaining standard rent, the Court will have also to ascertain the proper outgoings, which the owner would be liable to pay. Such outgoings would include municipal and local rates and taxes, annual charges for repairs to maintain the property in a fit condition to command rent, cost of rent collection and management, cost of fire insurance, and monthly charges for consumption of electric energy for lights in the common passage, cost of replacement of electric bulbs, and for water pump, mali (gardener), and sweeper. The object of fixing a fair and reasonable rent is to fix a fair value for the accommodation offered and its beneficial occupation. The Court should also take into consideration the circumstances peculiar to the facts of each particular case.

In the case of **Raju Shetty Vs. Ramesh Shirole**[54], it was held that education cess was recoverable as rent by virtue of Section 13 of Bombay

[54] 1991 B.R.C. 255

Rent Act. It was further observed that a right to recover certain tax amount from the tenant under the provisions of this statue can be waived by the owner or quantified by agreement at, a figure not exceeding the total liability under the statute.

In the case of **Hotel Kings and others Vs. Sara Farhan Lukmani**[55], it was held that under Section 10 of the Bombay Rent Act the permitted increase equivalent to amount paid towards rates and taxes does not make such payment a part of the rent.

In **Girish Gangadhar Agrawal Vs. Jiteshmumar Hasmukh Vakhariya**[56], it was held that Landlord is entitled to municipal taxes only if he pays the same to the Municipal Corporation.

<u>Prospective in operation</u>:

In the case of **Kewalchand Kastoorchand Vs. Samirmal Jaini and another**[57], It was held by Division Bench of Honourable Bombay High Court (Nagpur Bench) that once fair rent is determined, the same would have prospective operation and such fair rent can be directed to be paid from the date such application is moved.

<u>Default in payment of Permitted increases as a ground of eviction</u>:

In the case of **B. K. Kamat Vs. K. L. Sonawane**[58], the Honourable Bombay High Court dealt with the issue of tenant's default in paying the permitted increases in rent. The landlord had increased the rent following improvements made to the property, which were permissible under Section 7 of the MRC Act. The tenant argued that the increase was unjustified and failed to make the required payments. It was held that the tenant is legally obligated to pay the increased rent as per the terms of the agreement, even if they dispute the justification for the increase. The Court emphasized that the tenant must challenge the increase before the Rent Court and is still required to pay the increased amount until the dispute is resolved. The Court

[55] 2007 (2) Mh. L. J. 376

[56] 2009 (6) Mh. L. J. 875

[57] AIR 1953 Nag 146

[58] 2006 (4) Bom. CR 86

also reiterated that failure to pay rent (including the permitted increase) for more than a month can lead to eviction proceedings under Section 15 of the MRC Act.

In the case of **Satyabhamabai N. Survade Vs. Sudhakar C. Yadav**[59], the tenant has committed default in paying the permitted increases in rent for a prolonged period. The Honourable Bombay High Court held that the tenant's failure to pay the permitted increase in rent for more than one month constituted default under Section 15 of MRC Act. The Court upheld the landlord's right to initiate eviction proceedings under the Act, as the tenant had not paid the increased rent within the stipulated period.

In the case of **Shantilal P. Shah Vs. Vasant K. Joshi**[60], the tenant raised objections to the increase in rent due to an improvement in the premises, citing that the increase was excessive and not justifiable. Despite the dispute, the tenant had continued to pay the standard rent, but withheld the amount corresponding to the increase. The Honourable Bombay High Court ruled in favor of the landlord, holding that under Section 15, the tenant was obligated to pay the permitted increase unless it was clearly proven that the increase was not justified. The Court emphasized that even in cases of dispute, the tenant should pay the increased rent until the Rent Court resolves the matter.

In the case of **Vishnu S. Gaikwad Vs. Krishna T. Shinde**[61], the tenant refused to pay the permitted increases in rent, arguing that the landlord had not justified in increasing rent under the provisions of the Act. The Honourable Court held that tenant's refusal to pay the permitted increase in rent, without challenging it in the Rent Court, was a violation of the MRC Act. The Court emphasized that tenants must approach the Rent Court to resolve any disputes regarding rent increases and must continue to pay the increased amount in the interim. The failure to do so would amount to default in payment. In the case of **Chase Bright Steel Ltd., Bombay Vs.**

[59] 2001 (4) Bom. CR 590
[60] 2004 (3) Bom. CR 420
[61] 2012 (6) Bom. CR 23

Shantaram Shankar Sawant[62], an application for fixing standard rent was later on dismissed in default, as defendant failed to serve the landlord-plaintiff with standard rent application and order of fixing interim rent. The Trial Court fixed standard rent and permitted the increases as claimed by landlord. Tenant neither paid arrears nor future permitted increases during pendency of trial or first appeal, but only paid them when a writ petition was filed in High Court. Tenant was held not entitled to protection from eviction under provisions of Section 12(2)(b) of Bombay Rent Act.

Conclusion:

The MRC Act prohibits the landlord from charging exorbitant and excessive rent. It allows either party to approach the Court for determination of standard rent and permitted increases. The Act casts a duty on tenant to pay not only standard rent, but also permitted increases. In case of his default to pay the standard rent and/or the permitted increases, he loses the protection of law and would be liable to be evicted.

---

62 1987 Mh. L. J. 432

Tenantable Repairs &
Duty of Landlord under section 14 of MRC Act

It is the statutory duty of the landlord to maintain the tenanted premises and to keep it in habitable condition. This duty is one of the common characteristics of Bombay Rent Act and MRC Act. The provision is self-explanatory. The text is as under-

14. Landlords' duty to keep premises in good repair-
(1) Notwithstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.

(2) If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord.

Provided that, where the repairs are jointly made by the tenants, the amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs together with simple interest at fifteen per cent. per annum on such amount:

Provided further that, the amount so deducted or recoverable in any year shall not exceed one fourth of the rent payable by the tenant of that year.

(3) For the purpose of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord.

This section casts statutory duty on the landlord to keep the tenanted premises in good and importantly in habitable condition. The consequences of not performing such statutory duty are also defined through sub-section (2). It provides that tenant may call upon the landlord to do the repairs by sending a notice in the context. If the landlord fails to carry out such repairs, despite of service of the notice in the prescribed manner, the tenant is then free to carry out such tenantable repairs and then to deduct the expenses from the rent. The proviso makes it clear that if the tenants are more than one and they contributed to incur the expenses, the deduction shall be proportionate to the rent payable by every tenant. It is further provided that the deduction for such expenses from the rent amount shall not be exceed one-fourth of the yearly rent.

The sub-section (3) makes it clear that the account and vouchers maintained by the tenant for such repairs and expenses shall be regarded as conclusive evidence in the context. The section further makes it clear that such evidence will be binding on the landlord.

The section only pertains to tenantable repairs and not to major structural alterations or major renovations. With reference to section 342 of Mumbai Municipal Corporation Act, 1988, the concept of 'tenantable repairs' can be analyzed. The section mandates for notice to be given to the Commissioner of intention to make additions etc. It provides that every person who intends to make any addition to a building or to make any alteration or repairs to a building involving the removal, alteration or re-erection of any part of the building, **except tenantable repairs**, shall give a notice to the Commissioner, in prescribed format. Explanation attached to the said section is more important. It actually defines as to what shall be construed as 'tenantable repairs.' The explanation is reproduced as under-

Explanation. - "Tenantable repairs" in this section shall mean, only,-

i. providing guniting to the structural members or walls;
ii. plastering, painting, pointing;
iii. changing floor tiles;
iv. repairing W. C., bath or washing places;
v. repairing or replacing drainage pipes, taps, manholes and other fittings;

vi. repairing or replacing sanitary water plumbing, or electrical fittings; and
vii. replacement of roof with the same material,

but shall not include-

a) change in horizontal and vertical existing dimensions of the structure;
b) replacement or removal of any structural members of load bearing walls;
c) lowering of plinth, foundations or floors;
d) addition or extension of mezzanine floor or loft; and
e) flattening of roof or repairing roof with different material];

cc) to make any alteration in a building involving-

i. the sub-division of any room in such building so as to convert the same into two or more separate rooms,
ii. the conversion of any passage or space in such building into a room or rooms, or

d) to remove or reconstruct any portion of a building abutting on a street which stands within the regular line of such street.

Thus, any work which does not befit to this list is not tenantable repair and therefore, in such cases, the scope of section 14 of MRC Act ends.

Important Case-laws on the topic-

1. **Indu Oil and Soap Co., Through authorized representative Mr. Rajesh Girdharilal Modi Vs. Municipal Corporation of Greater Mumbai, through its Municipal Commissioner and Others[63].**

2. **Najama Gulab Bagwan and others Vs. Laxmibai Rangildas Gujar and others[64].**

[63] 2025 SCC OnLine Bom 3870
[64] 2006 (1) Mh. L. J. 273

Right of Landlord to inspect the premises under section 28 of Rent Act

Introduction:

The inspection of suit premises is a legal procedure, primarily under the Civil Code in India. A Court may order an examination of a property that is the subject of a lawsuit. This is typically done to gather evidence, to verify facts, or to assess the property's condition. Inspection cannot be a mere formality of a visual inspection of the premises; it is always with some purpose and intention.

Section 28 of the MRC Act gives statutory right to the landlord to enter and inspect the rented or licensed premises under specific conditions. This section explicitly states that a landlord is entitled to inspect the premises. ‘To inspect the premises’ covers a critical examination. It cannot be mere casual glance or mere ocular inspection. It may be to determine the past and present condition of the premises.

Section 28 of the MRC Act provides for inspection of tenanted premises. The text of the provision runs as below-

> **Section 28. Inspection of premises.**
> The landlord shall be entitled to inspect the premises let or given on licence, at a reasonable time after giving prior notice to the tenant, licensee or occupier.

The inspection of tenanted premises is usually asked for by the landlord to record measurement, condition of the place and whether any addition or changes have been made to the structure

Key Elements of Section 28 of MRC Act:

The provision contains the following essential elements-

a. **Entitlement**: The landlord "shall be entitled" to inspect, indicating a statutory right rather than a mere privilege.
b. **Scope**: The right extends to premises "let or given on licence," covering both tenancies and license arrangements.

c. **Timing**: Inspection must be conducted "at a reasonable time," requiring consideration of the tenant's convenience and circumstances.
d. **Notice Requirement**: Prior notice must be given to the tenant, licensee, or occupier, ensuring they are not taken by surprise
e. **Person to be Notified**: Notice can be given to the tenant, licensee, or occupier, recognising various forms of occupation.

Purpose:

The main goal is to obtain full information or evidence necessary for a fair disposal of the case. This can include:

- To verify the actual condition or extent of the property.
- Assessing any alterations, additions, or damage that may have occurred.
- Determining the bona fide requirement of a landlord in eviction suits.
- Allowing samples to be taken or observations to be made by experts.

Procedure:

A party involved in the suit (plaintiff or defendant) typically files an application requesting an inspection. The inspection is generally conducted after giving prior written notice to all parties involved, who have a right to be present or represented during the inspection.

Landlord's statutory right to inspect:

To reiterate, section 28 of the MRC Act, grants landlords an inherent as well as statutory right to inspect the tenanted premises at a reasonable time after giving notice. The landlord is also permitted to bring an architect or surveyor to take measurements to ensure compliance with legal obligations (like providing equivalent area in reconstruction).

Discretion of the Court:

The Court has broad discretion to allow or reject an application for inspection, considering the necessity, timing, and relevance of the inspection to the issues in the suit. Generally, a landlord has a right to inspect the premises, balanced by the tenant's fundamental right to privacy and peaceful enjoyment. Inspections require proper procedure, typically involving advance notice and a reasonable time. Any inspection or measurement carried out by a party on their own, without Court permission (if applicable) and without notice to the other side, may not be admissible as evidence. Courts are generally hesitant to allow inspection if its sole purpose is seen as a "fishing expedition" to collect new evidence at a premature stage of the suit. The inspection must be necessary for the proper determination of a disputed fact already in the case.

Landlord can take inspection of his property; there is no reason to hold landlord cannot take inspection at any stage of proceedings. Requirement is of prior notice. When landlord moved application for appointment of commissioner for proper measurements and inspection of premises, it just cannot be treated an application as contended under Order XXVI Rule 1 of Code. It was held in case of **Kamlabai Laxman Mutraj Vs. Bherumal Verimal Haran[65].**

In case of **Empeegee Portfolio Services Pvt. Ltd. Vs. Sharada Navinchandra Shah[66],** it was held that to inspect premises covers a critical examination. It cannot be a casual glance. It may be to determine past and present condition of premises. Court sees no reason why landlord cannot be permitted to inspect with a notice to tenant by taking an architect or some other person with him. There was no case for rejection of this request even under Order XXVI of Civil Code or other provisions.

In the case of **Suresh Manoharlal Jumani and another Vs. Aasia Management and Consultancy Pvt. Ltd.[67]**, the Honourable Bombay High Court has held that,

> "If the word 'inspection' by the landlord would be restricted to just observing the repairs without taking an expert with him, the right given to the landlord vide section 28 of the Rent Act, would not serve any purpose. It would be rendered superfluous. Giving such an interpretation to the said provision would be rendering the said provision otiose. As such, the said term 'inspection' will have to be given wider interpretation so as to serve the object of

[65] 2009 (2) Mh. L. J. 213 : 2009 (4) Bom. C. R. 453
[66] 2009 (1) Bom. C. R. 579
[67] 2013 (5) Mh. L. J. 905

enacting the aid provision. The said provision will have to be so interpreted so as to achieve the aim of workability of the enactment as a whole while giving it a purposive interpretation in preference to the literal or textual interpretation. Section 28 has to be invoked in aid of other provisions of the Statute."

In the case of **Robert Sylvester Mendosa Vs. Shabnam Anwarali Batliwala and another**[68], an application was filed by the landlord directing the petitioner to permit him to take inspection of the suit premises along with their architect and was specifically mentioned that he does not want to visit the suit premises with an architect without the order of the Court to avoid unnecessary police complaint and allegations on him. As the suit was pending before the trial Court, hence, respondents had not given notice as mentioned in Section 28 of the Rent Act, but had filed an application before the Court. It was held that as the landlord has a right to take inspection of the suit premises and his architect can also visit with him to take measurement. If the architect takes measurement of the suit premises, the tenant has a right to cross examine the said witness after filing the evidence of the said witness.

Landlord's Rights and Duties in the context

Rights:

1. **Right to Inspect:**
   A landlord has the right to enter and inspect the premises to check its condition, assess maintenance needs, and ensure compliance with the lease terms (e.g., no unauthorized structural changes, no illegal activities).
2. **Right to Access for Repairs/Maintenance:**
   The landlord has the right to access the property to perform necessary repairs and maintenance that they are obligated to provide.
3. **Right to Show Property:**
   Towards the end of the tenancy, they can show the property to prospective tenants or buyers.
4. **Right of Entry (with Notice):**
   A landlord is generally entitled to enter the premises for legitimate reasons such as conducting routine inspections, performing necessary

[68] MANU/MH/0933/2023

repairs/maintenance, or showing the property to prospective tenants/buyers.

5. **Emergency Entry (without Notice)**:
   In genuine emergencies posing an immediate threat to life or property (e.g., fire, major water leak, gas leak), the landlord may enter without prior notice.
6. **Documentation**:
   The landlord may take photographs during the inspection to document the property's condition, provided they focus on the property itself and do not infringe on the tenant's personal privacy or belongings.
7. **Legal Recourse**:
   If a tenant unreasonably denies access for valid reasons after proper notice, the landlord can seek legal action, such as applying for a Court order (injunction) for entry or potentially initiating eviction proceedings based on the breach of the lease agreement.

Duties:

1. **Provide Prior Notice**:
   The landlord must provide the tenant with advance notice before entry, except in emergencies. The common standard is at least 24 to 48 hours' written notice, specifying the date, time, and purpose of the visit.
2. **Enter at Reasonable Times**:
   Entry should be requested and occur at a "reasonable time" (e.g., typically between 7:00 A.M. and 8:00 P.M.) that is not excessively frequent or harassing to the tenant.
3. **Duty to respect Tenant's Privacy**:
   Inspections must be conducted in a non-invasive manner, focusing solely on the property's condition and not searching through the tenant's personal belongings, closets, or drawers. Landlord cannot enter the property at will or without permission and must not interfere with the tenant's enjoyment of the property.
4. **Ensure Habitability and fix necessary repairs**:
   The landlord is responsible for maintaining the property's structure and essential systems (plumbing, electricity, etc.) After inspection, the landlord has a duty to carry out necessary structural and major repairs to keep the property safe and habitable.

Right and Duties of Tenant in the context-

Rights:

1. **Right to Privacy/Quiet Enjoyment:**
   The tenant has the right to the exclusive possession and peaceful enjoyment of the home without undue disturbance or interference from the landlord.
2. **Right to Deny Unauthorised Entry:**
   The tenant can legally refuse entry if the landlord attempts to enter without proper notice or a valid, non-emergency reason.
3. **Right to Be Present:**
   The tenant is entitled to be present during the inspection to observe the process and safeguard personal belongings.
4. **Legal Recourse:**
   If the landlord violates access rules (e.g., unlawful entry, harassment), the tenant can document the incidents, send a formal complaint, or seek legal remedies like filing a police complaint for trespassing, a restraining order from a civil Court, or a petition with the local rent control authority.
5. **Right to Document:**
   Tenants can record (photos/videos) any unauthorized entry by the landlord as potential evidence for legal action.

Duties:

1. **Grant Reasonable Access:**
   The tenant must allow the landlord (or their authorised agent/architect/Court commissioner) entry for legitimate purposes, provided proper notice has been given.
2. **Maintain the Property:**
   The tenant has an obligation to take reasonable care of the premises, keep it clean, avoid damage beyond normal wear and tear, and promptly notify the landlord of any necessary repairs or issues.
3. **Adhere to Agreement:**
   The most critical step for both parties is to have a clear, written, and registered rental agreement that explicitly outlines the rules for property access, notice periods, and inspection frequency to prevent future disputes. The tenant must comply with all terms and conditions

specified in the rental agreement, including clauses related to property maintenance and access.

4. **Report Repairs:**
   Tenants should promptly notify the landlord of any defects or needed major repairs.
5. **Avoid Waste/Damage:**
   Tenants must not intentionally damage the property or make structural alterations without the landlord's written consent.

Right of inspection as against Appointment of Court Commissioner:

The right of inspection under section 28 of MRC Act is having limited scope, whereas, appointment of Court Commissioner in view of Order XXVI Rule 9 of Civil Code has a very wide scope. Under this rule, the power is conferred on the Court to appoint a commissioner for local investigation in order to better appreciate the evidence already on record. However, this power is discretionary and a commissioner for local inspection can be appointed only after the parties have led the evidence. The object of local inspection under this rule is not to collect evidence which can be taken in Court but to obtain evidence for elucidating matters, which due to its peculiar nature, are local in character and can only be had at the spot. This rule does not authorize a Court to delegate to commissioner, the trial of any material issue which the Court itself is bound to try. Also, the commissioner appointed to prepare a map of the locality cannot get that done by another person.

Conclusions:

Section 28 of the MRC Act, though brief in its formulation, embodies important principles governing the relationship between landlords and tenants. The provision strikes a careful balance between the property rights of the landlord and the possessory rights of the tenant. The judicial interpretation of this provision, particularly by the Honourable Bombay High Court has clarified that the right of inspection is comprehensive and purposeful. It is not a mere formality but a substantive right that enables the landlord to protect and maintain the property. At the same time, this right is not absolute and must be exercised within the framework of reasonableness, proper notice, and respect for the tenant's right to peaceful possession. For the legal fraternity, Section 28 of MRC Act presents interesting questions regarding the scope of rights, procedural compliance, and evidentiary standards. For landlords and tenants, it provides a clear framework for balancing property protection with possessory rights. The provision, as interpreted by Courts, promotes transparency, mutual respect, and fair dealing in landlord-tenant relationships.

Inspection of the tenanted premises can be done in view of section 28 of MRC Act, at any time as and when required by landlord. Whereas, the Court cannot appoint the Court commissioner only considering the prayer of the parties but after ascertaining the necessity of the local investigation of the premises the Court can appoint the Court commissioner. Therefore, the application under Section 28 of the MRC Act though appears to be similar to the application for appointment of Court commissioner under Order XXVI of Civil Code, but both are different.

Essential Supplies and Incidental Proceedings
In view of Section 29 of MRC Act

29. Landlord not to cut-off or withhold essential supply or service.

(1) No landlord, either himself or through any person acting or purporting to act on his behalf, shall, without just or sufficient cause, cut-off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) A tenant in occupation of the premises may, if the landlord has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.

(3) Having regard to the circumstances of a particular case the Court, may, if it is satisfied that it is necessary to make an interim order, make such order directing the landlord to restore the essential supply or service before the date specified in such order, before giving notice to the landlord of the enquiry to be made in the application under sub-section (3) or during the pendency of such enquiry. On the failure of the landlord to comply with such interim order of the Court, the landlord shall be liable to the same penalty as is provided for in sub-section (4).

(4) If the Court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut-off or withheld by the landlord without just or sufficient cause, the Court shall make an order directing the landlord to, restore such supply or service before a date to be specified in the order. Any landlord who fails, to restore the supply or service before the date so specified, shall, for each day during which the default continues thereafter, be liable upon further directions by the Court to that effect, to fine which may extend to one hundred rupees.

(5) Any landlord, who contravenes, the provisions of sub-section (1), shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(6) An application under this section may be made jointly by all or any of the tenants of the premises situated in the same building.

Explanation-

ln this section, -

(a) essential supply or service includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary service;

(b) withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut-off by the municipal authority or any other competent authority.

(7) Without prejudice to the provisions of sub-sections (1) to (6) or any other law for the time being in force, where the tenant, -

(a) who has been in enjoyment of any essential supply or service and the landlord has withheld the same, or

(b) who desires to have, at his own cost, any other essential supply or service for the premises in his occupation,

the tenant may apply to the Municipal or any other authority authorized in this behalf, for the permission or for supply of the essential service and it shall be lawful for that authority to grant permission for, supply of such essential supply or service applied for without insisting on production of a "No Objection Certificate" from the landlord by such tenant.

Useful Reference:

Article namely

'Disconnection of Essential Utilities by Landlords: Permissible or Not?'[69]

Written by-

- **Ms. Tamarra Sequeira**
- **Ms. Amruthavarshini**
- **Mr. Aditya Sethi and**
- **Ms. Nandita Mathihalli**

[69] 2024 SCC OnLine Blog Exp 79

Arrears of rent: When ground for eviction

Section 12 of Bombay Rent Act:

Section 12 (1) of Bombay Rent Act is a bar or an impediment in the way of a landlord recovering possession of his premises. It only subsists so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of this Act. In other words, the Court is debarred from passing a decree in favour of the landlord so long as the tenant satisfies these conditions. But it may be pointed out that Section 12 (1) of Bombay Rent Act does not impose any obligation upon the Court to pass a decree in favour of the landlord if these conditions are not satisfied. If the Court has a discretion not to pass a decree under certain circumstances, that discretion has not been taken away by Section.

Section 12 (2) deals with the first of the two contemplated obligations to be fulfilled by the tenant. The Legislature, however, wanted to grant the tenant a further protection. Cases are not uncommon that a tenant in such a situation might not be able to pay rent and more often than not. the causes may be beyond his immediate repairs. Being conscious of this situation, the Legislature, therefore, afforded one additional opportunity to the tenant and this protection is afforded by casting an additional burden on the landlord. Even if the tenant is in arrears of rent, say for 2-3 years or even 10 years and under Section 12 (1) of Bombay Rent Act, it can be said that the tenant did not pay or was not ready and willing to pay those arrears stretched over the period of 2-3 years or more, the Legislature wanted that before that protection granted by Section 12 (1) is lost by the tenant, he should have one more opportunity to retrieve the unhappy situation. The landlord, therefore, is fastened with one additional obligation. The landlord has in very emphatical language been told by Sub-section (2) of Section 12 that before he can proceed to institute a suit for eviction of the tenant on the ground of non-payment of rent, he shall extend an opportunity to the tenant to make good the lapse or lapses committed by him till then. This special obligation is cast on the landlord in the negative text and it is one of the well-known canons of construction that when the Legislature expresses its intent in a negative tone, disabling one of the patties, that direction is mandatory in character. When the Legislature says that the suit for recovery of possession on the ground of nonpayment of rent shall not be instituted by the landlord unless requirement of that Sub-section (2) of Section 12 is complied with, it is clear that the provisions of this Sub-section (2) are mandatory. (Reference: **Khimji Bhimji Majithia Vs. Taraben Lalji Soni**[70])

The sole object of giving notice under Sub-section (2) of Section 12 of Bombay Rent Act is to afford an opportunity to the tenant to make good the default in payment of the standard rent or permitted increases so that the tenant can save the tenancy from the consequences of default by paying up the arrears of standard rent and permitted increases. Section 12 (3) (a) of Bombay Rent Act, which deals with the statutory notice to be served by the landlord for non-payment of rent by the tenant and this statutory notice can only be served provided the arrears of rent are for six months or more and the tenant must fail to comply with the notice within one month. Then the Legislature expressly provides that the Court may pass a decree for eviction in any such suit for recovery of possession, and a Division Bench of this Court has taken the view that "may" must be construed as "shall". Therefore, in Sub-section (3)(a) of Section 12 the discretion of the Court has been taken away and the Court is bound to pass a decree if the conditions laid down in Sub-section (3)(a) are satisfied with regard to statutory notice and default by the tenant.

In other words, the Legislature puts a sort of an umbrella above the heads of all tenants, provided they do not become remiss in their corresponding duties, the duties being to go on paying rent and to go on abiding by the terms and conditions of the tenancy. If these two conditions are fulfilled by the tenant, the landlord, notwithstanding any contract or condition to the contrary, is not entitled to get possession, subject of course in special situations referred to in Section 13(1) of the MRC Act, as held in the case of Khimji Majithia (cited earlier).

Courts must consider whether the tenant was and is "ready and willing to pay" the rent to the landlord having regard to the real facts and

[70] AIR 1983 Guj 18

circumstances of the case and not merely legalistic technical facts to be inferred from his conduct in sending it by Money Order, or by cheque, or in current coins of the realm. The Courts cannot assume that merely because the cheque was sent that the tenant was not ready and willing to pay the arrears of rent to the landlord. The cheque system is popular, especially with expansion in banking. Unless it is established that the person who issued the cheque had no cash in the bank account or would not be in a position to furnish cash when the cheque is presented to the Bank, it cannot necessarily be assumed that the tenant was not ready and willing to pay the arrears of rent to the landlord within the meaning of the Bombay Rent Act. (**See: Marutrao Bhaurao Shelke Vs. Akbaralli Noorbhai Bohori**[71])

Section 15 of MRC Act:

The ground contemplated under section 12 of Bombay Rent Act was adapted and continued under section 15 of MRC Act. It serves as an umbrella to the tenant against eviction so long as the tenant pays and/or is ready and willing to pay standard rent and permitted increases and observes and performs the terms and conditions of tenancy. Sub-section (2) of section 15 of MRC Act provides further safeguard against eviction on the ground of nonpayment of rent. The fundamental principle of Section 15 is that tenant should continue to acknowledge the title of his landlord by paying rent and observing the terms of tenancy.

The text of section 15 of MRC Act is as under-

15. No ejectment ordinarily to he made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

[71] (1974) 76 BOMLR 35

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days 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.

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in Court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

(4) Pending the disposal of any suit, the Court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the Court thinks fit.

<u>When the landlord can sue for Recovery of Possession</u>:

The MRC Act does not forbid bringing an action and what is prohibited is that a landlord would not be entitled to the relief of an order for possession unless certain conditions are fulfilled. No sooner a tenant fails to perform those conditions, it gives to a landlord a cause of action to file a suit for recovery of possession. It is only when a landlord is in a position to establish that the tenant has forfeited his right to protection under section 15 (1) that the landlord would have a cause of action. The plaint must therefore set out a cause of action which arises to him under this statute. While dealing with the provisions of The Bombay Rent Act, in the case of **Ganpat Ladha Vs. Sashikant Vishnu Shinde**[72], Honourable Apex Court has observed that

[72] (1978) 2 SCC 573 : 1978 Mh.L.J. 550

"11. It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf. Thus Section 12(3)(a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J.) in Ratilal Balabhai Nazar v. Ranchhodbhai Shankerbhai Patel [AIR 1968 Guj 172 : (1968) 9 Guj LR 48] . If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Section 12(3)(a) to get a decree for eviction. But where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfil those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour, of the tenant can be found in Section 12(3)(b) even where the conditions laid down by it are satisfied to be strictly confined within the limits prescribed for their operation. We think that Chagla, C.J., was doing nothing less than legislating in Kalidas Bhavan case in converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear. Section 12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these

> conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of Courts"

It is, thus, clear that the rent control legislation does put an embargo only to the limited extent on the right of landlord to seek eviction of tenant. The right to sue for possession in respect of the property belonging to the landlord is inherent. However, it is made subject to certain limitations by the rent control legislation.

Requirement, Mode and Manner of Demand Notice:

Notice to quit is to be served according to (i) the agreement between the parties and (ii) if there is no agreement, according to the provisions of Section 106 of TP Act. No notice to quit is required to be given to a statutory tenant, as there is no contract of tenancy subsisting in his case. Although there is a reference to Section 106 of TP Act in Sub-section (2) of Section 15 of MRC Act. But the said provision is for the suit for recovery of possession by the landlord on the ground of non-payment of standard rent or permitted dues and such suit cannot be instituted until the expiration of 90 days after the notice in writing of the demand of standard rent or permitted increase has been served upon the tenant. In fact, that is not a notice under Section 106, TP Act but it is to be served in that manner. Even if the contractual tenancy is determined by giving a notice still as per the State Rent Acts, the tenant cannot be evicted until the landlord makes out a case for his eviction under the concerned Rent Act and the order or decree for eviction is passed. The notice under Section 106 of TP Act in that case is not necessary and the issuance of notice under Section 106 of TP Act is merely a surplusage, as observed in **K. Mukta Ashok Khankhoje Vs. Namdeorao Tukaram Khutaphale[73].**

Mode of Service of Notice:

The notice has to be served upon the tenant in the manner provided in Section 106 (4) of the TP Act. The provision makes it clear as to how the notice shall be served. For clarity, the text is reproduced -

---

[73] 2004 (1) Mh. L. J. 941

Section 106 (4) of TP Act-

Every notice must be either sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of his family or servants at his residence, or (if such a tender or delivery is not practicable) affixed to a conspicuous part of the property.

Service of notice by post:

Honourable Bombay High Court in the case of **Hajrabi A. Gani Vs. Abdul L. Azizulla**[74] has held that the presumption of service under Section 27 of the General Clauses Act, 1897, Section 28 of the Bombay General Clauses Act, 1904 and under Section 114 of the Evidence Act is a rebuttable presumption that the notice was delivered to the addressee or that on being delivered it was refused by the addressee. When the notice is sent by registered post and returned with endorsement 'refused', undoubtedly it is for the defendant to adduce evidence to satisfy the Court that the same was not tendered to him. But once the defendant does so by making a statement on oath and adduces other evidence then, unless such denial is found to be prima facie incorrect, the onus will shift to the plaintiff to prove the positive that the notice was served.

Not necessary to send the notice on address of premise:

Notice under subsection (2) of section 15 of the MRC Act can be served on the tenant at his residence. It uses the word 'premises'. This does not mean that the notice must be served on the tenant the premises let to him, even if he is actually residing elsewhere. Even if he is residing elsewhere the notice can be served where he is residing.

Service on one tenant in case of joint tenancy:

Service on one of the many joint tenants or cotenants, is prima facie evidence that the notice has reached others and mere production of registered post acknowledgement by one of them is sufficient to determine the tenancy. Even if one of the joint tenants has refused to accept such a notice, such a refusal is a good service on all the joint tenants and it is not necessary for the landlord to chase all the tenants and take refusal from each.

[74] AIR 1996 Bom.192

Personal service of notice:

Personal tender of the notice may take place anywhere and the vicarious tender or delivery can be effected at the tenant's residence.

Concept of 'Readiness and Willingness' under section 15 of MRC Act:

Section 15 of the Chapter III of MRC Act, indicates that a tenant can perform his obligation and then claim protection in the form of relief against forfeiture as forfeiture occurs in accordance with general law governing lease under the TP Act. The provision protects the tenant from the forfeiture when the tenant is paying rent or has proved his readiness and willingness to pay it. Section 15 (3) adds further obligation upon the tenant to pay entire arrears till date with interest and costs, as may be ordered by the Court. If tenant is continuing to pay rent due during the pendency of the suit instituted against him on the ground of nonpayment of standard rent and permitted increases then such tenant is entitled to claim relief against forfeiture of tenancy. The Court cannot be oblivious of landlords who may have to survive only on rental income. Habitual irregular payment of rent and permitted increases by the tenant will prejudice and jeopardize very survival of such landlords who survive on rental income only. Therefore, such a tenant who may be habitually irregular in payment of standard rent and permitted increases can invite eviction in view of Section 15 (1) of the Maharashtra Rent Act when the Court considers the case of such a tenant who commits breach of conditions of tenancy as also remains habitual in rental arrears. In such exceptional case, provisions of Section 15 (1) are applicable and procedural compliances under Section 15 (2) and 15 (3) will not apply.

In nutshell, to derive that if tenant offers or pays the amount recorded in the notice issued in pursuance to subsection (2) of section 15, together with permitted increases, the landlord is disabled from proceeding against the tenant is not within contemplation of section 15 of the Act. The right to seek remedy and claim possession of the premises owned by the landlord is inherent in him however, initiation of such proceedings is subject to fulfilment of certain pre-conditions such as issuance of notice in accordance with Section 106 of the TP Act as provided under Section 15 (2) of MRC Act. It is thus clear that the tenant who disobeys the provisions of Section 15(1) can be evicted independently though such tenant may not necessarily pay any arrears of rent on the date of institution of the suit. Sub-section (3) of Section 15 shall have to be construed independently and if the tenant does not observe the mandate of subsection (3) in respect of payment of amount of rent and permitted increases regularly till disposal of the proceedings before the Court, is also liable to be evicted.

In the landmark case of **Babulal Fakirchand Agrawal Vs. Suresh Kedarnath Malpani and others**[75], Full Bench of Honourable Bombay High Court has referred the judgment of its Division Bench of the Honourable Bombay High Court in the case of **Chandiram Dariyanumal Ahuja Vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola**[76]. The observations are worth reproducing, for clarity and emphasis. It was held that-

> "17. The entire Scheme of Chapter III - relief against forfeiture, as provided under the provisions of Section 15, indicates that a tenant can perform his obligation and then claim protection in the form of relief against forfeiture as forfeiture occurs in accordance with general law governing lease under the TP Act. The provision protects the tenant from the forfeiture when the tenant is paying rent or has proved his readiness and willingness to pay it. Section 15(3) added further obligation upon the tenant to pay entire arrears till date with interest and costs, as may be ordered by the Court. If tenant is continuing to pay rent due during the pendency of the suit instituted against him on the ground of non-payment of standard rent and permitted increases, then such tenant is entitled to claim relief against forfeiture of tenancy. To put it otherwise, when tenant does not pay rent as agreed or pays rent only when legal notice is served upon him or Court summons is issued against him, the landlord is not helpless because sub-section (1) of Section 15 enables the landlord to insist upon the tenant to pay rent and perform the conditions of tenancy. The tenant who disobeys legal provisions u/s. 15(1) of the Act can be evicted independently, though such

[75] MANU/MH/1159/2017

[76] 2013 (1) Mh. L. J. 28

tenant may not necessarily be in arrears of rent on the date of institution of the suit. A tenant who is prompted or induced to pay only after service of legal notice or after service of Court summons cannot be viewed as a tenant who either pays or is ready and willing to pay standard rent and permitted increases. Section 15 of the Maharashtra Rent Act has extended protection to a tenant after the landlord seeks to exercise his right to forfeit the tenancy in accordance with the provisions of general law. A tenant, in order to claim relief against forfeiture of tenancy, gets a period of 90 days after service of pre-suit statutory demand notice by the landlord calling upon the tenant to pay entire arrears of standard rent and permitted increases payable to the landlord. Thereafter when suit is filed, the tenant gets additional opportunity to pay entire arrears of rent and permitted increases demanded after the suit summons is served upon him. Such a tenant has a period of 90 days from the date of service of suit summons to pay or tender the arrears of rent with simple interest thereupon @ 15 % p.a. During pendency of the suit, the protection is available as above to the tenant to claim relief against forfeiture of tenancy provided that the tenant shall continue to be regular in payment of standard rent and permitted increases payable during the pendency of the suit as also costs of the suit as directed by the Court. The Court cannot be oblivious of landlords who may have to survive only on rental income. Habitual irregular payment of rent and permitted increases by the tenant will prejudice and jeopardize very survival of such landlords who survive on rental income only. Therefore, such a tenant who may be habitually irregular in payment of standard rent and permitted increases can invite eviction in view of Section 15(1) of the Maharashtra Rent Act when the Court considers the case of such a tenant who commits breach of conditions of tenancy as also remains habitual in rental arrears. In such exceptional case, provisions of Section 15(1) are applicable and procedural compliances u/s. 15(2) and 15(3) will not apply."

The Honourable Apex Court in **Mranalini B. Shah and another Vs. Bapalal Mohanlal Shah**[77], considered the expression 'regularly' as used in section 12 (3) (b) of the Bombay Rent Act. It was held that the provisions of Clause (b) of section 12(3) are mandatory and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlords claim for eviction on the ground of default in payment of rent is to be defeated. The Apex Court further observed that if the tenant persistently defaults during the pendency of the suit or appeal in paying of the rent, the Court has no discretion to treat what were manifestly irregular payments as substantial compliance.

Similarly, in case of **Prabhakar Venkobaji Manekar Vs. Surendra Dinanath Sharma**[78], the phrase 'then due' was considered and interpreted by Honourable Bombay High Court. It was held that-

> "11. …. It is to be noted that the expression used in section 15(3) of the said Act is arrears "then due". In the decision relied upon by the learned counsel for the petitioner in Bhimsen Gupta (supra), the expression "lawfully payable" as used in section 11(1)(d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1983 was considered. Similarly in Kamala Bakshi (supra) the expression "arrears of rent legally recoverable, as appearing in section 14(1) of the Delhi Rent Control Act, 1958 were under consideration."
>
> 12. The expression "then due" was used in the provisions of section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which stood repealed as a result of said Act coming into force. Considering similar arguments as advanced that if the amounts that were claimed to be due could not be recovered on account of bar of limitation, then the tenant could not be evicted for being in arrears of such dues, learned Single Judge in Karamchand Deoji Sanghavi v. Tulshiram Kalu Kumawat, 1992 Mh. L.J. 560, held that if the tenant intended to

---

[77] AIR 1980 SC 353

[78] 2015 SCC OnLine Bom 5023 : 2015 (4) Mh. L. J. 351

seek protection from eviction then the entire amount of arrears even if time barred were required to be paid. It was held that the provisions of section 12 of the Bombay Rent Act did not alter the entitlement of the landlord in the light of law of limitation.

In Sriniwas Babulal (supra) relied upon by the learned counsel for the respondent it was held that the demand of time barred rent in a notice issued under section 15 of the said Act was not fatal and it was incumbent on the tenant to pay even time barred arrears. It is, therefore, clear that the expression "then due" will have to be construed to include amount of arrears that were due and payable disregarding the fact that part thereof had become time barred. In Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, (1978) 1 SCC 44, it was held by the Supreme Court that even if the remedy was barred, the debt was not extinguished and if the tenant wanted to seek benefit of the statute then for avoiding the decree of eviction, the amounts due were required to be paid. Hence, the expression "then due" in section 15(3) of the said Act would include the amount of arrears even prior to three years of such notice."

It has to be stated that mere desire to pay the rent is not enough. It must be translated into action. The tenant was under an obligation to comply with the demand and in any case to explain as to how, in his view, nothing was due or a lesser amount was due, and to have paid that amount. Not having done so, he loses the protection of the Rent Act and, therefore, would be liable to be evicted on account of failure to comply with the requirement of sub-section (3) of Section 15 of the MRC Act. (Reference: **Girish Gangadhar Agrawal Vs. Jiteshkumar Hasmukha Vakhariya**[79])

Conclusion:

This ground for eviction proves to be a demonstration of balancing act of legislation. It protects the tenant and confers two opportunities to pay rent, in case of default. At the same time, the shield for tenant stands removed, if he/she is not ready and willing to pay rent for the tenanted

[79] 2009 SCC OnLine Bom 1271 : 2009 (6) Mh. L. J. 875

premises. Thereby, the interest of landlord is protected and he/she can get possession of the tenanted premises on proof that tenant was in arrears of rent and the opportunities to pay rent were spoiled.

Other Grounds for Eviction

Section 13 of Bombay Rent Act and Section 16 of MRC Act provide various grounds, on proof of which the landlord can secure decree of eviction against the tenant. All those grounds were similar, except a few. Both these provisions start with the phrase '*Notwithstanding anything contained in this Act a landlord shall be entitled to recover possession of any premises if the Court is satisfied-*'. It necessarily means that landlord has to establish all the facts giving rise to the circumstances which establish the ground or grounds for eviction. The burden of proof is on the landlord, as he alleges the ground to exist and therefore, he has to prove those facts. It is the basic rule as regards to burden of proof.

The available grounds under Bombay Rent Act and MRC Act can be enlisted and compared as below-

Sr. No.	Section of Bombay Rent Act	Section of MRC Act	Ground/Circumstances to be proved
1.	13 (1) (a)	16 (1) (a)	that, the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the TP Act;
2.	13 (1) (b)	16 (1) (b)	that, save as otherwise provided in section 23A, the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;
3.	13 (1) (c)	16 (1) (c)	that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes;

Sr. No.	Section of Bombay Rent Act	Section of MRC Act	Ground/Circumstances to be proved
4.	13 (1) (d)	16 (1) (d)	that the tenant has given notice to quit and in consequence of that notice the landlord has contracted to sell or let the premises or has taken any other steps, as a result of which he would, in the opinion of the Court, be seriously prejudiced if he could not obtain possession of the premises;
5.	13 (1) (e)	16 (1) (e)	that the tenant has, since the coming into operation of this Act unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein; or
6.	13 (1) (f)	16 (1) (f)	that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the coming into operation of this Act, to be in such service or employment;
7.	13 (1) (g)	16 (1) (g)	that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held 81[or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purpose of the trust
8.	13 (1) (h)	16 (1) (h)	that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out

Sr. No.	Section of Bombay Rent Act	Section of MRC Act	Ground/Circumstances to be proved
			without the premises being vacated;
9.	13 (1) (hh)	-	that the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished;
10.	13 (1) (hhh)	-	that the premises are required for the immediate purpose of demolition ordered by any local authority or other competent authority;
11.	13 (1) (i)	16 (1) (i)	that where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of a new building;
12.	13 (1) (ii)	-	that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new residential building which a local authority has approved or permitted him to build thereon;
13.	-	16 (1) (j)	that the premises let consist a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the

Sr. No.	Section of Bombay Rent Act	Section of MRC Act	Ground/Circumstances to be proved
			demolition thereof and erection or raising of a floor or floors on such terrace;
14.	13 (1) (j)	16 (1) (m)	that the rent charged by the tenant for the premises or any part thereof which are sub-let before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium, other like sum or consideration in respect of such premises or part;
15.	13 (1) (k)	16 (1) (n)	that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit;
16.	13 (1) (l)	-	that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence.

Section 16 (1) (a) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of TP Act;

Explanation- For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto;

This ground is directly connected with the Section 108 (o) of TP Act. Landlord can establish facts that the tenant committed any act which is contrary to the section 108 (o) of TP Act. Therefore, the relevant provision must also be reproduced here for clarity.

Section 108 (o) of TP Act:

108. Rights and liabilities of lessor and lessee: In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:

...

...

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

What is to be proved by landlord?

While this ground for eviction is taken/cited, the landlord is duty bound to prove that-

a. lessee/tenant did not use the property and its products (if any) as a person of ordinary prudence would use them, if they were his own,
b. Lessee used the property or permitted another to use it, for a purpose other than that for which it was leased,
c. Lessee fell or sold timber, pulled down or damaged buildings belonging to the lessor, or
d. Lessee/tenant worked mines or quarries not open when the lease was granted, or
e. Lessee/tenant committed any other act which is destructive or permanently injurious to the property.

The burden to prove such act, which is contrary to the said clause (o) of Section 108 of TP Act is entirely on the landlord. The necessitous evidence may vary depending upon facts and circumstances.

Section 16 (1) (b) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney;

<u>What is to be proved by landlord</u>?

While this ground for eviction is taken/cited, the landlord is duty bound to prove that-

a. Tenat has erected any structure on the premises
b. The structure is of permanent nature,
c. Tenant did it without landlord’s written consent.

The burden to prove is entirely on the landlord. The necessitous evidence may vary depending upon facts and circumstances. However, there must be cogent evidence about the condition of tenanted premises **before and after** the alleged erection of permanent structure. It also means that comparable evidence must be clearly before the Court, in order to reach to conclusion that the questioned structure was not there earlier and that it was brought into existence subsequently. There must also be evidence as regards to the permanent nature of the structure. There must be consent in writing and oral consent is not acceptable, as held in **Vithal N. Shetti and**

another Vs. Prakash N. Rudrakar and others[80]. The observations therein are of great help and guidance. It is also necessary to understand the concept 'permanent structure'.

Concept of 'permanent structure':

The explanation to Section 16 (1) (a) (b) of MRC Act, seems to be negatively worded suggesting that which acts are not within the ambit of 'permanent structure' nor does section 7 of MRC Act provide the definition of the phrase. In the light of the settled law in various cases by Honourable High Court and Honourable Supreme Court

a) Increasing the height of the premises by means of bricks, sand & cement
b) Covering the open ota by means of a construction of a bricks, sand, cement,
c) Constructing of mezzanine floor,
d) Making partition in a premises by means of bricks, sand and cement,
e) Removing old walls and constructing new walls,
f) Changing the roof of mangalore tiles by RCC,
g) Removal of windows and constructing a wall in place of window,
h) Constructing of pillars in support of the roof,
i) Fixing the girders by carving the walls,
j) Extending the area of a premises and making construction for the purpose of creating new room, etc. are within the ambit of permanent construction.

Whereas,

i. Fixing of over head tank,
ii. Fixing grill to the windows,
iii. Covering the balcony,
iv. Changing the floor tiles,
v. Construction of a gutter or mori,
vi. Replacement of rotten door,
vii. Installing of Air-Conditioner etc.

are not within the ambit of the permanent construction.

[80] 2003 (3) Bom. C. R. 462 (SC)

Section 16 (1) (c) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(c) that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of any of the provisions of clause (a) of sub-section (1) of section 394 or of section 394A of the Mumbai Municipal Corporation Act, or of sub-section (1) or of section 376 or of section 376A of the Bombay Provincial Municipal Corporations Act, 1949, or of section 229 of the City of Nagpur Municipal Corporation Act, 1948; or of section 280 or of section 281 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965;

Meaning of nuisance and annoyance:

Excessive or unlawful use of one's property to the extent of unreasonable annoyance or inconvenience to a neighbour or to the public. Unreasonable and substantial interference with a neighbour's use or enjoyment of land.

Test to determine Nuisance or annoyance:

What would be tolerated by the ordinary occupier. The standard is the ordinary man, which means that abnormal sensitivities may prevent a claim, if the nuisance would not have otherwise unreasonably interfered with an ordinary occupier (e.g. perfume). Nor would it be necessary to prove negligence on the part of the defendant (nuisance is not a branch of the law of negligence). Nuisance is an actionable tort. Damages are often indirect (as opposed to trespass where the harm is direct by the tort-feaster).

Examples: Noise from a go-kart business; smell from a slaughterhouse; dust from a saw mill; smoke.

In a case of **Kashinath Shankar Gambhire Vs. Sudha Gopal Patil and others**[81], it is held in para 6 as under;

" The nuisance for which an action would lie under Section 13(1)(c) of the Bombay Rent Act is incapable of any legal definition. Nuisance ordinarily means that which annoys or hurts or that which is offensive. It includes any act, omission or conduct which causes or is likely to cause inconvenience, hurt, damage or which may interfere with the enjoyment of the life or property. Anything done which unwarrantably affects the rights of others, endangers life or health, gives offence to the senses, violates the law of decency or obstructs the comfortable and reasonable use of property amounts to nuisance. The question whether a particular act, omission or thing is nuisance or annoyance actionable in law depends on surrounding circumstances. The alleged act or omission, the mode of committing it and the consequences flowing therefrom, amount to nuisance or not at all times would be the question dependent on facts and circumstances of the case. However, one thing is certain that in order to attract the ground of eviction under Section 13 (1) (c) of the Bombay Rent Act invariably it needs to be satisfied that the alleged nuisance is of gross and unusual character, frequent and persistent and that it would not be possible for the affected person or persons to lead normal life and it is such that one cannot ordinarily expect in household. Initiating legal process by filing suits or defending the litigation by a party cannot amount to a nuisance or annoyance, a ground for eviction contemplated under Section 13(1)(c). It is always open to a party to assert and vindicate his right in the competent Court though he may succeed or fail in such litigation. A party who pursues his remedy through legal process or defend himself by opposing the litigation initiated against him, cannot by any stretch of imagination be blamed to be guilty of an act which may be covered by expression "nuisance or annoyance" within the meaning of Section 13(1)(c).

[81] MANU/MH/0640/2000

In another case of **Gaurishanker Vs. Bhikhalal**[82], while dealing with the ambit of Section 13(1) (c) of the Act, it was observed that following points must exist to hold the action of the tenant as causing annoyance or nuisance:

1. It must be of a gross character.
2. It must be of an unusual character.
3. It must be frequent and persistent.
4. It must be such that one cannot ordinarily expect in a household.
5. It must be such that it would not be possible for the neighbours to lead a normal life which one can hope to live in a busy town or city.

Honourable Bombay High Court in a case of **Sukhlal Vs. Ramkrushna and others**[83]. dealt with following three landmark Judgments on this subject and held that, single and isolated act of the tenant would not amount to nuisance or annoyance within the meaning of Section 13(1)(c) of the Act.

[82] MANU/GJ/0151/1977
[83] 2018 (2) Mh. L. J. 80

Section 16 (1) (d) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(d) that the tenant has given notice to quit and in consequence of that notice, the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the Court, be seriously prejudiced if he could not obtain possession of the premises;

The provision is clear. It provides that when the tenant has given notice to quit and due to which the landlord entered into any contract or agreement to either sell or to let out the premises, or has taken any steps as a consequence of such notice to quit, landlord must get possession of the suit premises. The test to determine is embodied in the provision itself and it revolves around the possible prejudice to the landlord, if the tenant gives notice to quit earlier and then retracts from it. So, necessarily, landlord has to establish that such notice to quit was given by the tenant. Secondly, it must be established that the tenant retracted from it and then refused to quit the premises. Moreover, landlord may come with evidence of entering into any contract of sell or agreement to let out or about steps taken as consequences of the tenant's notice to quit. Landlord may also adduce evidence of the prejudice, loss or damage caused to him or such probability, in order to meet with the test.

Section 16 (1) (e) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(e) that the tenant has,-

i. on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or
ii. on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State,

unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein;

It is necessary to unfold the legislative history as well as certain concepts, one by one, while considering this ground for eviction.

Terms 'deemed tenant', 'protected tenant', 'statutory tenant', 'contractual tenant in holding' and 'tenant at sufferance'

Rent laws extend the definition of a tenant to include certain occupants who are not direct parties to a lease agreement but qualify as tenants by virtue of their possession and relationship with the premises.

DEEMED TENANT

A deemed tenant refers to a person who is treated as a lawful tenant under tenancy laws, even in the absence of a formal agreement with the landlord. This status is typically granted to individuals who:

1. Were in occupation of the premises when the original tenant vacated or died, provided they meet the statutory requirements.
2. Possess the property with the landlord's implied consent or knowledge.
3. Have been recognized by law due to their specific relationship with the premises, such as family members or dependents of the original tenant.

Section 15A of the Bombay Rent Act was instrumental in introducing the concept of deemed tenants. This provision granted tenant status to occupants who were in possession of premises on February 1, 1973, as licensees. The MRC Act, later consolidated these rights under Section 7 (15), broadening the definition of tenants to include deemed tenants.

Rights of Deemed Tenant

1. **Protection Against Eviction**
   Deemed tenants enjoy legal protection from eviction under tenancy laws. A landlord cannot evict a deemed tenant arbitrarily, and eviction can only occur on specific grounds enumerated in the law, such as non-payment of rent, illegal activities, or bona fide requirements of the landlord.
2. **Right to Fair Rent**
   Deemed tenants are entitled to occupy the premises at a fair or standard rent determined under the tenancy laws. This provision prevents landlords from charging exorbitant rents and ensures affordability for occupants.

3. **Right to Essential Services**
   Landlords are prohibited from denying essential services like water, electricity, or access to the premises to deemed tenants. Any such denial can be contested in court.
4. **Continuity of Tenancy**
   The rights of deemed tenants continue as long as they comply with statutory obligations, including the payment of rent and adherence to tenancy terms. This ensures long-term stability and protection for occupants.

<u>Obligations of Deemed Tenant</u>

1. **Payment of Rent**
   Deemed tenants must pay rent regularly and on time. Non-payment of rent is a valid ground for eviction under tenancy laws.
2. **Adherence to Tenancy Terms**
   Like regular tenants, deemed tenants must adhere to the conditions of tenancy. They are prohibited from using the premises for unlawful activities or making unauthorized alterations.

3. **Subletting Restrictions**
   Deemed tenants are generally not allowed to sublet the premises without the landlord's written consent. Unauthorized subletting may result in the termination of their tenancy rights.

The concept of a deemed tenant is a double-edged sword. On one hand, it provides essential protections to occupants who might otherwise face arbitrary eviction. This is particularly relevant in India's urban housing market, where informal tenancy arrangements are prevalent. On the other hand, the lack of formal agreements in such arrangements often leads to disputes between landlords and deemed tenants, especially over issues like rent payment and property use.

Moreover, critics argue that the expansive definition of tenants under laws like the MRC Act discourages landlords from leasing properties, contributing to housing shortages in cities. Balancing the rights of landlords and tenants remains a persistent challenge in India's tenancy framework.

Conclusion

Deemed tenants occupy a unique position in Indian tenancy laws, blending informal arrangements with formal legal recognition. Their rights to protection, fair rent, and essential services underscore the law's commitment to preventing exploitation and ensuring housing stability. However, deemed tenants must also fulfill their obligations, including paying rent and adhering to tenancy terms, to retain their legal status.

As housing needs evolve, the concept of deemed tenancy remains crucial for addressing the complexities of informal housing arrangements. Periodic legislative reviews and clearer guidelines can help mitigate disputes and ensure that tenancy laws remain equitable for all stakeholders, fostering trust and cooperation in landlord-tenant relationships.

PROTECTED TENANT

A protected tenant is a tenant who is granted statutory safeguards against eviction under tenancy laws. This status prevents landlords from evicting tenants on a whim, ensuring stability and security in rental arrangements. The concept of protected tenancy originated under the Bombay Rent Act, which sought to address housing shortages and protect tenants from rising rental prices and exploitation. The MRC Act later consolidated these protections and adapted them to modern housing needs. To qualify as a protected tenant, the individual must comply with statutory obligations such as timely payment of rent and adherence to the terms of the tenancy agreement. Protected tenancy does not mean absolute immunity from eviction; tenants must act in accordance with legal provisions to maintain their status.

Rights of Protected Tenant

1. **Protection Against Eviction**
   The primary right of a protected tenant is protection from arbitrary eviction. A landlord can evict a tenant only under specific, legally defined circumstances, such as willful non-payment of rent, unauthorized subletting, or the landlord's bona fide need for the premises. This provision prevents landlords from using coercive measures to remove tenants without just cause.
2. **Right to Possession**

Protected tenants have a right to remain in possession of the premises as long as they fulfill their obligations under the tenancy agreement. Even if the lease period has expired, the landlord cannot evict the tenant without meeting statutory requirements. This right ensures the tenant's security and fosters stability in the rental arrangement.

3. **Regulated Rent**
   Another important right is the regulation of rent. Protected tenants are shielded from arbitrary rent hikes, with the law prescribing fair and reasonable rent limits. This provision aims to keep housing affordable and prevent exploitation in high-demand rental markets.
4. **No Automatic Eviction on Subletting**
   Subletting, when done with the landlord's consent and as per statutory conditions, does not automatically lead to eviction. Protected tenants retain their rights as long as they comply with procedural requirements, such as obtaining written consent and notifying the landlord of the subletting arrangement.
5. **Right to Re-Entry**
   If a subtenant vacates the premises, the original tenant retains the right to reclaim possession. This right protects the tenant from losing their tenancy due to temporary subletting arrangements and ensures that they remain in control of their rental rights.

<u>Obligations of Protected Tenants</u>

While protected tenants enjoy several rights, they are also bound by certain obligations:

- **Timely Payment of Rent**: Non-payment of rent can lead to the forfeiture of protected status and eviction.
- **Compliance with Tenancy Terms**: Protected tenants must not breach the conditions of the tenancy, such as using the premises for illegal activities or causing substantial damage to the property.
- **Adherence to Subletting Rules**: Unauthorized subletting can result in eviction, emphasizing the need for tenants to secure prior consent and fulfill notification requirements.

<u>Challenges in Protected Tenancy</u>

1. **Disputes Over Landlord Consent**:

Many conflicts arise over whether landlords gave consent for subletting or other arrangements. Ambiguities in agreements often lead to litigation, increasing costs for all parties involved.

2. **Compliance Burden**:
   Protected tenants must comply with a range of procedural requirements, such as obtaining written consent for subletting and paying rent on time. Failure to do so can result in eviction, despite the tenant's protected status.
3. **Vulnerability of Subtenants**:
   Subtenants often have limited rights under tenancy laws. If the original tenant fails to adhere to legal requirements, the subtenant may lose possession, leading to financial and housing insecurity.

In case of **Bhatia Co-operative Housing Society Vs. D.C. Patel**[84] Honourable Supreme Court ruled that unauthorized subletting is a valid ground for eviction, highlighting the importance of landlord consent. In landmark case of **V. Dhanapal Chettiar Vs. Yesodai Ammal**[85]**,** Honourable Supreme Court held that landlords must establish one of the statutory grounds for eviction, strengthening tenant protections.

<u>Conclusion</u>

The rights of a protected tenant under tenancy laws are essential for ensuring fairness in rental markets. These rights, however, are not unconditional and depend on the tenant's adherence to legal and contractual obligations. As housing demands evolve in urban areas, a balanced approach is necessary to protect tenants while encouraging landlords to lease properties. Periodic legislative reviews and clearer guidelines could reduce disputes and foster greater trust between landlords and tenants, ensuring that tenancy laws remain relevant and effective in contemporary contexts.

<u>STATUTORY TENANT</u>

A statutory tenant is a tenant who retains possession of rented premises after the expiration of the tenancy agreement, relying on the protection afforded by rent control laws. While their contractual tenancy has

---

[84] AIR 1953 SC 16

[85] (1979) 4 SCC 214

ended, their occupancy is legitimized by statute, preventing arbitrary eviction. Statutory tenants are distinct from contractual tenants. The former's rights stem from legislation rather than a rental agreement, and their status often hinges on compliance with specific conditions such as timely rent payments and adherence to tenancy terms. This distinction underscores the statutory tenant's reliance on legal protections to continue occupancy.

Rights of Statutory Tenant

1. **Protection Against Eviction**
   A statutory tenant cannot be evicted unless the landlord demonstrates one of the grounds prescribed by law. These grounds typically include:
   - Willful default in rent payment.
   - Unauthorized subletting or transfer of tenancy rights.
   - The landlord's bona fide requirement for personal use of the premises.
   - Misuse or structural alteration of the property without consent.
   - Courts have consistently upheld this protection to prevent the exploitation of tenants in markets with limited housing availability.
2. **Right to Fair Rent**
   Statutory tenants are entitled to protection against arbitrary rent hikes. Rent control laws typically cap the permissible rent increase, ensuring affordability for tenants.
3. **Right to Essential Services**
   Landlords cannot deny statutory tenants access to essential services such as water, electricity, or sanitation. Such denial constitutes harassment and can be legally challenged.
4. **Right to Continued Occupation**
   As long as the statutory tenant complies with the legal and contractual obligations, they retain the right to occupy the premises, even after the tenancy period has expired.

Obligations of Statutory Tenants

While statutory tenants enjoy extensive protections, these rights are contingent on fulfilling certain obligations, including:

- **Payment of Rent**: Timely payment of rent is a fundamental requirement. Failure to do so can lead to eviction proceedings.
- **Adherence to Tenancy Terms**: Statutory tenants must comply with the terms of the original tenancy agreement, such as not using the premises for unauthorized purposes or making structural changes without permission.
- **Respect for Landlord's Rights**: Statutory tenants must not engage in activities that infringe upon the landlord's property rights, such as subletting without consent.

Precedents

1. **Ganga Dutt Murarka Vs. Kartik Chandra Das**[86]
   Honourable Supreme Court clarified the rights of statutory tenants, emphasizing that their possession is protected by law and cannot be terminated except on legally prescribed grounds.

2. **Damadilal Vs. Parashram**[87]
   It was observed that statutory tenants, despite the termination of their contractual tenancy, have a legal right to continue occupying the premises as long as they comply with the provisions of the rent control laws.

Conclusion

Statutory tenancy reflects the intent of rent control laws to protect tenants from arbitrary eviction and ensure affordable housing in high-demand areas. However, this protection must be balanced with the landlord's right to reclaim and utilize their property fairly. While statutory tenants enjoy significant rights, these are conditional upon compliance with legal and contractual obligations. As urban housing dynamics evolve, the legal framework governing statutory tenants must be periodically reviewed to address emerging challenges, such as housing shortages and economic disincentives for landlords. A balanced approach that respects both tenant security and landlord rights will foster a more equitable and efficient housing market.

---

[86] AIR 1961 SC 1067
[87] AIR 1976 SC 2229

CONTRACTUAL TENANT

A contractual tenant is someone who occupies the leased premises under the terms of a written or oral contract with the landlord. The nature of this tenancy is governed entirely by the terms of the lease or rental agreement. Unlike a protected tenant, whose tenancy is safeguarded by rent control laws and certain statutory protections, a contractual tenant's rights and obligations are subject to the specific provisions outlined in the contract. In a holding, which refers to land or property owned by a landlord, the contractual tenant enjoys the right to occupy the premises for the duration of the lease, which may range from a few months to several years, depending on the agreement. The key feature of this tenancy is that both parties, i.e. the landlord and the tenant agree to a specific set of terms that define the tenant's right to hold and use the property in exchange for payment of rent.

Rights of Contractual Tenant

1. **Right to Possession**
   A contractual tenant is granted the right to occupy the rented premises for the period stipulated in the agreement. As long as the tenant adheres to the terms of the lease, including timely payment of rent and proper maintenance of the property, they are entitled to remain in possession of the property for the duration of the tenancy. This right is essentially the right to exclusive use of the rented premises, which cannot be interfered with by the landlord without due legal process.
2. **Right to Quiet Enjoyment**
   A contractual tenant has the right to the "quiet enjoyment" of the premises, meaning they are entitled to live on the property without interference or disturbance from the landlord or other third parties. This right protects tenants from actions that would hinder their peaceful possession, such as unlawful entry or harassment by the landlord.
3. **Right to Renew or Extend the Lease**
   Some lease agreements provide contractual tenants with the right to renew or extend their tenancy upon mutual agreement with the landlord. While such a right is not automatic, it can be negotiated as part of the lease terms. If the lease is silent on renewal, the tenant must

seek the landlord's consent to continue occupying the premises after the contract expires.

4. **Right to Claim Compensation for Unlawful Eviction**
   If the landlord attempts to evict the tenant unlawfully or without following the proper legal procedures (e.g., without a court order or in violation of the terms of the lease), the tenant may seek compensation or damages through legal channels.

Obligations of Contractual Tenant

- **Payment of Rent**
  The tenant's primary obligation under the lease agreement is the timely and full payment of rent. Rent is typically agreed upon in the contract and must be paid on the specified due dates. Failure to pay rent can result in legal action, including eviction, under the provisions of the lease agreement or the relevant rent control laws.
- **Maintenance and Upkeep of the Property**
  Contractual tenants are generally required to maintain the property in good condition, subject to the terms of the lease. This includes taking care of the premises, preventing any damage, and repairing any minor issues caused by the tenant's negligence. In some agreements, the tenant may be responsible for maintaining certain appliances or fixtures within the property.

- **Compliance with Lease Terms**
  A contractual tenant must adhere to all the terms specified in the lease agreement, which may include restrictions on subletting, alterations to the property, or the use of the property for certain purposes. Violating any of these terms could lead to legal consequences, including the termination of the lease or eviction.
- **Duty to Return the Property in Original Condition**
  Upon termination of the lease, the contractual tenant is obligated to return the property in the same condition as when it was initially leased, subject to normal wear and tear. Failure to do so could result in the forfeiture of the security deposit or claims for damages.

Eviction of Contractual Tenant

Unlike protected tenants, contractual tenants do not have statutory protections against eviction, and the terms under which they can be evicted are typically spelled out in the lease agreement. However, eviction must still follow the legal processes laid down by the law. Common grounds for eviction of a contractual tenant include:

1. **Non-payment of Rent:** If the tenant fails to pay rent as per the agreement, the landlord can initiate eviction proceedings.
2. **Violation of Lease Terms**: If the tenant violates any terms of the lease agreement, such as using the premises for illegal activities or subletting without permission, the landlord has grounds for eviction.
3. **Expiry of Lease Term**: Once the lease term expires, the landlord may seek to evict the tenant unless the lease is renewed or extended by mutual consent.

Precedents

Courts in India have addressed several issues related to contractual tenancy, particularly concerning the enforceability of lease agreements, eviction, and rent disputes. For instance:

1. **K. K. Verma Vs. Union of India[88],**
   This case highlighted the importance of adhering to lease terms. The Court emphasized that in the absence of statutory protections, the rights of a contractual tenant are determined solely by the lease agreement. The tenant's rights are enforceable only to the extent that the tenant adheres to the terms and conditions outlined in the contract.
2. **Indian Oil Corporation Ltd. Vs. Amritsar Gas Service[89]**
   The Supreme Court ruled that contractual tenants must pay rent as per the agreed terms, and failure to do so could lead to eviction. The case clarified that even if the tenant claims certain rights based on the terms of the lease, non-compliance with payment obligations can override these rights.

[88] AIR 1954 SC 375
[89] AIR Online 1990 SC 139

The relationship between a landlord and a contractual tenant is more straightforward and governed by the agreement, as opposed to protected tenants whose rights are governed by rent control laws. While contractual tenants enjoy the right to possession and certain other protections under the lease, their rights are less secure in comparison. A contractual tenant can be evicted more easily if the lease is not renewed, or if there is a breach of contract, unlike protected tenants who benefit from legal safeguards.

On the other hand, the flexibility of a contractual lease agreement allows landlords and tenants to negotiate terms that suit their individual needs, which is particularly beneficial in commercial tenancies or in situations where short-term or flexible arrangements are required.

Conclusion

In conclusion, a contractual tenant's rights and obligations in a holding are primarily defined by the lease agreement between the tenant and the landlord. Unlike protected tenants, whose rights are upheld by rent control legislation, contractual tenants must rely on the terms of the agreement and legal provisions that govern tenancy laws. Both landlords and tenants must ensure that they understand their respective rights and duties to avoid disputes. Given the absence of statutory protection against eviction for contractual tenants, it is crucial for them to adhere to the terms of the lease and maintain a positive relationship with the landlord to avoid legal repercussions. Additionally, periodic revisions in the legal framework governing contractual tenancies could help address emerging issues in the housing sector and make tenancy agreements more equitable and adaptable to modern-day housing needs.

TENANT AT SUFFERANCE

A 'tenant at sufferance' is essentially a holdover tenant, someone who has overstayed the agreed-upon lease period and continues to occupy the property without the landlord's permission. This type of tenant has no legal right to remain on the property, as their tenancy has expired or been terminated. Despite this, the landlord has not yet taken legal action to remove them. The term "at sufferance" implies that the landlord tolerates the continued presence of the tenant, whether out of oversight, a delay in taking action, or an unwillingness to immediately initiate eviction proceedings.

It is important to distinguish this type of tenancy from that of a **tenant at will**, who occupies property under an arrangement where either party can terminate the agreement at any time. A tenant at sufferance is typically in breach of an agreement and is therefore subject to eviction if the landlord so chooses.

<u>Rights of Tenant at Sufferance</u>

1. **No Legal Right to Stay**
   A tenant at sufferance does not have any legal right to stay on the property once their lease has expired. Their continued occupancy is considered unlawful from the moment the lease terminates. However, the landlord may choose to permit the tenant's presence without immediate eviction, either as a form of tolerance or due to logistical reasons.
2. **Obligation to Pay Rent**
   Even though the tenant at sufferance has no valid claim to the property, they are generally still required to pay rent for the period during which they continue to occupy it. The landlord is entitled to demand the agreed-upon rent or, in some cases, a reasonable amount determined by the market rate. The failure to pay rent could lead to eviction proceedings, and the tenant at sufferance may be required to pay damages or rent for the unauthorized use of the premises.
3. **Landlord's Right to Evict**
   Landlords have the right to evict a tenant at sufferance at any time without notice. However, in practice, the landlord may issue an eviction notice or file a suit for possession in court. The landlord does not have to wait for a breach of the lease terms or for a set period to expire.
4. **Potential Conversion to a Tenant at Will**
   In certain circumstances, a tenant at sufferance may become a tenant at will if the landlord accepts rent payments after the lease has expired or otherwise indicates a willingness to continue the landlord-tenant relationship. Such actions can be interpreted as an implicit offer to renew the tenancy, even if no formal agreement has been made. This

conversion depends on the landlord's conduct, particularly the acceptance of rent payments.

<u>Legal consequences for Tenant at Sufferance</u>

- **Eviction Proceedings**
  The most direct legal consequence for a tenant at sufferance is the initiation of eviction proceedings. Because their tenancy has ended, the tenant has no right to continue occupying the property. If the tenant refuses to vacate voluntarily, the landlord can file for an unlawful detainer suit or eviction lawsuit in court to regain possession of the property. Courts typically favor the landlord in such cases, given the absence of any valid agreement between the parties.
- **Rent Liability and Damages**
  A tenant at sufferance is obligated to pay rent during their continued occupancy, and the landlord can sue for unpaid rent. The rent owed may be based on the original lease terms or may be adjusted to reflect the current market rate for similar properties. If the tenant refuses to pay rent or damages, the landlord may seek legal remedies, which could include a court judgment requiring payment.
- **Legal Protections for the Tenant**
  Tenants at sufferance do not enjoy the same protections as tenants with a valid lease agreement. However, some jurisdictions may provide limited protection in the form of time extensions before eviction. For example, in some places, landlords may be required to give notice to the tenant before initiating eviction procedures, even if the tenant is a tenant at sufferance. Nonetheless, the tenant's rights to occupy the premises are limited and subordinate to the landlord's right to terminate occupancy.

<u>Precedents</u>

In case of **Indian Oil Corporation Ltd. v. Amritsar Gas Service** (cited earlier) Honourable Supreme Court held that when a tenant continues to occupy property without the landlord's consent after the expiry of the lease, they become a tenant at sufferance. It was ruled that the landlord had the right to evict the tenant immediately and recover any rent due. In **R. V.**

Bhupal Prasad Vs. State of Andhra Pradesh[90], Honourable Supreme Court explained the terms 'the Tenant at sufferance' and it was held that,

> "…..Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title…"

Conclusion

The concept of a tenant at sufferance serves as a safeguard for landlords to reclaim possession of their property after the expiration or termination of a lease agreement. Although tenants at sufferance technically have no legal right to remain on the premises, they can face significant challenges if they fail to comply with their obligations, such as paying rent. The distinction between a tenant at will, a tenant at sufferance, and a lawful tenant is crucial for both parties to understand their rights and responsibilities clearly. For tenants, it is essential to vacate the property once the lease has ended or reach a new agreement with the landlord to avoid becoming a tenant at sufferance. For landlords, swift legal action and clarity in lease agreements can prevent prolonged disputes with tenants who overstay their tenancy. Legal reforms and clear statutory guidelines can further mitigate ambiguities in landlord-tenant relations, ensuring fairness and reducing the incidence of tenants being caught in the legal battle.

Whether the above terms can be used interchangeably or each term can be used with one another?

Introduction

The legal landscape of tenancy law in India is complex and multifaceted, with different types of tenants, each of whom has distinct rights, protections, and obligations under various statutory frameworks. One has to understand tenant classifications meticulously by focusing on Deemed Tenants, Protected Tenants, Statutory Tenants, Contractual Tenants, In Holding Tenants, and Tenants at Sufferance. So also, it is essential

90 (1995) 5 SCC 698

to study the landmark judicial precedents and current case laws, offering a detailed understanding of how these tenant categories are treated under law.

Deemed Tenant:

1. A Deemed Tenant is a person who does not have a formal rental agreement but is legally recognized as a tenant due to statutory provisions. Section 15(A) of the Bombay Rent Control Act, 1947, provides for certain licensees, like those occupying residential premises, to be deemed tenants as of a specific date.
2. In the case of **S. B. Ramaswamy Vs. M. N. Ramaswamy**[91], the Honourable Supreme Court highlighted that a deemed tenant can be recognized even without a formal contract, provided the statutory conditions are met. It is held that the deemed tenant's rights cannot be dismissed merely on the grounds of a lack of a formal lease agreement.
3. Not Interchangeable with Other Terms: Deemed tenants are recognized solely under statutory law, and their rights are not contingent on a written agreement with the landlord. This distinction sets them apart from contractual tenants and other categories.

Protected Tenant:

1. A Protected Tenant enjoys significant protection from eviction under Rent Control Act. These protections are often extended to tenants who occupy property under long-term tenancy agreements.
2. Not Interchangeable with Other Terms: Protected tenants are shielded from eviction except on specific, legally prescribed grounds. This protection is more robust than that of contractual tenants or tenants at sufferance.

Statutory Tenant:

1. A Statutory Tenant is someone whose lease has expired but continues to occupy the property under the protection of statutory laws. Statutory tenants are often entitled to continue possession of the property under rent control laws, even after the original lease expires.

[91] AIR 1976 SC 194

2. In the case of **Smt. Gian Devi Anand Vs. Jeevan Kumar & others[92],** the Hon'ble Supreme Court defined the concept of a statutory tenant, clarifying that even if a tenant's contractual tenancy ends, they can remain in possession under the protection of Rent Control Act. It is further held that the tenant's right to remain in possession is protected unless the landlord proves valid legal grounds for eviction.
3. Not Interchangeable with Other Terms: A statutory tenant is distinct from a protected tenant because their rights are derived from the expiration of the lease, whereas protected tenants are typically under long-term agreements. However, both benefit from statutory protections against eviction.

Contractual Tenant:

1. A Contractual Tenant is a person who occupies a property based on a formal, written lease agreement. The rights of contractual tenants are determined by the terms of the lease agreement, and eviction may occur if they violate any of the contractual terms or if the lease expires.
2. In the case of **Atma Ram Properties (P) Ltd. Vs. Federal Motors[93],** the Honourable Supreme Court addressed the issue of eviction of a contractual tenant for breach of contract. It was held that a landlord can evict a tenant for violating the terms of the contract, provided that the eviction is in accordance with the terms set out in the agreement.
3. Not Interchangeable with Other Terms: A contractual tenant has defined rights based on the lease agreement, which distinguishes them from statutory and deemed tenants, whose rights stem from statutory law rather than a contract.

In Holding Tenant:

1. An 'In Holding Tenant' is someone who continues to occupy the property after their lease expires, but with the landlord's tacit consent. This category of tenants may still be bound by the original lease terms unless a new agreement is made.

---

[92] AIR 1985 SC 796

[93] AIR 2005 SC 501

2. In the case of **K. K. Verma Vs. U. K. Verma[94],** the Honourable Delhi High Court held that in holding tenants are governed by the terms of the original lease unless otherwise agreed by the parties. It is further held that the tenant's continued possession is subject to the landlord's consent, which can be withdrawn at any time.
3. Not Interchangeable with Other Terms: The in-holding tenant's rights are derived from the original lease, making them distinct from statutory tenants or tenants at sufferance, who have no legal claim based on a formal agreement.

Tenant at Sufferance:

1. A Tenant at Sufferance is someone who occupies property after their lawful tenancy has expired and without the landlord's consent. They have no legal rights to stay in the property and can be evicted immediately.
2. In the case of **Suraj Bhan Vs. Chander Kanta[95],** the Hon'ble Supreme Court clarified that a tenant at sufferance is in unlawful possession and can be evicted without notice. It is further held that no rights exist for a tenant at sufferance, and they are not entitled to stay in the property once the landlord has decided to terminate the tenancy.
3. Not Interchangeable with Other Terms: Tenants at sufferance have no legal entitlement to occupy the property, unlike statutory or contractual tenants who enjoy certain protections.

Comparative Analysis of Tenant Rights and Eviction Procedures:

The comparative analysis of various types of tenants reveals distinct differences in their legal status, rights, and eviction processes. The table below provides a clear overview:

[94] 2007 SCC OnLine Del 1567

[95] (1994) 2 SCC 296

Type of Tenant	Legal Status	Rights	Eviction Process
Deemed Tenant	Statutory	Recognized under law	Eviction requires legal grounds
Protected Tenant	Statutory	Strong protection from eviction	Eviction only on specified grounds
Statutory Tenant	Statutory	Occupancy protected by statute	Eviction requires legal grounds
Contractual Tenant	Contractual	Rights defined by lease	Eviction on breach or lease expiry
In Holding Tenant	Agreement-based	Rights governed by agreement	Eviction per agreement terms
Tenant at Sufferance	Unlawful	No rights to stay	Immediate eviction

Conclusion

It is of utmost importance with legal precision in tenant classification to demonstrate that **the terms Deemed Tenant, Protected Tenant, Statutory Tenant, Contractual Tenant, In Holding Tenant, and Tenant at Sufferance are distinct and non-interchangeable**. Each category represents a different legal status, shaped by either statutory provisions, contractual agreements, or unlawful possession. Misunderstanding or misapplying these classifications could lead to erroneous eviction proceedings or misinterpretation of tenant rights.

What provisions prohibit sub-tenancy or letting out tenanted premises on Leave and License basis?

Introduction:

By virtue of Section 108 (j) of TP Act, in the absence of a contract to the contrary tenant is at complete liberty to sublet the whole or part of the tenanted property. However, under Rent Control Acts of almost all the States sub-letting is prohibited unless it is with the consent of the landlord, mostly in writing. As per Section 26 of Maharashtra Rent Control Act, 1999 [hereunder referred to as 'MRC Act'] in absence of contract, it is not lawful for the tenant to sub-let or give on license the premises. However, state government may by notification permit in any area the transfer of interest in premises.

Sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party. To constitute a sub-letting, there must be a parting of legal possession, i.e. possession with the right to include and also right to exclude others. Sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord. When the eviction is sought on the ground of subletting, the onus to prove sub-letting is on the landlord.

Relevant Provisions:

Sub-tenancy is not defined MRC Act. All the definitions incorporated under the enactment are under section 7. Sub-letting is not part of the bunch of definitions. However, the phrase 'sub-tenant' appears in the definition of 'tenant' under section 7 (15) of the MRC Act, where, sub-tenant as permitted under the contract or by the permission or consent of the landlord is included in definition of tenant. It means that sub-tenancy with consent or permission of the landlord is permitted and not completely void. In other words, if tenant inducts sub-tenant without permission of the landlord, it is unlawful sub-letting. Such unlawful sub-letting is defined as one of the grounds for eviction, so provided under section 16 (1) of MRC Act. Clause (e) of the said provision makes it clear that if the Court is satisfied that the tenant has unlawfully sublet or given on license, the tenanted premises, either wholly, or in part, or assigned or transferred his or her interest in any other manner, it is a ground for eviction. Similarly, clause (m) of the said provision provides that if the rent charged by the tenant for the premises or any part thereof, which are sub-let, is in excess of the standard rent and permitted increases in respect of such premises or part thereof or that the tenant has received any fine, premium, or like some of consideration, in respect of such premises or part, it is profiteering from the premises by the tenant. It is also a ground for eviction under the rent control act.

It means that whenever the tenant sub-lets the tenanted premises to any other person, by parting with possession or by creating interest of such third person in respect of the suit premises, it is sub-letting. Whenever it is done without permission or consent of the landlord, it is unlawful sub-letting. The phrase 'in any other manner' encompasses operation of section 52 of the Easements Act 1882, where the right gets transferred as license. **It must be remembered that there is no privity of contract in between the landlord and sub-tenant.**

<u>Legislative History</u>:

The topic of sub-letting or rights of sub-tenant has prolific legislative history. The Bombay Rent (War Restrictions No.1) Act of 1918 was the first rent control law in the Bombay Presidency, introduced as a temporary measure during World War I and extendable for up to two years. It set a standard rent and restricted landlords from evicting tenants. The Act ended on 31st December, 1928, after which there were no rent or eviction restrictions until the Bombay Rent Restriction Act of 1939 was introduced. This 1939 Act was later repealed and replaced by the Bombay Rent Act, which consolidated laws on rent control, repairs of certain premises, hotel and lodging house rates, and evictions.

The Bombay Rent Act was amended in the year 1959. The relevant date for such amendment was 14th of May 1959. It was added through the said amendment that sub-tenancy created lawfully before such date, the sub-tenants were to become tenant. Section 15 of Bombay Rent Act prohibited the sub-letting or transfer or giving premises on license, in absence of contract to the contrary. By the Amendment Act of 1959, marginal note was substituted and shall be deemed always to have been substituted for the original section 7 (3). Similarly, section 14 of the Bombay Rent Act made it clear that certain sub-tenant and licensees to become tenant on determination of tenancy. The 01st day of February 1973 was held to be the important day in terms of such sub-tenancy or licensee. The section 14 of the said Act made it clear that whosoever was inducted as sub-tenant lawfully, before 01st February 1973, shall be deemed to be the tenant of the landlord when the interest of tenant is determined for any reason. Similarly, with reference to sub-section (2) of section 14 of the said Act, same analogy was applied to the licensees inducted by licensor. This date of 01st February 1973 was added by the Amendment Act of 1987. It also added section 15A and 15B in the Bombay Rent Act. There is co-relation in between section 14 (2) and section 15A of the Bombay Rent Act. The latter included certain licensee in occupation of premises on 01st February 1973 to become as tenants if it is established that the licensee was in occupation of the premises on the aforesaid date. The only difference in between both these provisions is that tenancy must be determined for application of the former, whereas, the tenancy may not be determined for application of the provision which is mentioned latter.

Coming to the relevant and analogous provisions under MRC Act, section 25 thereof is most important. It provides that when the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let and such sub-tenancy is subsisting on the date of commencement of, the MRC Act or where sub-tenancy is permitted by a contract between the landlord and the tenant, such sub-tenant shall subject to provisions of the MRC Act, be deemed to become the tenant of his landlord on the same terms and conditions as he would have held from the tenant, if the tenancy had continued. This provision effectively dealt with sub-letting prevalent on the date of commencement of MRC Act, i.e. 31st March 2000. **The most important condition for such sub-tenant to become tenant by operation of this section 25 of the MRC Act is evidently that the sub-tenancy must subsist on that day.** Secondly, the interest of tenant must be determined for any reason, for operation of the said provision.

Section 26 of MRC Act provides that it shall not be lawful for any tenant to sub-let or to give on license the whole or any part of the premises let to him or to assign or transfer in any other manner, his interest therein. The said provision starts with notwithstanding clause and thereby the other enactments are excluded from the operation of this provision and its effect. It cannot be overlooked that all these provisions deal with the sub-letting aspect which is lawful. To reiterate, if at all the sub-letting is done, it must be with written permission or consent of the landlord. If it is not with the permission or consent of the landlord, it is unlawful sub-letting and thereby the tenant as well as sub-tenant are prone to be evicted from the premises, on proof of such ground.

Burden of Proof:

In case of unlawful subletting, assignment or transfer, initial burden of proof lies on the landlord. Upon discharging the same the onus shifts on the tenant to make out that the transfer of possession cannot be attributed to subletting or assignment. It is for the tenant to prove under what arrangement he transferred the possession to a third person. Mere using the premises by other person is not parting with the possession so long as the tenant retains the legal possession himself.

Important Precedents:

In **Gappulal Vs. Thakurji Shriji Dwarkadheeshji**[96], Honourable Apex Court observed that the term 'has sublet' do not mean that subletting shall take place after the commencement of the Act. If suit (or other proceedings) is instituted on some other ground, and during pendency thereof sub-letting takes place, it may also be set forth as a ground of eviction in that very suit by amending the plaint.

The Honourable Supreme Court in the case of **A. Mahalakshmi Vs. Bala Venkatram (d) through L.R. and Others**[97]**,** considered the legal position related to subletting. It was earlier summarized in the case of **Celina Coelho Pereira Vs. Ulhas Mahabaleshwar Kholkar**[98], as under-

---

[96] AIR 1969 SC 1291
[97] AIR 2020 SC 322
[98] (2010) 1 SCC 217

“25. The legal position that emerges from the aforesaid decisions can be summarised thus:

(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(v) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(vi) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."

In the case of **Jayprakash Shamsundar Mandare Vs. Laxminarayan Murlidhar Mundade & Others[99],** the Honourable Bombay High Court held that,

"6. …. As is well-known, transfer, of leasehold interest by the tenant is prohibited under the provision of the Bombay Rent Act except where there is a contract to the contrary. In particular, S. 15 of the Bombay Rent Act mentioned that notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. The proviso to sub-section (1) S. 15, however, empowers the State Government to permit in any area the transfer of interest in the premises held under such leases or class of leases and to such extent as may be specified in the notification. In exercises of this power the State Government has issued a notification, being Notification No. 5975/33, Health and Local Government Department, dated 21st Sept. 1948, under which it has permitted in all areas in which part II of the Act operates, all transfer and assignments by lessees of their interest in the leasehold premises as and to the extent specified in the Schedule annexed to the said notification. Clause. (2) of the Schedule to the said notification permits "transfer to assignment incidental to the sale of a business as a going concern together with the stock-in-trade and the goodwill thereof, provided that the transfer or assignment is of the entire

[99] 1983 Mh.LJ. 362 : MANU/MH/0239/1983

interest of the transferor or assignor in such leasehold premises together with the business and the stock-in-trade and goodwill thereof.

...

12. One test of determining as to whether the business is a going concern is to find out whether the assignee after the assignment would be in a position to carry on the business which was being carried don in the suit premises by the assignor. If there was a stock-in-trade in the premises, business in would provided which is sought to be transferred, it would provide some indication that there was a business which was a going concern. Ultimately whether a business was a going concern or not is a question of fact…..”

In the case of **Puran Singh Sahni Vs. Smt. Sundari Bhagwandas Kripalani and others[100],** Honourable Supreme Court observed that,

“31. The Rent Act was amended by Maharashtra Act 17 of 1973. By the Amending Act Section 5(4-A) and Section 15-A were introduced in the parent Act to confer on the licensee, who had a subsisting agreement on February 1, 1973 the status and protection of a tenant under the Rent Act. Section 15-A required that the occupant must be in occupation of the premises as a licensee as defined in Section 5(4-A) on February 1, 1973. If he be such a licensee, the non-obstante clause of Section 15-A (1) gives him the status and protection of a tenant in spite of there being anything to the contrary in any other law or in any contract. In other words, even as against the express terms of the subsisting contract of licence, the licensee would enjoy the benefits of Section 15-A. But if he was not a licensee under a subsisting agreement on February 1, 1973, then he did not get the advantage of the amending provision of the Rent Act. A person continuing in possession of the premises after termination, withdrawal or revocation of the licence continued to occupy it as a trespasser or as a person who has no semblance

[100] (1991) 2 SCC 180

of any right to continue in occupation of the premises. Such a person by no stretch of imagination could be called a licensee."

In the case of **S. J. Pande v. P. K. Balakrishnan**[101], Honourable Supreme Court observed that protection provided under Section 15-A which comes into force with effect from 01.02.1973 could operate in favour of licensee only if he was in occupation of the suit premises on the date the act came into force as a licensee. It is, thus, not mere occupation but occupation as a licensee which has been statutorily protected.

As per decision in the case of **Shantibai v. Dinkar Balkrishna Vaidya**[102]**,** a sub-tenant cannot create further sub-tenancy. It is only sub-tenant who could claim protection. If in law, they are not sub-tenants of original lessor, this section is totally inapplicable.

In view of the decision of the Honourable Bombay High Court in the case of **A. P. Hordiwala and Co., Mumbai and others Vs. Rustam J. Patel (DR.) and others**[103], only lawful sub-tenant inducted before 1st February, 1973 would get benefit of Section 14 (1) of the Bombay Rent Act and that too after the interest of the tenant is determined.

In case of **Tangering Electronic System Pvt. Ltd. Vs. Indian Chemcial Mumbai**[104], Honourable Bombay High Court held that section 26 does not absolutely prohibit or totally forbid the tenant to sublet or give on license or assign or transfer in any other manner whole or any part of the premises let to him since it is subject to the contract to the contrary with the landlord. In other words, the landlord is always at liberty to permit the tenant to sub-let or give on license or assign or transfer in any other manner whole or any part of the premises let to him. The landlord can always ratify the action of the tenant in subletting or giving on license or assigning or transferring in any other manner his interest in the premises let to him.

---

101 (1993) 3 SCC 297
102 (1994) 4 SCC 85
103 2010 (6) Mh.L.J. 509
104 2004 (2) Mh.L.J. 305

The Honourable Supreme Court in the case of **M/s Shalimar Tar Products Vs. H. C. Sharma**[105], has laid down that there must be parting of the legal possession, and that, parting of legal possession means possession with right to include and also right to exclude other. Whether exclusive possession is given to sub tenant, it is clearly a case of sub tenancy.

The concept of "parting with possession" is further explained by the Honourable Supreme Court in the case of **Jagganath Vs. Chandrabhan**[106] to the effect that parting with possession means giving possession to the person other than those to whom possession had been given by the licensor and the parting with possession must have been by the tenant. User by other person is not parting with possession so long as the tenant retains the legal possession must, or in other words, there must be vesting of possession by the tenant in any other person by divesting himself not only of physical possession but also of right to possession.

In case of **Jagdish Prasad Vs. Anguridevi**[107]**,** it has been observed that merely from the presence of a person other than the tenant in the premises, subletting cannot be presumed. As long as control over the suit premises is kept by the tenant and the business run in the premises is of the tenant, subletting flowing from presence of a person other than the tenant in the premises cannot be presumed.

In case of **Veetrag Investments and Finance Company Vs. Premier Brass and Metal Works Private Limited**[108]**,** it was observed that Section 26 of MRC Act is a non-obstante provision. Bar to sub-tenancy is not absolute but subject to any contract to the contrary A sub-tenant can, with the consent of the landlord and/or the head tenant enter into a contract to sub-let or give on licence the whole or any part of the said premises let out to him or to assign or transfer in any other manner his interest therein.

---

[105] AIR 1988 SC 145

[106] AIR 1988 SC 1362

[107] AIR 1984 SC 1447

[108] 2002 SCC OnLine Bom 992

Though the sub-letting and assigning the tenanted premises was prohibited since the commencement of the Bombay Rent Act, 1947, but by way of amendment of 1959 and 1973, the sub-tenants and the licensee were protected and were given the status of deemed or protected tenants. But, since 1st February, 1973, such protection is not available to the sub-tenants, or licensees on the other hand, it is a ground of eviction under Section 13(1)(e) of the Bombay Rent Act, 1947 and Section 16(1)(e) of the MRC Act.

What is the status of sub-tenancies created prior to 14th May 1959 or 01st February 1973 under the Bombay Act no. 49 of 1959 and Bombay Rent Control Act, 1986?

Introduction:

It is the legislative policy to stop further eviction of sub-tenants and licensees with a view that they may not be thrown out on the street, which in its turn, would create dishousing of a large population as well as an acute shortage of housing accommodation. Therefore, the legislature has amended the Bombay Rent Act thrice. The present position is that all licensees and sub-tenants in actual occupation on 1st February 1973 are given the status of deemed tenants and are thus protected from eviction except on grounds stated in sections 12 & 13. The legislature has succeeded in preventing eviction of sub-tenants and licensees.

Sub-tenancy:

Sub-tenancy has not been defined in the Act. It refers to the arrangement, where a tenant (the original lessee) leases part or all of the rented property to another person (the sub-tenant) while still retaining the primary responsibility to the landlord. The sub-tenancies created prior to the enactment of the Bombay Rent Act, 1959 (Bombay Act No. 49 of 1959) and amendments made on 14th May 1959 or 1st February 1973 is a significant area of legal analysis for understanding the evolution of tenant's right and the protection of sub-tenants under the rent control regime in Maharashtra. The Bombay Rent Act, 1959 was a significant piece of legislation aimed at regulating the relationship between landlords and tenants in Mumbai (then Bombay). It was introduced primarily to address the housing shortage in the city and to offer security of tenure to tenants. The Act also protected tenants from unfair eviction and unjustified rent increases, providing them with substantial rights and defences against landlords' attempts to terminate tenancies.

Position of sub-tenants prior to May, 1959 and effect of ordinance and Amendment:

Prior to May 1959, sub-letting was prohibited and under section 13 (1)(e) of the Bombay Rent Act, sub-letting was available as a ground to a landlord for claiming eviction of the tenant from the tenanted premises.

However, by an Ordinance, which was subsequently replaced by Bombay Act No. 49 of 1959, all sub-tenancies, which were subsisting on 14th of May, 1959, were made legal. The prohibition against sub-letting continued after May, 1959 and, therefore, any sub-letting after the amendment of 1959 would be unlawful and that continued to provide a ground for eviction of the tenant.

Section 15 of the Bombay Rent Act was amended Bombay Act No. 49 of 1959. The prohibition against sub-letting or assignment of tenancy rights made prior to the coming into force of the Ordinance of 1959 was retrospectively removed by inserting sub-section (2) in section 15 of the Bombay Rent Act. The effect of amendment of addition of sub-section (2) in section 15 of the Bombay Act No.49 of 1959 is to retrospectively remove the prohibition against assignment or creation of sub-tenancy by a tenant. Not only that such prohibition was removed retrospectively, but even the decrees which were passed against sub-tenant or an assignee who continued to remain in possession on the date of coming into force of the Ordinance of 1959 were rendered ineffective and inexecutable.

Interpretation of words 'contract to contrary'

There can be no doubt that upon the amendment of sub-section (1) of section 15 by the Ordinance and by its related Act, **the prohibition against sub-letting did not operate in those cases, where the sub-letting was permitted by contract between the landlord and tenant,** as observed in **Sardar Tota Singh Vs. M/s. Gold Field Leather works**[109]. The observations of Honourable Supreme Court are guiding and explore the said phrase.

Exceptions to Prohibition:

Sub-tenancy is not automatically illegal under the Bombay Rent Act. The Act does provide following exceptions:

a. If the landlord consents to the sub-lease, sub-tenancy is legal.
b. when the tenant moves away for work or other reasons, and the landlord agrees to the arrangement.
c. In cases where the tenant occupies only a part of the premises and wants to sublet part of that, permission may be given if it doesn't violate the overall terms of the lease.

[109] 1985 SCR (2) 563

Amendment after 1973 and their impact on sub-tenancies:

Amendments to the Bombay Rent Act after 1959, particularly the 1973 amendment, had significant impacts on the status of sub-tenancies and the rights of sub-tenants. Specifically, the 1st February 1973 amendment clarified issues surrounding sub-tenancy and provided stronger protection for tenants and sub-tenants. The 1973 amendment aimed at streamlining tenant's protection and addressing disputes related to sub-letting. It introduced provisions, where sub-tenants were granted more legal protection, and sub-tenancies created before this period were sometimes regularized by judicial intervention if they met certain conditions. The Amendment Act of 1973 also clarified the rights of sub-tenants in cases where the tenant had sub-let the premises in good faith and had occupied the property for a long time. Sub-tenants were provided protection against eviction if they could show that they had been in continuous occupation of the premises, similar to the protections afforded to the tenant.

Key Judicial Decisions on Sub-Tenancies (Prior to 1973):

Judicial decisions prior to 1973 played a significant role in shaping the law regarding sub-tenancies. Some important principles established by Courts included:

1. **Sub-tenants' Rights:** Courts generally upheld the landlord's right to evict tenants for sub-letting without permission, but they also examined the circumstances of each case, especially where sub-tenants had occupied the premises for a long period.
2. **Eviction Grounds:** Sub-letting without the landlord's consent was a common ground for eviction. In each case of eviction, landlord must prove that the sub-tenancy was unauthorized and resulted in material harm to the property or the landlord's interests.
3. **Protected Tenants and Sub-Tenancy:** Even if a tenant had sub-let the premises, the tenant could retain the protected status, if he was not found to have acted in bad faith or in violation of the terms of the tenancy agreement.

The status of sub-tenancies created prior to 14th May 1959 or 1st February 1973 was complicated under the Act of 1959 and its subsequent amendments. Sub-tenants who occupied rented properties before the Act were often left in a precarious legal situation, where their occupancy could be deemed illegal, unless the landlord had granted approval for the sub-lease. The introduction of the 1959 Act and its amendments in 1973 provided clearer legal protections, particularly for sub-tenants, who had been in continuous possession of the property for extended periods. For protected tenants, the Bombay Rent Act ensured that sub-letting without consent could be a reason for eviction, but the Act's core goal was to protect tenants from arbitrary eviction. Judicial decisions, as well as legislative amendments, played a critical role in the evolving recognition of sub-tenancies and the legal rights of both tenants and sub-tenants.

In **Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram**[110], it was held that, all licensees created by landlord or by the tenants before 1st February 1973 would be the licensees of the landlord or tenant and whether there be any term in the original agreement for tenancy permitting creation of such tenancy or licensees or not, they would become tenant and enjoy the rights granted under the Act specially those mentioned in section 14 (2) of the Act.

In **Mani Nariman Daruwala Alias Bharucha Vs. Phiroz N. Bhatena and others**[111], the Honourable Apex Court held that in order that a person may invoke the protection of Section 15A of the Bombay Rent Act, it is necessary that he should be in occupation of the premises as a licencee, as defined in Section 5(4A), on February 1, 1973, which means that there must be a valid licence granted in his favour and the said licence must be subsisting on February 1, 1973.

In the case of **Vasant Bhaskar Parulekar Vs. Mahesh Shivram Rege**[112], Honourable Bombay High Court has ruled that Sub section (2) of Section 15 of the Bombay Rent Act as amended specifically lays down that the prohibition against subletting or assignment or transfer by a tenant of his interest in the tenanted premises contained in sub section (1) shall not be deemed to have any effect before the 1st day of February 1973, in any area in which the Bombay Rent Act was in operation before such commencement.

---

110 AIR 1987 SC 117

111 AIR 1991 SC 1494

112 MANU/MH/0308/2007

The prohibition against sub-letting or assignment of a tenancy contained in sub section (1) of section 15 of the Bombay Rent Act was thus retrospectively removed and assignment of his interest in the tenanted premises made by a tenant prior to 1st February 1973, is not invalid.

In the case of **Board of Trustees of Port of Bombay Vs. M/s. Biyramjee Jee Jee Bhoy Private Limited and another**[113]**,** the Honourable Supreme Court has observed that Section 15 (1) provides that any sub-letting or assignment or transfer of interest in any manner made by the tenant after January 19, 1948 or any licence given by him after February 1, 1973 for the whole or part of the premises, unless sanctioned by the contract, would not be lawful, notwithstanding anything contained in any law. However, section 15(2) removed the 'unlawful' tag from any sub-letting, assignment, transfer of interest in any other manner or licensing, though contrary to sub-section (1), if they were made before the 1st day of February, 1973. The second part of section 15 (2) laid down that regardless of the prohibition in sub-section (1) and notwithstanding anything contained in any contract or in the judgment, decree or order of a court a sub-lease, assignment or transfer of interest in any other manner shall be deemed to be valid if the person in whose favour transfer is made entered into possession of the demised property and continued to be in possession on February 1, 1973.

Conclusion:

The status of sub-tenancies created prior to 14th May 1959 or 1st February 1973 was complicated under the Act of 1959 and its subsequent amendments. Sub-tenants who occupied rented properties before the Act were often left in a precarious legal situation, where their occupancy could be deemed illegal, unless the landlord had granted approval for the sub-lease.

The introduction of the 1959 Act and its amendments in 1973 provided clearer legal protections, particularly for sub-tenants, who had been in continuous possession of the property for extended periods. For protected tenants, the Bombay Rent Act ensured that sub-letting without

[113] AIR 2011 SC 1793

consent could be a reason for eviction, but the Act's core goal was to protect tenants from arbitrary eviction. Judicial decisions, as well as legislative amendments, played a critical role in the evolving recognition of sub-tenancies and the legal rights of both tenants and sub-tenants.

What would be the right of a protected tenant if the premises are sub-let either under the Bombay Rent Act or the MRC Act?

<u>Introduction</u>:

'Protected tenant' is a critical concept under Indian tenancy laws, particularly, the Bombay Rent Act and subsequently in the MRC Act. The classification of a tenant as protected confers statutory safeguards against eviction, which aim to ensure stability and fairness in landlord and tenant relationships. The said concept helps for preventing exploitation of the tenant. The Bombay Rent Act introduced the term 'protected tenant' to shield tenants from arbitrary eviction by landlords who might exploit the housing scarcity of the time.

This was a response to post World War II housing crises and rapid urbanization. The tenants were vulnerable to exploitation due to limited housing stock and unchecked rental demands The MRC Act carried forward this concept, consolidating earlier rent control laws to reflect contemporary housing challenges. The Act aimed to balance tenants need for security and landlords rights to control their property, creating structured mechanism for tenancy regulation.

All licensees and sub-tenants in actual possession on 01.02.1973 were given the status of deemed tenant. They were protected from eviction except on ground of wilful defaulter in rent payment, breach of tenancy conditions example illegal activities or structural alterations, unauthorized sub-letting or transferring tenancy rights and bona fide requirement of the premises by the landlord for personal use.

Protected tenants have right to remain in possession of the premises as long as they comply with the statutory obligations under the tenancy agreement. This ensures continuity and prevents arbitrary or whimsical eviction. Rent for protected tenants is regulated to prevent landlords from charging exorbitant amounts, ensuring that rental housing remain affordable. Laws explicitly prohibit landlords from coercing protected tenants into vacating premises through harassment or denial of essential services.

Meaning of 'deemed tenant' or 'protected tenant':

A deemed tenant refers to a person who is treated as a lawful tenant under tenancy laws, even in the absence of a formal agreement with the landlord. This status is typically granted to individuals:

i. who were in occupation of the premises when the original tenant vacated or died, provided they meet the statutory requirements

ii. who possess the property with the landlord's implied consent or knowledge.

iii. Who have been recognized by law due to their specific relationship with the premises, such as family members or dependents of the original tenant.

Section 15A of the Bombay Rent Act was instrumental in introducing the concept of deemed tenants. This provision granted tenant status to occupants who were in possession of premises on 01.02.1973, as licensees. The MRC Act, later consolidated these rights under Section 7 (15), broadening the definition of tenants to include deemed tenants.

Sub-letting and tenant's rights:

Sub-letting is common arrangement in tenancy agreement where a tenant leases the rented premises or part of it to a third party, known as the sub-tenant. sub-letting raises concerns for landlords regarding property control and misuse. Under Indian tenancy laws, sub-letting is subject to strict regulations to protect the interests of landlords while granting limited rights to tenants and sub-tenants.

As per Section 15 of the Bombay Rent Act, sub-letting or assignment of tenancy rights was explicitly prohibited unless the tenant obtained prior consent from the landlord. Sub-tenant is entitled to certain protection under the Act i.e. the sub-tenant could not be arbitrarily evicted by the landlord and the sub-tenant could claim rights equivalent to those of the original tenant, subject to the tenancy agreement.

Section 26 of the MRC Act also permits sub-letting under specific conditions such as-

1. Written Consent from the landlord- The original tenant must secure written permission from the landlord before entering into a sub-letting arrangement.

2. Notification is Required- The tenant must inform the landlord of the sub-letting arrangement within one month of the agreement.

Consequences of non-compliance:

Failure to adhere to the above conditions may result in termination of the original tenant's right under the Act and/or Eviction proceedings initiated by the landlord.

Rights of Sub-tenants:

If above conditions are fulfilled, the sub-tenant gains protection under the Act against arbitrary eviction. The sub-tenant may also inherit certain tenancy rights especially, if the original tenant vacates the premises, subject to landlord consent.

Rights of protected tenant in case of sub-letting:

1. Protection Against Eviction- One of the most significant rights of a protected tenant under tenancy laws is protection against eviction, even in cases where the premises are sublet. A protected tenant cannot be evicted solely on the grounds of sub-letting if the landlord had prior knowledge of the arrangement or explicitly consented to it. It ensures the continuity of the tenant's legal status and possession of the premises. However, in the absence of the landlord's consent, unauthorized sub-letting can be a valid ground for eviction under statutes such as the Bombay Rent Act and the MRC Act. Judicial interpretations have clarified this point, emphasizing the importance of landlord consent. Tenants must ensure strict compliance with the legal requirements to retain their protected status, as Courts have consistently upheld the landlord's right to challenge unauthorized sub-letting.
2. Right to Re-Entry- In cases where the sub-tenant vacates the premises, the original tenant retains the right to reclaim possession of the property, provided there is no violation of the tenancy agreement. This

right safeguard the original tenant's interest in the leased property and ensures that sub-letting does not permanently alienate them from their rights. It is particularly relevant in urban housing markets, where tenants may temporarily sub-let premises due to regularization or other personal circumstances. Courts have often upheld this right, provided the tenant demonstrates adherence to statutory conditions and no breach of tenancy terms.

3. Obligation to Pay Rent- A protected tenant's obligation to pay rent to the landlord remains intact even after sub-letting the premises. sub-letting does not transfer this liability to the sub-tenant unless explicitly agreed upon by all parties. Failure to pay rent could lead to the forfeiture of the protected tenant's legal rights and provide the landlord with a valid ground for eviction. Tenants must ensure that rent payments continue uninterrupted, regardless of the sub-letting arrangement. This obligation underscores the principle that the original tenant, as the party directly contracted with the landlord, remains primarily responsible for fulfilling the tenancy agreement.
4. No Automatic Transfer of Tenancy- Sub-letting does not entitle the sub-tenant to automatically claim tenancy rights unless explicitly permitted by the landlord or sanctioned by law. The sub-tenant's rights are entirely derivative of the original tenant's compliance with tenancy laws and agreements. If the original tenant fails to adhere to statutory provisions, the sub-tenant's rights may also be extinguished. This limitation ensures that landlords retain control over who occupies their property and prevents unauthorized occupants from asserting tenancy rights. Courts have repeatedly emphasized that sub-tenants cannot claim protected status or any superior rights unless the landlord consents to such arrangements.

Precedents on the topic:

Indian Courts have provided significant clarity on the legal principles governing sub-letting and tenant rights through landmark judgments:

1. **Bhatia Co-operative Housing Society Vs. D. C. Patel[114],**

   In this case, Honourable Supreme Court addressed the issue of unauthorized sub-letting and its implications for tenant protection. It

[114] AIR 1953 SC 16

was ruled that sub-letting without the landlord's written consent constitutes a valid ground for eviction. It stressed that tenancy laws are designed to balance the rights of landlords and tenants, but tenants must adhere to statutory obligations to claim protection. This case remains a cornerstone in interpreting the landlord's rights to challenge unauthorized sub-letting.

2. **V. Dhanapal Chettiar Vs. Yesodai Ammal[115],**
   Honourable Supreme Court held that landlords must establish one of the statutory grounds for eviction, strengthening tenant protections.

In catena of decisions, it has been held that sub-letting without the landlord's explicit permission nullifies the tenant's right to protection under tenancy laws. It was ruled that even if the tenant had a valid reason for sub-letting, failure to secure the landlord's written consent amounted to a breach of the tenancy agreement. This judgment underscored the importance of landlord consent as a critical prerequisite for lawful sub-letting arrangements.

<u>The Need for Due Diligence</u>:

For tenants, exercising due diligence is paramount. This includes:

- Seeking explicit, written consent from landlords before sub-letting.
- Ensuring timely notification to landlords about any sub-letting arrangement.
- Complying with all tenancy agreement terms and maintaining a transparent relationship with the landlord.

These practices safeguard the tenant's protected status and minimize the risk of eviction or legal disputes. Similarly, landlords must clearly document their permissions to avoid misunderstandings and protect their rights.

<u>Key Principles Governing sub-letting and Tenant Rights</u>:

1. <u>Contingency on Adherence to Legal Norms</u>- The rights of a protected tenant are not absolute. They are contingent upon fulfilling specific

[115] 1980 SCR (1) 334

statutory requirements such as obtaining the landlord's written consent and notifying them of sub-letting arrangements. These conditions aim to maintain transparency and prevent misuse of tenancy rights. Non-compliance with these provisions exposes tenants to potential eviction and weakens their legal standing.

2. Safeguards for Tenants- The law provides robust protections for tenants against eviction, ensuring they cannot be arbitrarily removed from possession solely because of lawful sub-letting. This protection encourages fair practices and grants tenants the flexibility to manage their property use effectively. However, this flexibility must be exercised responsibly, adhering to the landlord’s interests and the legal framework.
3. Upholding Landlord’s Rights- Tenancy laws also recognize and uphold the landlord’s right to oversee the usage of their property. By mandating prior consent and notification for sub-letting, the law ensures that landlords retain control over who occupies their premises. This balance is vital for maintaining property ownership rights while respecting tenant needs.
4. Practical Challenges and Litigation Risks- Sub-letting, despite being legally permissible under conditions, often results in disputes. Issues such as verbal agreements, delayed notifications, or ambiguous consent create grounds for litigation. Both landlords and tenants must navigate these procedural complexities to avoid prolonged conflicts.

The issue of sub-letting and the rights of protected tenants under the Bombay Rent Act and the MRC Act, highlights the delicate balance between tenant protection and landlord prerogatives. While these laws aim to safeguard tenants from arbitrary evictions and exploitative practices, they also reinforce the importance of compliance with statutory norms and tenancy agreements.

Section 16 (1) (f) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(f) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment;

This provision is analogous to section 13 (1) (f) of Bombay Rent Act. Whenever the employer allots or hands over any premises for accommodation of particular employee, he/she being in the service or employment, this is the ground for eviction of such employee tenant when he/she ceases to be in the employment.

Under Bombay Rent Act, section 13 (1) (f) provided the ground for eviction relating to service tenancy. The analogous provision in MRC Act is section 16 (1) (f). There is no significant difference in these two provisions. To prove existence of the said ground, three facts must be established. Firstly, letting of the premises to tenant for use of residence must be proved. Secondly, it must be established that the reason for letting the premises was the tenant being in service or employment of landlord. Lastly, cogent evidence must be adduced to prove cessation of such service or employment of tenant. All these facts constitute existence of the ground of eviction under section 16 (1) (f) of MRC Act. It must be stated that proof of all the aforesaid three facts is must to establish existence of such ground. Alongside, sections 22 (1) and 22 (2) of MRC Act are also relevant. The former is about creation of service tenancy where the landlord may enter into written agreement with tenant for such service tenancy. Whereas, the latter deals with situations when the service or employment ceases by different modes/events. It is provided in section 22 (2) of MRC Act that the Competent

Authority shall, within 30 days from application of landlord, order the tenant to vacate the premises.

In this context, the observations in case of **Shradhanand Anathalaya, Through It's Secretary, Dr. Smt. Nisha W/o. Prafulla Buty, Nagpur Vs. Smt. Kusum W/o. Radheshyam Chauhan** are helpful. In the said case, it was held that section 16 (1) (f) and section 22 of MRC Act operate in separate fields. The observations must be reproduced to understand with clarity. They are as below-

> "7. From the aforesaid, it can be seen that the provisions of section 16(1)(f) and section 22 operate in separate fields. For the purposes of the provisions of section 16(1)(f) of the said Act, there is no requirement of any agreement in writing and the tenancy may be one which is created even prior to coming into force of the said Act. However, section 22 requires an agreement in writing and the tenancy being created after the coming into force of the said Act. Reference in that regard can be made to the decision in Janabai Govindrao Korche (supra) that has been relied upon by the learned counsel for the applicant, wherein it is held that application of section 22 of the said Act is prospective in nature. In the present case, even according to the non-applicant, the tenancy has been created prior to twenty five years which is before coming into force of the said Act.
>
> Further, the landlord has not approached the Competent Authority under section 22(2) of the said Act but has approached the Civil Court under section 33 read with section 16(1)(f) of the said Act. It is only if the landlord approaches the Competent Authority under section 22(2) of the said Act that the Second proviso to section 22 would come into operation. It is thus clear that for the purposes of seeking eviction under section 16(1)(f) of the said Act, it is not necessary as contemplated by the Second proviso to section 22 to await the final adjudication on the validity of the order of termination."

The observations in case of **Chinnupashabi W/o. Hasan Jahangirdar and Others Vs. Fatesingh Shikshan Sanstha and It's Trustees**[116]**,** are also helpful in the context. Dealing with question under section 13 (1) (f) of Bombay Rent Act, it was observed that the section requires that the premises were firstly let to a tenant for the same being put in use as a residence by a person who is in service. Referring to definition of 'tenant' under section 5 (11) of Bombay Rent Act, it was further observed that a person has to pay rent, through money, to become a tenant. It was highlighted that the Honourable High Court held in the said case that payment of rent cannot be in service tenancy.

In case of **Dipak Banerjee Vs. Lilabati Chakraborty**[117]**,** observations in English case of **Barnes Vs. Barratt**[118] were discussed. It was thereby observed that service cannot supplant rent to be paid. The Country Court Judge ruled in the said case that even if there was a tenancy, the Rent Acts did not apply to it, because there was no agreed monetary quantification of the rent nor any agreed method of quantification. But, in case of **Rajendra Suryakant More Vs. Fixolite Wires & Cables Pvt. Ltd. And another**[119]. Honourable Bombay High Court ruled down in the said case that the suit for eviction under section 16 (1) (f) of MRC Act was maintainable in view of section 33 of the MRC Act.

---

[116] 1999 (3) Mh. L. J. 167
[117] (1987) 4 SCC 161
[118] (1970) 2 All ER 483
[119] 2016 (5) Bom. C.R. 609

Section 16 (1) (g) of MRC Act read with Section 16 (2) & 16 (3) of MRC Act: Reasonable & Bona Fide Need

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust;

Section 16 (2)
No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1), if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

Explanation. - For the purposes of clause (g) of sub-section (1), the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager.

Section 16 (3)
A landlord shall not be entitled to recover possession of any premises under the provisions of clause (g) of sub-section (1), if the premises are let to the Central Government in a cantonment area, and such premises are being used for residence by members of the armed forces of the Union. or their families.

Introduction:

"The object of the Rent Act is no doubt to protect the honest tenants…but not to penalize the innocent landlord"
-Honourable Shri Justice M. C. Chagala

It is necessary for the Legislature to try and seek equilibrium between the rival interests of landlords and tenants while framing welfare legislation such as Rent Control Law.

This ground may be probably the most used ground for seeking eviction of tenant. It harps upon the need of landlord and it is spelled to be 'reasonable' and 'bona fide'.

Reasonable and bona fide requirement:

Section 16(1) (g) is a unique provision made by legislature to strike a just balance between the competing needs of a landlord and tenant. Under this clause, if a landlord requires the premises reasonably and bona fide for occupation by himself or for occupation by any person for whose benefit the premises are held, he is entitled to recover possession. This clause has to be interpreted having regard to the acute shortage of houses and having regard to respective hardships of landlord and tenant. If the landlord is a trustee of a public charitable trust and the premises are required for occupation for the purpose of such trust, such trustee can sue for ejectment of the tenant. The question of bona fide requirement is a question of fact. Bona fide requirement would mean genuinely or honestly required. A landlord should not seek eviction on a false pretext, or for a co-lateral purpose or with an oblique motive.

The word 'requirement' coupled with the word 'reasonable' means that it will be something more than a mere desire, but need not certainly be a compelling or absolute or dire necessity. It is something between a mere desire or wish on the one hand and a compelling or dire or absolute necessity at the other end.

Essentials:

In order to prove the ground of reasonable and bona fide requirement, following ingredients are to be proved.

i. the requirement of the landlord for his occupation of the tenanted premises should be reasonable ;
ii. it should also be bona fide ;
iii. the hardship of the tenant in case of eviction should not be more than the hardship of the landlord if he fails to get the eviction order. Whether the requirement is reasonable or not can only be judged from the facts since no strait-jacket formula can be evolved for it.

Reasonable:

It is difficult to give an exact definition of the word "reasonable". The expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined. It is not meant to be expedient or convenient, but certainly something more than that. While interpreting the word "reasonable" in Section 13 of the Act, the Bombay High Court has held in **Kishinchand Murjimal Vs. Bai Kalavati**[120] that the word "reasonable" "cannot mean equally convenient or luxurious though it may not necessarily exclude ideas of convenience and comfort. However, the expression reasonable can be taken as providing an angle, which is comfortable or agreeable to reasons, having regard to the facts of the particular controversy.

The word 'reasonable' has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It was precisely observed in the case of **Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar**[121]**.**

Bonafide:

The requirement is composite one, reasonable and bona fide. The reasonableness of requirement is connected with the extent of requirement of the premises by the landlord whereas, the bona fide requirement relates to the intention of landlord in seeking eviction and possession of the suit premises. If the requirement is not found to be reasonable then no decree for eviction can be passed. If it is found to be reasonable then, the question of extent of such requirement will have to be gone into. Thus, the question of

[120] AIR 1973 Bom 46
[121] (1987) 4 SCC 497

reasonableness of requirement under section 16(1)(g) is interlinked with the second part of sub-section (2) of section 16 of the said Act.

The Armchair rule:

The Honourable Supreme Court, in **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta**[122] has extensively dealt with 'bona fide' requirement: (i) The word 'need' and 'require' denote a certain degree of want. (ii) Term 'bona fide' refers to a state of mind. (iii) The phrase 'required bona fide' is suggestive of legislative intent that a mere desire which is the outcome of whim is not considered by Rent Control legislation. (iv) The judge of the facts should place himself in the armchair of the landlord and ask the question to himself whether, in the facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, and honest. If the answer be in the positive, the need is bona fide. (v) Concept of bona fide needs a practical approach instructed by realities of life- an approach either too liberal or too conservative or pedantic must be guarded against.

If minutely looked at the provisions of Section 16(1)(g) of the MRC Act or Section 13(1)(g) of the Bombay Rent Act, both the provisions speak that landlord may file a suit for recovery of possession of the premises on the ground of bona fide requirement. The word "landlord" is used in both the sections. The definition of landlord is provided under section 5(3) of the Bombay Rent Act and pari materia under section 7(3) of the MRC Act.

As per the definition of landlord, a person who is for the time being receiving or authorize to receive rent, such as rent farmer, rent collector or estate manager etc. can be stated as a landlord. But so far as suit on the ground of bona fide requirement is concerned, such landlords have no authority to file a suit. Because explanation appended to sub-section (2) of Section 16, excludes such persons. It speaks that for the purposes of clause (g) of Section 16, the expression "landlord" shall not include rent farmer, rent collector or estate manager. The object behind it appears that while deciding the suit under clause (g), Court is required to consider the requirement of the owner/landlord. Thus, it is expected that owner/landlord has to plead and prove his requirement and not to delegate

122 AIR 1999 SC 2507

said job to the estate manager, rent collector or rent farmer. Therefore, it can be safely inferred that estate manager, rent collector or rent farmer cannot maintain suit under clause (g) of the Act.

While setting out the need for business premises and testing the reasonableness thereof, it is not necessary for the landlord to plead and prove that, he has necessary knowhow or expertise as well as financial capability to conduct the business. It is ultimately the aspect of the need, which is relevant. It should not be a mere wish or desire. Similarly, it is well settled that merely because a litigation is pending for considerable length of time, it should not necessary be considered that the need and requirement pleaded has either been lost or rendered redundant and unnecessary. It has to be judicially accepted that, litigation in the Indian Courts takes considerable length of time. Merely because it consumes lot of time, it does not mean that the suits filed by the landlord for possession on the ground of reasonable and bona fide requirement ought to be thrown out straight away. **[See: Goverdhandas Mulchand Agarwal Vs. Gherulal Uderam Bagade[123]]**

Pleadings:

The Court cannot ordinarily doubt the bona fide need of the landlord, nor the Courts can dictate to the landlord as to how the premises owned by him should be used. It is sufficient for the landlord to express his desire to occupy the premises which are owned by him. It is not necessary for the landlord to establish the dire necessity, but it is enough to show that some need exist. When the landlord who is staying in the rental premises desire to stay in his own accommodation then the Courts, as a rule should not refuse the decree. The plaintiff would suffer greater hardship in the event when the decree was to be refused. It was held and observed in **Balwant P. Doshi Vs. Shantaben Dhirajlal Shah[124].**

In order to succeed his claim of requirement, the landlord has to plead his basic requirement in precise manner furnishing suitable details. So that tenant could know case of landlord and advance his appropriate defence. It

[123] 2005 (3) Mh. L. J 196
[124] 2002 (4) Mh. L. J 473

means there must be some pleading spelling out the need to enable tenant to resist the claim. If basic need is pleaded in the plaint, then during trial landlord can suitably explain or elaborate the same by giving all details. Whether the pleading is sufficient or not depends upon each case but factors need to be taken into consideration that any prejudice is caused to the tenant/ defendant, on account of vagueness or lacking of details etc. or he was prevented or could not raise his appropriate defence. Thus, if the tenant understood the case of landlord, exhaustively cross examined him, produced his appropriate defence, nothing survives in the objection raised at later stage that pleading is vague and without sufficient and proper details of the requirement.

In **Shankar Bhairoba Vadangekar Vs. Ganpati Appa Gatare**[125]. Further, Honourable Bombay High Court, taking into consideration the ratio laid down by Honourable Apex Court, **Baba Kashinath Bhinge Vs. Samarth Lingayat**[126]**,** held that it is true that the pleading of the plaintiff is not precise and no specific requirement was pleaded but once parties properly understood the case of each other, issues were framed and evidence was adduced, technicalities of the pleadings recede to the background.

Landlord is the Best Judge:

As far as bona fide need of the landlord and suitability of the premises are concerned in the matter of eviction, the landlord is the best Judge and has complete freedom in the matter. The tenant can not dictate the terms. **Raghvendra Kumar Vs. Firm Prem Machinary and Co**[127] and **Rafiq Ahemad Qureshi s/o Bashir Ahemad Vs. Iqbal Khan s/o Hashmat Ali Khan and others**[128]**.**

The principles, as laid down need no further discussion, but they can be crystallized as follows:

a) The landlord is the best Judge of his own requirement for residential or business purposes and has complete freedom in the matter.

---

[125] 2001 (4) ALL MR 61
[126] (1994) Supp. 3 SCC 698
[127] AIR 2000 SC 534
[128] 2012 (1) Mh. L. J. 337

b) Unless proved otherwise, the reasonable and bona fide need of the landlord, if supported by material evidence on the record, has to be respected.
c) Even if some premises owned by the said landlord is available, but occupied by other tenants, in such circumstances also, ownership of the other premises, that itself cannot be the reason to discard the present need of the landlord, specially when it is proved that the premises in question is needed at the relevant time of filing of the Petition.
d) It is true that the bona fide need or genuine need of the landlord must not be a farce and/or a just cause to evict the tenant for other ulterior purpose. **[See: Motor Cycle House and Metro Cottage Industries and Ors. Vs. Kamalabai Dattatraya Kale and others[129]]**

Illustrations

The landlady who was a 70 years old widow was residing with the family of a friend. Honourable High Court had held that she should continue to reside with the family of the friend and her need for the tenanted accommodation where she would be required to reside alone, was not bona fide. Honourable Supreme Court reversed the judgment of the Honourable High Court holding that landlord is the best judge of his requirement. It was further held that the alternative accommodation available to the landlord must be such over which he has got a right (is owner thereof). **[Reference: Prativa Devi Vs. K.V. Krishnan[130]]**

In case of **Sarla Ahuja Vs. Union of India[131],** the Landlady who was residing at Calcutta wanted to shift to New Delhi, where accommodation in dispute was situated. Honourable Supreme Court held that Landlady was not the owner of the house where she was residing and the alternative accommodation to debar the landlord from seeking eviction on the ground of bona fide need should be situated in the same city or town and at least within the reasonable proximity thereof. Regarding cordial relationship of the landlady with her daughter-in-law, it was held that the right of the

[129] 2005 (4) ALL MR 211
[130] (1996) 5 SCC 353
[131] AIR 1999 SC 100

landlady to get her house vacated on the ground of bona fide need could not be postponed until she developed sore relations with her daughter-in-law.

In case of **S. N. Kapoor v. Basant Lal Khatri[132],** alternative house available to the landlady in another town was held to be irrelevant.

The need of the landlady to reside separately from her doctor son who had constructed a house was held to be bona fide, in case of **R. C. Tamrakar Vs. Nidi Lekha[133].**

Court cannot dictate terms to tenant:

It is well settled that the landlord's requirement need not be of a dire necessity. The Court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the appellants' case that their sons want to start the general merchant business is a pretence because they are dealing in eggs. Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the Courts below. It is also important to note that there is nothing on record to show that during the pendency of this litigation, the respondent made any genuine efforts to find out any alternative accommodation." [Reference: **Mohd. Ayub vs. Mukesh Chand[134]]**

Landlord is the best just of his requirement and tenant or the Courts have no concern to dictate the landlord as to how and in what manner he should live or do business. However, this principle is applied only when the accommodation available to the landlord is less suitable. It cannot be applied to more suitable accommodation, available to landlord, as held in the landmark case of Shiv Sarup Gupta (cited earlier)

In case of **Siddalingamma Vs. Mamtha Shenoy[135],** it was observed that Rent Control Legislation generally leans in favour of tenant, it is only the

---

132 (2002) 1 SCC 329
133 AIR 2001 SC 3806
134 (2012) 2 SCC 155
135 AIR 2001 SC 2896

provision for seeking eviction of the tenant on the ground of bona fide requirement of landlord for his own occupation of use of the tenanted accommodation which treats the landlord with some sympathy.

Premises Required for the purposes of the Trust:

In **Airflow Transport (India) Pvt. Ltd. Vs. Rao Bahadur B.P. Annaswamy Mudaliar and others**[136]**,** same question was arose before Honourable Karnataka High Court. It was held as per Section 21(1)(h) of Karnataka Rent Control Act, it is not necessary for the trustees of the public charitable trust to establish bona fide and reasonable requirement of the property. Besides, it is observed by Honourable Bombay High Court **Framroz Manekji Bilimoria Vs. M/s. Suhrid Geigy Trading Ltd.**[137] in para 5 of the said judgment that provision of Section 13(1)(g) of the Bombay Rent Act, appears to be divided into two parts. The requirement of the first part should be reasonable and bona fide, under the second part it is not necessary that requirement should be reasonable and bona fide, but it is sufficient if trustees of the public charitable trust proves that they require the premises for the purposes of the said trust. So, if landlord is a Public Charitable Trust, they are not required to prove reasonable and bona fide need of tenanted premises.

Comparative Hardship:

As per Section 16 (2) of MRC Act, no decree for eviction shall be passed on the ground specified in clause (g) of subsection (1), if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

Burden of proof:

[136] AIR 1997 Karnataka 365
[137] 1977 R.C.R. 545

The Burden to establish that the premises are reasonably and bona fide required, as contemplated under Section 16 (1) (g) of MRC Act, is upon the landlord. The requirement is composite one, reasonable and bona fide. **[Reference: Bismilla Bee W/O. Sk. Chand & another Vs. Mohd. Anwar S/O. Mohd. Akhtar[138]]**

The burden of proving greater hardship, so as to deprive the landlord of his established right to seek eviction, lies on the tenant. The provision of sub-section (2) of section 16, is incorporated for the benefit of the tenant and therefore, the burden of proving greater hardship, so as to deprive the landlord of his established right to seek eviction, lies on the tenant.

The Honourable Bombay High Court has held in case of **Shankar Bhairoba Wadngekar since deceased through Lrs. Dattatray Shankar Wadngekar Vs. Ganpati Appa Gatare since deceased through Lrs. Sushilabai Ganpat Gatare[139],** that the onus is on the tenant to establish that the requirement of the landlord is not bona fide. Whereas, the burden on the landlord in this behalf is very light.

<u>What If tenant fails to show that he has made efforts to look alternative accommodation during pendency of matter</u>?

If the tenant fails to show that he has made any effort to look for an alternative accommodation during the pendency of the proceedings, then he has no right to plead hardship, and the balance of comparative hardship goes in favour of the landlord. **[See: Badrinarayan Chunni Lal Bhutada vs. Govindram Ramgopal Mundada[140]]**

<u>Premises in a Cantonment Area Let to the Central Government</u>:

Sub-section (3) of Section 16 of MRC ACt prohibits the landlord from recovering possession under clause (g) of any premises in a cantonment area let to the Central Government when the premises are used as residence by members of the armed forces of the Union, for their families.

<u>Assignment of decree- Unlawful</u>:

---

138 2010 (1) ALL MR 889
139 2001 (4) Mh. L. J. 131
140 AIR 2003 SC 2713

Sub-section (5) of Section 16 of MRC Act lays down that whatever may be any contrary provision in any other law, any assignment of a decree obtained under clauses (g), (h), (i) and (j) of sub-section (1) of Section 16 is unlawful.

The Sub-section (7) of Section 16 of MRC Act provides that any transfer of a decree passed under clauses (g), (h), (i) and (j) of sub-section (1) is subject to the rights and interests of the concerned tenant/s.

Res-Judicata and Bonafide need:

It is well settled that the principle of res judicata would not apply in respect of bona fide need of the landlord, especially when the changed circumstances have been pleaded and proved. Once the question of necessity is decided against the landlord, it cannot be assumed that he will not have a bona fide and genuine necessity even in future. It was observed in case of **Surajmal Vs. Radheshyam[141].**

Conclusion:

The phrase 'required bona fide' is suggestive of legislative intent that a mere desire which is the outcome of whim is not considered by Rent Control legislation. The Judge of the facts should place himself in the armchair of the landlord and ask the question to himself whether, in the facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, and honest. The bona fide need of the landlord as a ground for eviction under the Rent Control Act is the threshold that draws the line between the genuine need of the landlord of the tenanted premises and the mere desire of the landlord. The bona fide ingredient is to be churned out from the intention of the landlord. Such concept of "bona fide necessity" should be meaningfully construed so as to make the relief granted to the landlord real and practical.

The topic can be concluded on the note that Honourable Bombay High Court in the case of **Ajay Mahasukhlal Shah Vs. Chandrakant Babulal Shah and others[142]** recently reiterated the observations in the case of Shiv

[141] (1988) 3 SCC 18
[142] 2023 SCC OnLine Bom 2614 : 2024 (2) Mh. L. J. 53

Sarup Gupta (cited earlier). Those observations summarize the topic. It was observed therein that-

> "13.Chambers 20th Century Dictionary defines bona fide to mean "in good faith : genuine". The word "genuine" means "natural : not spurious : real : pure : sincere". In Law Dictionary, Mozley and Whitley define bona fide to mean "good faith, without fraud or deceit". Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the Court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the Court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his

subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

Effect of Subsequent Events on Bonafide Requirement under the MRC Act

Introduction:

The MRC Act continues the long-standing legislative policy to regulate landlord and tenant relationships and prevent unreasonable eviction of tenants, while also safeguarding the legitimate property rights of landlords. Among the various grounds of eviction, the ground of reasonable and bona fide requirement under Section 16(1)(g) of MRC Act is one of the most litigated and socially sensitive.

However, litigation under the MRC Act often spans several years, sometimes decades. During such prolonged litigation, circumstances of the landlord or tenant may undergo significant change. These subsequent events occurring after the filing of the eviction suit, often raise complex questions such as Whether the original bona fide requirement still survives, whether changed circumstances weaken or extinguish the landlord's claim, whether the requirement become stronger or more urgent and how Courts should balance later developments with the "crucial date" principle.

Statutory Scheme of Bonafide Requirement:

Section 16 (1) (g) – Reasonable and Bonafide Requirement:

Section 16 (1) (g) of MRC Act allows eviction when the premises are required reasonably and bona fide by the landlord for occupation by himself or family members for whose benefit the premises are held or for purposes of a public charitable trust. This provision embodies a dual objective such as prevent arbitrary evictions and recognize genuine and honest needs of the landlord.

Section 16 (2) : Comparative Hardship:

Even where bona fide need is proved, Section 16(2) of MRC Act restrains eviction if the tenant would suffer greater hardship compared to the landlord. This comparative evaluation ensures fairness and prevents eviction where it causes disproportionate harm.

Section 18 of MRC Act : Post-Eviction Safeguard:

If eviction is granted on bona fide requirement, but the landlord does not occupy the premises within one month or re-lets it within one year to someone other than the evicted tenant, the tenant may apply for restoration of possession. This provision acts as a check against misuse of the ground of 'bona fide requirement'.

Understanding Bona fide Requirement:

Courts have identified several core elements of bona fide requirement such as the requirement must be real and genuine and it cannot be artificial, fanciful, motivated by higher rent or a mere desire. As held in **Kanahaiya Lal Arya Vs. Md. Ehshan and others**[143]**,** the landlord decides which premises suits his requirement and Court should not dictate how the landlord must organize his life or business. In other words, it is reiterated that landlord is the best judge of his requirement. In the case of **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta** (cited earlier), Honourable Supreme Court held that the judge must place himself 'in the armchair of the landlord' in order to assess sincerity and reasonableness.

The Doctrine of Subsequent Events:

Eviction suits under MRC Act frequently remain pending for long durations due to Court backlog, appeals, amendments and interlocutory proceedings and over this entire period, life does not remain static. The social circumstances such as family, employment, health and housing circumstances keep changing. Accordingly, the Courts have evolved the doctrine of subsequent events to ensure justice by reflecting current reality and keeping away the outdated circumstances existing years earlier.

The Crucial Date Rule and Its Limits:

The general rule, reaffirmed by Hon'ble Supreme Court in the **Gaya Prasad Vs. Pradeep Srivastava**[144] is the bona fide requirement must be judged on the date of filing of the eviction suit. At the same time, it is added that subsequent events must be considered if they are natural and unavoidable, fundamental and capable of eclipsing the original requirement.

---

[143] 2025 SCC OnLine SC 432

[144] (2001) 2 SCC 604

This rule protects landlords from being penalized for delay and so as to do substantial justice without ignoring drastic changes that make eviction meaningless or unjust.

The Honourable Supreme Court in the cases of **Om Prakash Gupta Vs. Ranbir B. Goyal**[145] and **Pasupuleti Venkateswarlu Vs. The Motor and General Traders**[146] laid down that subsequent events may be considered when they fundamentally affect the right to relief and the relief becomes inappropriate or unjust in the event if it is ignored. If those events shorten litigation and promote complete justice without ignoring real-world developments which may lead to further litigation. If those events are brought promptly and supported by evidence and parties must not spring surprises or engineer events. If those events, do not contradict earlier pleadings. The Courts must avoid accepting events inconsistent with original stand.

<u>Events Weakening or Extinguishing the Requirement</u>:

1. **Death of the Landlord or Beneficiary:** If the person for whom premises were required dies during litigation, the requirement may lapse. However, as held in **Vijaya Arun Beri Vs. Vijay Waman Bhatt**[147], the requirement may survive if legal heirs continue to require the premises.

2. **Acquisition of Suitable Alternative Premises:** If the landlord acquires or is allotted another appropriate premises, the necessity may no longer exist. Such suitability is evaluated on the basis of location, area, usability, purpose, etc.

3. **Fulfillment of Need Elsewhere:** If the landlord shifts to a better house or relocates his business in newly acquired premises which meets the same requirement.

145 (2002) 2 SCC 256
146 (1975) 1 SCC 770
147 MANU/MH/7322/2025 : 2025:BHC-AS:48415

4. **Permanent Change in Circumstances:** If the child for whom the premises were required, shifts abroad or abandons his business plans or the structure of family is changed permanently.

Events Strengthening Bonafide Requirement:

1. **Expansion of Family:** If the family of landlord is expanded due to events such as marriage, childbirth or elderly parents needing care, enhances the requirement and Courts treat such events as natural and credible.

2. **Retirement and Change in Vocation:** If the landlord retires and after retirement, he may require premises for livelihood or more comfortable residence.

3. **Deterioration in Health:** If the medical needs of the landlord requires ground-floor premises, proximity to family and more spacious or hygienic residence.

4. **Structural or Municipal Requirements:** If the premises is declared as a dangerous building for habitation, such declaration may strengthen the requirement of landlord.

5. **Genuine Business Expansion:** The events supported by documents regarding expansion of business may strengthen the requirement of landlord in respect of commercial premises.

When Courts Reject Subsequent Events:

The Courts generally refuse to consider later developments which are fabricated or engineered to strengthen the claim or unsupported by evidence or raised belatedly or contradictory to earlier pleadings. The Courts must be alert towards the attempts of manipulating circumstances with intention to unfairly evict tenants.

Interaction with Comparative Hardship:

The subsequent events such as deteriorating health of tenant strengthens his claim of hardship. Similarly, the events such as growing family or medical needs of landlord reduce hardship on the side of tenant. Courts must weigh both parties evolving situations so as to ensure equitable justice. At the same time, the realistic approach shall be taken to weigh the rival claims of hardship, in case decree of eviction is passed and in case it is not passed.

<u>Post-Eviction Conduct and Section 18</u>:

Section 18 of the MRC Act ensures that eviction on the ground of bona fide requirement is not misused. If the landlord does not occupy the premises within one month, or re-lets within one year, the tenant may seek restoration. This provision protects tenants from eviction based on false claims of personal requirement.

<u>Conclusion</u>:

The doctrine of subsequent events is of utmost importance in the Rent Act jurisprudence. This doctrine ensures that the eviction orders are passed on real and current circumstances so that both the landlord and tenant receive substantial justice. The original requirement should neither be blindly accepted nor should be mechanically rejected. Only genuine, natural, significant, and well-established later developments influence the decision. As such, the effect of subsequent events must be judged with caution, balance, and fairness and it must be ensured that eviction decrees are not rendered unjust, inequitable, or meaningless by changes occurring during prolonged litigation.

Section 16 (1) (h), (i), (j), (k) and (l) of MRC Act with Section 16 (6), 16 (7) and 16 (10) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated;

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

(j) that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace;

Explanation.-For the purposes of this clause, if the premises let include the terrace or part thereof, or garages, servant's quarters or out-houses (which are not on the terrace), or all or any one or more of them, this clause shall nevertheless apply; or

(k) that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or

(l) that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or

(6) No decree for eviction shall be passed on the ground specified in clause (i) or (j) of sub-section (1), unless the Court is satisfied-

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord,

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, bye-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the landlord has given an undertaking.-

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the Court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the Court may, by order, for reasons to be recorded. extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

(7) Where the possession of premises is recovered on the ground specified under clause (g), (h), (i) or (j) of sub-section (1) and the premises are transferred by the landlord, or by operation of law before the tenant or tenants are placed in occupation, then such transfer shall be subject to the rights and interests of such tenants.

...

...

(10) A suit for eviction on the grounds specified in clause (h), (i), (i) or (k) of sub-section (1) may be filed by the landlord jointly against all the tenants occupying the premises sought to be demolished.

Demolition Ordered by Local Authorities:

<u>Introduction</u>:

'Change' is inevitable, the human dwellings cannot be exception to the same. Previously when the families were of smaller sizes and the income level was low, smaller premises were sufficient. With the advent of time, family sizes increased. Additionally the income level and urbanization also enhanced the need for better and bigger housing. All these aspects gave rise to 'greed' instead of 'need' of the premises. Accordingly, it will be apt to consider various legal facets as regards the same. The famous case of **Olga Tellis & Ors Vs. Bombay Municipal Corporation[148],** seeking right to stay on pavements is self-illustrative.

<u>LANDLORD'S RIGHT TO RECOVER POSSESSION OF THE PREMISES REQUIRED FOR THE IMMEDIATE PURPOSE OF DEMOLITION ORDERED BY THE MUNICIPAL/COMPETENT AUTHORITY</u>:

Section 16 (1) (k) of the MRC Act gives right to the Landlord to recover possession as the Municipal Authority or a Competent Authority has ordered demolition of a building on the ground that it is in a dilapidated and dangerous condition, or it is an unauthorized construction or it comes in the way of scheme for an improvement of the town such as a slum clearance, a road development, a widening of the street, etc. are kept intact. This clause

[148] AIR 1986 S.C. 180

has been introduced in order that a co-owner or a tenant may not hamper the execution of orders issued by virtue of those powers by a competent authority, by pleading that the Rent Act protects him. While considering the scope of Section 16 (1) (k) of MRC Act with Section 507 of Mumbai Municipal Corporation Act, 1888 Honourable Bombay High Court in **Diwanchand Vs. N. M. Shah**[149] has observed that the provisions of this section do not impliedly abrogate the provisions of Section 507 of the said Act. The scope of this clause is much wider than that of said Section 507. If a landlord has availed of the remedy under the said Section 507, he is not disentitled to further and other remedies under Section 16 (1) (k) of MRC Act. In spite of an order under the said Section 507, if a tenant is adamant and does not give facilities to the landlord to enter the premises, this act on the part of a tenant might exonerate a landlord from prosecution under the Mumbai Municipal Corporation Act, but the requirement of the landlord to demolish the building remains intact and does not ceases.

The emphasis under this clause is on the word "immediate". The said word "immediate" must be construed, having regard to the circumstances, that is to say, as soon as the landlord gets vacant possession from the tenant. It is open to the tenant to adduce evidence to show that the order of the authority is either satisfied or is ineffective or that its efficacy has been impaired. In **Mrs. Piaded Fernander Vs. K. M. Ramesh**[150], Honourable Bombay High Court has held that the satisfaction that is contemplated by Section 13(1)(hhh) of the Bombay Rent Act (now Section 16(1)(k) of MRC Act) is not a mere formal thing. The Court must apply its mind to all the facts and circumstances of the case including the order of demolition and then come to the conclusion one way or the other. If the municipal authorities are no longer interested in the demolition of the premises, the landlord cannot be allowed to use it as a handle or lever to somehow evict the tenants from the suit premises. It may be noted that in case of eviction decree passed under section 16(1) k) of this Act, the Court cannot direct landlord to provide alternate accommodation to the tenant. However recently in **Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and others**[151], Honourable Bombay High Court has issued some guidelines under Section

149 (1972) Mh. L. J 524
150 AIR 1970 Bombay 376
151 2015(6) Bom.L.R. 860

354 of Mumbai Municipal Corporation Act. The guideline in clause (p) provides as follows -

> "In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction of redevelopment impose a condition in IOD (intimation of disapproval) that no Commencement Certificate will be issued under Section 45 of the MRTP Act,1966 unless and until an agreement either providing a permanent alternate accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the Landlord in respect of the demolished premises, is filed with the Corporation at the earliest."

Section 16(10) of MRC Act enables the landlord to file the suit against all the tenants who are intended to be evicted from their respective premises in suit filed under clause (h),(i),(j) or (k) and therefore, it is not necessary to file the suit against each tenant separately. In all such suits, the cause of action would be the same. Therefore, in order to avoid multiplicity of suits and early disposal, this provision is made specifically.

<u>EVICTION OF OCCUPIERS UNDER THE MHADA ACT, 1976</u>.

<u>Introduction</u>:

One of the main objectives behind enacting MHADA Act, 1976 is to reconstruct dangerous buildings. Keeping the same in mind the Act contains self-contained mechanism to evict the occupiers chosen for that purpose.

Section 2(25) of the MHADA Act, 1976 defines 'occupier' as:

(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;

(b) an owner in occupation of, or otherwise using, his land or building;

(c) a rent – free tenant of any land or building;

(d) a licensee in occupation of any land or building;

(e) any person who is liable to pay to the owner damages for the use and occupation of any land or building.

The procedure for evicting occupiers is contemplated under Section 93 to 95 (A) of the said Act. As per Section 93 of the said Act, the procedure is contemplated for Clearance and Compulsory Acquisition. As per Section 93 (1), on receipt of proposal u/s.92, if the State Government is satisfied about the reasonable of the proposal and resources available with the Board for constructing a new building, it may approve the proposal and communicate its approval to the Board.

As per Section 94(1) of the said Act, it is incumbent on the part of Board to provide temporary and alternative accommodation to the occupiers in any building at such place and to such extent as it deems fit and the accommodation may not be in a same locality or to the same floor area as the vacated premises by the occupiers. If, the occupiers fail to accept the accommodation allotted to him within one month from the date of allotment, then the Board's responsibility to provide temporary accommodation shall cease as per Section 94(2). As per sub-section (3) and (4) if the occupier accepts temporary accommodation, he shall pay to the Board on behalf of the authority rent for such accommodation at the rate fixed by the Board. As per subsection (5) subject to provisions of this Section, whether a occupier accepts or does not accept temporary accommodation he shall get accommodation in a new building free of cost and it is incumbent on the part of occupiers to form cooperative society under Maharashtra Cooperative Societies Act, 1960 and thereafter, the Board shall transfer the ownership of the society to the occupiers. If the occupiers of new building fail to become member of the Cooperative Housing Society formed by the occupiers of such building within three months from the date of allotment or the date specified by the Board, the right of the occupier gets such accommodation shall stands forfeited and he shall be liable for eviction and Board shall cease to provide him any accommodation as per Section 94(6).

Section 95A of the said Act, provides procedure for summary eviction of occupiers in certain cases. Section 95A(1) provides that where the owner of a building or the members of the proposed cooperative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 70 per cent of the total occupiers of that building proposed to be 50% and a No Objection Certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed cooperative housing society of the occupier, as the case may be, then it shall be binding on all the occupiers to vacate the premises provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.

On refusal by any of the occupant to vacate the premises as provided in subsection (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act to effect summary eviction of such occupiers as provided in Section 95A(2). In well-known case of **Rashida Shabbir Tinwala & anr. Vs. Bombay Building Repairs and Reconstruction Board[152],** a Division Bench of Honourable Bombay High Court dismissed the objection to inprinciple approval for redevelopment under DCR 33(9) vide the Letter of Intent (LOI) for cluster redevelopment of "Bhendi Bazar area" of Mumbai.

As per Section 95A (3) any person occupying any premises, land, building or structure of the Board unauthorisedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction. Section 95A (4) provides for penal punishment to any person who refuses to vacate such premises or obstructs such eviction. Such person shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

APPLICABILITY OF "DUE PROCESS OF LAW" FOR THE EVICTION OF OCCUPIERS UNDER THE MHADA ACT, 1976.

To achieve the objects of MHADA, in some conditions the occupier is required to be evicted, but the same is subject to 'due process of law'. So it becomes necessary to know what is the meaning of 'due process of law'. Due process of law means the procedure established by law. The Honourable Supreme Court in **Maria Margarida Sequeria Fernandes and ors. V/s. Erasmo Jack de Sequeria (Dead) through L.Rs.**, has explained the meaning

[152] W. P. (L) No. 1662 of 2015 decided on 2nd July, 2015

of 'due process of law. Therefore, 'due process of law' is such process where rights of the party is adjudicated by giving opportunity of hearing. It is satisfied the moment rights of the parties are adjudicated by the Competent Court.

Section95A of MHADA Act provides summary eviction of occupiers in certain cases. Its object was to give an opportunity to the occupants of old structure who were unable to develop them for lack of resources to move to better accommodation at the same time create additional housing for general consumption. It was enacted to enable speedy implementation of such redevelopment schemes. When the housing Societies decide to get their premises redeveloped, care should be taken that its members should have to stay when the original building is demolished and is being reconstructed. As per provision of Section95A authority needs to examine whether 70% of the members have consented and developer has provided transit accommodation.

Before invoking summary powers under Section 95A of the Act, it is necessary to give full opportunity to the occupiers and pass reasoned order. In case of **Seema Santosh Jadhav Vs. Maharashtra Housing Area Development Authority**[153], it is held that unless MHADA gives full opportunity to the occupiers and pass a reasoned order after considering the rival submissions, the eviction order so passed so also action so initiated by invoking Section 95A of the MHADA Act is impermissible. It is also held that even unauthorised occupant and/or trespasser, someone wants to evict, the due procedure of law required to be followed. The due procedure of law in such a situation cannot be meant just completing the formalities of issuing show cause notice and without giving opportunity to the parties to take unilateral decision even declaring that the Board issued documents are illegal, unauthorised, therefore, summary eviction. The proceeding cannot be converted into full fledge judicial proceedings as if Authority is trying a civil suit. The unilateral decision without giving an opportunity to the parties is liable to be tested in Court of law. It is also held that the principle of natural

[153] 2014 (1) Mh. L. J. 284

justice and due opportunity need to be followed by the Authority at all stages. MHADA Authority is under obligation to perform and utilize its power in accordance with law, following basic principle of natural justice.

Always question arises about the jurisdiction of Court and the scope of enquiry. In **Dhirajilal Vishanji Chedda Vs. Kshitija Infrastructure Pvt. Ltd.**[154] the Honourable Bombay High Court has held that the Small Causes Court is having limited jurisdiction to decide the proceeding between landlord and tenant only and cannot decide validity of the notices under Section 95A. It was also held that the Small Causes Court has no jurisdiction to grant injunction.

Even if we peruse Section 41 (2) of PSCC Act (Maharashtra Amendment) the jurisdiction of the Court of Small Causes is specifically excluded in MHADA Act, 1976 matters. Similarly vide Section 177 of MHADA Act, 1976 jurisdiction of Civil Court is ousted.

Demolition intended by Landlord

Introduction:

Section 16(1)(i) of MRCA,1999 gives right to the landlord to recover the possession of the premises reasonably and bona fide required for the immediate purpose of the demolition for purpose of erecting new building on the premises sought to be demolished. The emphasis under section 16(1)(i) is on demolition, reconstruction and increasing the housing accommodation and to put the new premises to more profitable use. Whether the requirement of the landlord is reasonable and bona fide or not, has to be judged by the surrounding circumstances which will include his means for reconstruction of the building and other steps taken by him in that regard.

Object:

The object of Section 16(1)(i) is to enable a landlord to provide more accommodation, to enable him to develop his property and more housing accommodation by providing more area and more tenements. Such

[154] 2013 (1) Mh. L. J. 58

construction should be in accordance with the rules and regulations relating to such act as may be prevalent from time to time.

Restrictions and conditions:

A landlord can require, under this clause, for the demolition of such a building independently of a requisition in respect thereof by a local authority or other competent authority. But when a landlord of his own volition wants to demolish the building independently of a requisition from the local authority concerned, the legislature has imposed certain restrictions and conditions, which are given under section 16(6) and they are (a) the landlord must have sufficient funds to carry out the work (b) the plans of the proposed building are prepared (c) the new building shall contain residential tenements which are not less than the number in the old building (d) that the landlord gives an undertaking that (i) the carpet area of the different premises let in the old building must be the same as in the new building (ii) the premises in the new building must be offered to the tenants of the old building (iii) if the carpet area of any premises in the new building is more than the carpet area in the old building the tenant's consent in writing must be obtained accepting the new area (iv) the work of demolition of the old building will be completed within there months and (v) new building must be completed within fifteen months. All of them are intended to ensure that a landlord may not evict a tenant under a false pretext nor defeat the object of the legislature of increasing the housing accommodation.

Reasonable and Bonafide:

In order to prove that, his requirement is reasonable and bona fide, a landlord has to prove the plans, necessary estimates, necessary sanctions and requisite funds. A landlord has to show that, he has the means to carry out his real intentions. While considering the bona fides, the Court should take into consideration, at the date of the hearing, every circumstance affecting the interests of a landlord and a tenant and the interest of the public. It is, however, not necessary for a landlord to prove that, his building is old and required to be pulled down. What is required to be proved is an honest intention to demolish the building and erect a new building. The fact that, a landlord had two alternatives and that, he has followed the one under this clause, does not detract anywise from his reasonable and bona fide requirement under this clause. This clause applies to residential as well as business premises. The eviction of the tenant for the purpose of demolition and refection of a new building must be (i) direct, (ii) immediate, (iii) genuine and (iv) real. The bona fide character of the requirement can be proved by the appropriateness of time and the absence of any ulterior motive or irrelevant consideration. The strong and sound condition of the building or sound and safe building does not qualify for demolition.

Case Laws:

In case of **Kisan Satpute Vs. Baburao Wakankar**[155], while interpreting words "necessary funds are available" under Sec. 16 (6)(a) of the MRC Act, the Honourable Bombay High Court has observed that, words "necessary funds are available" only mean that, landlord should be in a position to arrange funds for purposes of reconstruction of new building as per plans within 15 months period. It is not necessary that, all funds must be available in hard cash with the landlord. Next question before the Hon'ble High Court was whether area of the reconstructed premises under Sec. 16(6)(d) of the MRC Act should be more than what tenant was in occupation? The Honourable High Court held that, the tenants cannot claim more than 15 sq. m. for the premises less than 15 sq. m. as per DC Rules. The carpet area in occupation of each tenant is 100 sq.ft., landlord has to provide only 15 sq. m. to them and not more.

In case of **Metalware and Co. Vs. Bansilal Sarma and Co.**[156], while deciding the factors to be considered by the Court in eviction suit on the ground of the bona fide requirement of the landlord for immediate purpose of demolition and reconstruction under Sec. 14 (1) (b) of Tamilnadu Rent Act, 1960 (analogous to Section 16 (1) (i) of the MRC Act), the Honourable Supreme Court has observed that, all surrounding circumstances including the sufficient means possessed by the landlord or funds to undertake the project and steps taken by him in that regard, existing condition of building, its age, situation and possibility or otherwise of its being put to a more profitable use after reconstruction have to be considered by the Court. In **M/s. Chunilal Radheshyam and Sons Vs. Amin Manilal and Co.**[157], it was

155 2008 (2) Bom. C.R. 126

156 AIR 1979 SC 1559

157 1982 (1) Bom. C.R. 35

observed provisions relating to production of certificate under Sec. 13 (3B) and giving undertakings under Sec. 13 (3A) (to some extent analogues to Sec. 16(6) of the M.R.C.A., 1999) are mandatory in nature and not directory. If the Court proceeds to pass a decree in the absence of such certificate, it will be an illegal exercise of its jurisdiction.

Section16(1)(j) entitles the landlord to get decree of eviction on the ground that he requires the terrace of the building for construction of upper floors after demolition of the tenements available on the terrace of the building for the purpose of erection or raising of floors. Thus, if a landlord owns a building with a open terrace as a roof and on such terrace a room or group of rooms as a separate unit or units are available and let out to the tenants, if the landlord is having available F.S.I, as per the development Rules, then the landlord is entitled to consume such available F.S.I by putting up additional floor or floors above the terrace level. For consuming such available F.S.I, if the landlord requires demolition of tenements on the terrace, he is entitled to seek decree of eviction for removal of such tenements available on the terrace for the construction of floors above the terrace level. For such erection or construction of floors if tenants refused to give consent, however, tenants are assured to be reaccommodated in the newly constructed floors, then the landlord would be entitled to get the decree under Section16 (1) (j) of the MRC Act.

In **Tribhuvandas Khushaldas & Ors Vs. Moolchandbhai Damodar Das**[158] it has been held that it is immaterial that after compliance of the requirement of law by accommodating the existing tenants who were occupying the tenements on the terrace, if premises is available in the newly constructed floors, the landlord can use such new premises and it is not required for the landlord for occupying such available premises to show that he is having reasonable and bona fide requirement to occupy such surplus area.

Explanation is attached with 16 (1) (j) clarifying that if premises let out includes terrace or part thereof, or garages, servant quarters or out houses which are not on terrace, said clause (j) nevertheless apply to such aforesaid premises.

[158] AIR 1976 Guj 118

Under Section 16 (1) (h) the landlord may sue for eviction on the ground of reasonable and bona fide requirement for carrying out repairs. The underlying object of this clause is to see that old building requires repairs and proper maintenance so that they are continued to be habited and housing accommodation is not reduced. While interpreting this clause the legislature policy needs to be kept in view. Mere fancy of landlord to carry out the repairs will not suffice or he himself must show that there is genuine need of repairs else, the life of building would get reduced. The eviction of the tenant is only for temporary period. Before granting eviction under this section, the Court has to form an opinion that the repairs cannot be carried out without the premises being vacated. The nature of repairs required to be carried out should be taken into account, while passing the decree under this clause. A suit for eviction on the ground specified in clause (h) of section 16, may be filed by the landlord, jointly against all the tenants occupying the premises sought to be demolished. Section 16(1)(h)(i) and section 17 of the Act should be read together. Before passing decree under section 16(1)(h), the Court need to ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, the Court shall record the fact of the election, in the decree. Further, the Court is required to specify in decree the date on or before which the tenant shall deliver possession to the landlord for commencement of repairs. As per section 17(2) of the MRC Act, when the landlord gets possession of suit premises on or before the date specified in the decree, then the landlord shall give notice in writing to the tenant, informing about when repair shall be completed. Said notice is to be issued two months before the date on which work of repairs is to be completed. Within thirty days of the receipt of the said notice, the tenant is required to perform two acts as conditions, firstly, he shall intimate to the landlord about acceptance of accommodation offered and secondly, he shall deposit with the landlord rent for one month.

If the tenant complies with these two conditions, then the landlord is bound to on completion of repairs work, to place tenant in occupation of the premises or part thereof on the terms and conditions existing on the date of passing of the decree for eviction. The failure of the tenant to give aforesaid intimation and to make the deposit, results in termination of his right to occupy the premises.

The landlord is required to commence the work of repairs within one month of the specified date. If he fails to complete the work within reasonable time or having completed work fails to place the tenant in occupation of the premises, then on the application made by the tenant within one year of the specified date, order the landlord to place tenant in occupation of the premises or part thereof. The failure of the landlord without reasonable excuse to commence work of repairs and any landlord or the person in occupation of the premises fails to comply with the order of the Court of giving vacant possession shall on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which extent to one thousand rupees.

Under Local Municipal Acts, a landlord may also be called upon to carry out repairs to the building, if in these circumstances, repairs to the premises are such that they cannot be carried out unless the premises are vacated, a landlord is entitled to evict his tenants. If the repairs can be carried out without the tenant vacating the premises, a landlord cannot take advantage of this provision. If the repairs are extensive and fundamental in character, as for instance, the very foundation on which the ground floor rests has to be reconstructed because the ground floor has sagged, the steps are broken, walls which have become cracked and moist have to be reconstructed and they cannot be carried out if the tenant remains in possession, a landlord in such a case can evict his tenant.

The object of Section 16(9) is to encourage a landlord to provide more housing accommodation by making better uses of 'terraces' and other structures on 'terraces'. This subsection is limited to certain types of premises only. The subsection being an inclusive one, what is intended is that where the premises mentioned in items (i), (ii) and (iii) or any of them are let independently or along with some other premises, a landlord may come to the Court and satisfy the Court that any of the above structures referred to in items (i), (ii) and (iii) are required by him for the purposes mentioned therein. The legislature has not specified any area of a terrace or any proportion of the area of the other premises to the entire premises mentioned in items (i), (ii) and (iii). Item (ii) indicates the types of structures on a terrace. Item (ii) gives an indication that a terrace contemplated might be an open one except the specified structures. Item (ii) indicates that if on the terrace there are rooms exceeding in area by more than onesixth of the total area of the terrace, a landlord would not be entitled to fall under this subsection.

The first requirement of this sub-section is about the premises referred to above. The second requirement is that a landlord should satisfy the Court that he requires the premises specified in items (i), (ii) or (iii) either for the purpose of demolition and erection or for raising a floor or floors on such terrace.

It may be noted that a requirement to be proved under this subsection has not been qualified by the words 'reasonably and bona fide' as in clauses (g), (h), (i) and (j) of sub-section (1). However, a landlord must prove his requirement which would be more than a desire and a need to some extent. A landlord will have to produce before the Court the necessary plans duly sanctioned by the authorities and his means for erecting the required structures. In **Maharaj Jagat Bahadur Singh Vs. Badri Prasad Seth**[159], Honourable Supreme Court while interpreting word “requires” employed in section 13(3)(iii) of East Punjab Urban Rent Restriction Act 1949 (to some extent analogous to 16(1)(h) of MRC Act) which gives right to the landlord to require the possession of the tenanted premises to carry out any building work or development scheme or if it has become unsafe or unfit for human habitation has observed that, if the repairs needed are so extensive and fundamental in the character that they cannot be carried out if the tenant remains in possession, then only it can be said that the landlord requires the building for such work. It is further observed that, small work such as, whitewashing or filling up the gap in the doorway shall not come within the meaning of extensive repairs.

Supplementary Provisions:

Unauthorised occupant under the MHADA Act, 1976:

The term “Unauthorised Occupant” has not been specifically defined under the MHADA Act but a reference of the same is found in Explanation-I to Section 66 which provides that for the purpose of this Chapter, the expression “unauthorised occupation” in relation to any person authorised

[159] 1962 Supp. (3) SCR 952

to occupy any Authority premises includes the continuance of occupation by him or by any person claiming through or under him of the premises after the Authority under which he was allowed to occupy the premises has expired or has been duly determined. "Authority Premises" is defined in Section 2(4) as any premises belonging to, or vesting in the Authority, or taken on lease by the Authority, or entrusted to, or placed at the disposal of the Authority for management and use for the purposes of this Act.

Explanation to Section 2(4) further says that it includes any premises taken by a person from the Authority under hire-purchase agreement, during the period any payments are to be made by such person to the Authority under such agreement or until such agreement is duly terminated.

<u>Procedure for eviction of unauthorised occupant under the MHADA Act, 1976</u>.

Section 66, 67, 69 to 72 of Chapter VI of MHADA Act, 1976 provides the complete procedure for eviction of unauthorized occupant from Authority premises. Once the suit premises is held to be a "Authority Premises" and a person is found to be in its unlawful occupation then the provisions of Section 66 (1)(b) of the said Act will apply for his eviction. It provides that if the Competent Authority is satisfied that any person is in unauthorised occupation of any Authority Premises, the Competent Authority may, for reasons to be recorded in writing, by notice served i.by post, or ii.by affixing a copy of it on the outer door or some other conspicuous part of such premises, or iii. in such other manner as may be prescribed order that person, as well as any other person, who may be in occupation of the whole or any part of the premises, to vacate the premises in unauthorised occupation, within 24 hours of the date of service of notice, and in any other case within a period of seven days of the date of such service. This subsection provides the manner of service on a person who is in unauthorised occupation or in 'Authority Premises'.

Section 66(3) provides the consequences of not complying with the order. If any person refuses or fails to comply with an order made under Section 66(1), the Competent Authority may evict that person and any other persons who obstructs him and takes possession of the premises, and may for that purpose use such force as may be necessary. Even the prayer of the unauthorised occupant to regularize the encroachment cannot be granted as the same may amount to adding premium on illegal and dishonest act as held by Honourable Bombay High Court in **Maniram Satyanarayan Chaudhari Vs. Estate Manager**[160].

As per sub-section (7) of Section 66 of this Act, if any person fails to vacate the premises required by the Board for the purpose of demolition of building containing such premises which are unfit for human habitation then, the Board may require the occupants thereof to vacate the premises within 24 hours of the date of service of the notice; and at the same time allot them alternative accommodation in any building of the Authority at such place as it thinks fit. The accommodation may not be in the same locality or of the same floor area as the premises vacated by the occupiers. Further if occupier fails to accept and occupy the alternative accommodation allotted to him within the time specified by the Board, the responsibility of the Board to provide him with any alternative accommodation shall cease. However, such occupier shall, have a right to reoccupy his premise in the building if a building is re-erected on the land on which the demolished building stood.

Where an occupier does not vacate his premises, the Board may take or cause to be taken such steps and use or cause to be used such force as may be reasonably necessary for the purpose of getting the premises vacated. The decision of the Board shall be final and conclusive and shall not be called in question in any Court nor any injunction against the order of demolition or vacation of the premises shall be made by any Court as provided in Section 66(8) and (9) of the said Act.

For the purpose of holding any inquiry under this chapter, the Competent Authority have same powers as vested in civil Court under the Civil Code when trying a suit in respect of the following matters namely (a) summoning and enforcing the attendance of any person and examining him on oath, (b) requiring the discovery and inspection of documents and (c) any other matter which may be prescribed as provided in Section 69 of the said Act. An aggrieved party has a right of appeal under Section 70 of the said Act to the appellate authority appointed by the government. Section 71 bars the

160 2014 (1) All MR 340

jurisdiction of civil Court to entertain any suit or proceeding in respect of the eviction of any person from any authority premises under this chapter or the recovery of rent, compensation, amount or damages for the use and occupation of such premises in respect of any order made or action taken in the exercise of any power conferred under this chapter or to grant any injunction in respect of such order or action. If any person obstructs the lawful exercise of any powers conferred by or under this chapter, shall on conviction be punished with fine which may extend to one thousand rupees as provided in Section 72 of the said Act.

<u>The role of The Mumbai Repairs and Reconstruction Board (M.B.R.R.B.) in redevelopment</u>:

Mumbai Building Repair and Reconstruction Board (M.B.R.R.B) has been constituted under Sec. 18 of MHADA Act, 1976. It is assigned to perform the duties of carrying out structural repairs of old cessed building and their reconstruction by following the procedure laid down under Chapter VIII of the said Act 1976. The said Chapter consists of Section 74 to 103 dealing with repairs and reconstruction of dilapidated buildings by the said Board. The role of the Board in above respect can be summarized. In case of **Radhika George and Others Vs. Maharashtra Housing And Area Development Authority and others[161],** the Honourable Bombay High Court has decided the aspect of jurisdiction of the authority to determine the rights of the parties under Section 95A of the MHADA Act. It was held that

> "proceeding under Section 95A cannot be converted into a full-fledged judicial proceeding as if the authority is trying a Civil suit. Rights of the parties cannot be determined under Section 95A".

<u>Conclusion</u>:

So as to conclude we may say that just because the sky line of the city is changing we should not pay heed to the individual basic need i.e. shelter under the garb of the larger public interest. The balanced attitude while following the model of development shall the thumb rule wherein the judiciary has a major role to play.

---

[161] 2012 (5) Mh. L. J. 229

Section 16 (1) (m) of MRC Act with Section 16 (8) of MRC ACt

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(m) that the rent charged by the tenant for the premises or any part thereof which are sub-let is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium other like sum of consideration in respect of such premises or part;

(8) For the purposes of clause (m) of sub-section (1), the standard rent or permitted increase in respect of the part sub-let. shall be the amounts bearing such proportion to the standard rent or permitted increases in respect of the premises as may be reasonable having regard to the extent of the part sub-let and other relevant considerations.

In addition to proof of unlawful sub-letting, the landlord has to prove that tenant was profiteering from such act. Therefore, he must adduce evidence about the actual financial dealings of the tenant with the persons who was unlawfully inducted in the tenanted premises. As a corollary, landlord will be necessitous to establish that the reasonableness of rent which the tenant pays and which he charges from the sub-tenant.

Section 16 (1) (n) of MRC Act

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

On the plain reading of Section 16 (1) (n) of the MRC Act, it appears that, users of the building for a purpose other than that for which it was leased, has to be considered in the context of section 30 of the Act, which prohibits conversions of a residential building into commercial building. In other words, when the lease is granted for the purpose of trade, in the absence of any covenant in the contract between the parties prohibiting a user different from the particular one mentioned in the lease deed, the tenant would be entitled to carry on any trade in the premises, consistent with the location and the nature of the premises. In a case where the premises let out for a commercial purpose is used by the tenant for a residential purpose, it would be a user for the purpose other than that for which it was leased attracting section 16 (1) (n) of the MRC Act.

It must be added here that, the landlord has to establish the following necessary ingredients, to prove existence of facts constituting this ground. It must be established with cogent evidence that-

I. The tenanted premises is not being used by the tenant, at all

OR

The tenanted premises is not being used by the tenant for the purpose for which it was let out.

II. The tenanted premises is not being used for a period of six months immediately preceding the date of institution of the suit.

Most of the times, it is being argued on behalf of the landlord that the report of Bailiff of the Court reported that tenant/defendant was not found at the address of the suit premises, while serving the summons of the particular suit. However, it has to be kept in mind that non-use of the premises is to be proved during the period of six months immediately preceding the date of institution of suit. Therefore, the report of Bailiff, which is certainly subsequent to the institution of the suit, may not solely help the landlord to prove non-user as mandated by the section.

Section 16 (1) (n) of the MRC Act provides for a specific ground for eviction. It is with a view that the premises shall not be left unused. It is in fact to save and restore the potential usability of the tenanted premises and value. If the tenant does not use the tenanted premises for the purpose for which it was let out and if such no use is continued for a period of six months immediately preceding the date of suit, the ground is available. There must not be reasonable cause or excuse for such non-user of the said premises. It means that for establishing this ground of eviction, the landlord has to establish first that the premises was not used. Secondly, landlord has to prove that the premises was not used for the purpose for which it was let out. Thirdly, landlord must establish that the period of non-user was of six months preceding the suit. It can be more than that, however, non-user for such period must be proved. Fourthly and lastly, landlord must prove that there was no reasonable cause or excuse for such non-user. It also means that the tenant can establish existence of any reasonable cause or excuse or circumstance, leading to such non-user.

The ground of change of user also goes hand-in-hand. It is actually governed by section 16 (1) (a) of MRC Act and section 108 (o) of Transfer of Property Act, 1882. If the tenancy was for one purpose and tenant changes the purpose, without landlord's consent, then it is also a ground for eviction. It is covered under breach of terms of tenancy. So, if the premises is used for any other purpose than the purpose of letting, then, both these grounds (of non-user and change of user) are available to be proved in Court.

Observations in case of **Anandibai Raghunath Karkare and others Vs. Kulko Engineering Works Ltd.**[162], are useful in this context. Honourable Bombay High Court observed in the said case that if the case of change of user is established, it would necessarily follow that the tenant must be evicted for ground of non-user of the premises for the purpose for which it was let out. In the said case, the suit premises was let out for office purposes.

---

[162] MANU/MH/0907/2000 : 2001 (1) Mh. L. J. 792

But, the report of Court Commissioner in the said case indicated that the premises was occupied by persons who were 'padyatri' and following religious belief of group known as 'Geetai'. The said report also indicated that the premises was not used for office. Considering the situation, it was held that the ground of change of user was established and it also establishes the ground of non-user for the purpose of letting. The relevant observations are-

> "10. Following the said decision, it will have to be held that since the case of change of user has been established from the record, it would necessarily follow that the respondent is liable to be evicted also on the ground of non-user of the suit premises for the purpose for which the same were let out. I have already pointed out that the materials for the ground of change of user and that of non-user are more or less overlapping. The evidence which is referred to above would clearly indicate that the ground of non-user of the suit premises has been made out in law."

These observations lay down ratio that the ground of change of user and non-user are interconnected. It also subsides the thrust of contention of learned Advocate Mr. Shamim that the issue of change of user was not before the learned Trial Court and yet it was considered. Truly, the relevant issue was there in the earlier set of issues. However, while the issues were recast, the specific issue about change of user was not distinctly framed. The discussion of learned Trial Court revolves around both these grounds, and the observations in the case of Anandibai Karkare and others justify it. It also means that the relevant objection of learned Advocate Mr. Sajid Shamim has to be overruled.

<u>Burden of proof on whom</u>?

By and large, the burden to prove existence of circumstance which activate these grounds, is on the landlord. One who alleges, must prove the particular fact. Therefore, it is for the landlord to prove that the premises was not used, the purpose of letting was changed and also the necessary elements concerning to these grounds. However, as mentioned earlier, the existence of reasonable cause or excuse or circumstance leading to non-user, if any, must be established by the tenant. It also means that the tenant must come with admission that the tenanted premises was not used for the purpose of letting and for a period as provided, when the tenant claims existence of reasonable cause or excuse.

Merely because, a shop let for trade in shoes and other leather goods, is used by the tenant also for the purpose of trading in readymade garments, it could not be held to be a user by tenant of the premises for a purpose other than that for which it was leased. It has to be noted that even now, the tenant is carrying on the business of trading in shoes, which according to the landlord was the purpose for which the building was let. The trade in shoes has not been stopped by the tenant. In such cases, the purpose has to be understood.

In the landmark case of **Malpe Vishwanath Acharya and others Vs. State of Maharashtra and another**[163], Honourable Supreme Court held that, the Rent Control Legislatn is enacted in the larger interest of the society as a whole and it is not intended to confer any disproportionately larger benefit on the tenant to the disadvantage of the landlord. But that does not mean that the Rent Control Legislation should not be approached as a beneficial piece of legislation and with the recognition that reasonable protection to the tenant is one of the objects of that legislation. While construing a provision of law imposing a liability, for eviction, on ground of non-user of suit premises, one must see whether there has been such a change of user of the premises as to make it alien to the purpose for which the building was let and deny eviction when the basic activity remains the same and there is only a variation in the manner or mode of carrying on of that activity.

Useful references:

1. **Narayanlal Bansilal deceased Venkantlal Govindlal Petit and others Vs. M/s. Bright Brothers and others**[164]**.**
2. **Ravibhushan Anant Datar and another Vs. Waman Dattatraya Purohit**[165]**.**
3. **Nilesh Laxmichand and another Vs. Shantaben Purushottam Kakad (since deceased) by LRs.**[166]
4. **Art Wood Shop, Pune and another Vs. J. B. Pandit and others**[167]**.**

---

[163] (1998) 2 SCC 1
[164] 1979 Bom. R. C. 52
[165] 2004 (1) Bom. C. R. 585
[166] 2019 (5) Bom. C. R. 108
[167] 1999 Bom. R. C. 65

Mesne Profits – Concept, how to determine and Scope of inquiry.

Introduction:

Mesne Profits are defined under Section 2(12) of the Civil Code as:

> "Mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with the ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvement made by the person in wrongful possession."

Mesne Profits are basically akin to damages, payable by the unlawful occupants to the landlord, for the period of unlawful occupation. The amount of mesne profits payable is defined to be the profits that the defendant makes whilst in such unlawful occupation.

How to Determine:

The three components therefore, for the purpose of arriving at mesne profits are:

I) Area of the premises

II) A declaration by a competent Court that the occupant is in unlawful occupation. In so far as the Small Causes Court is concerned, the Small Causes Court has two jurisdictions:

  i) Jurisdiction under the Rent Act whereby the disputes are between a landlord and a protected tenant.

  ii) Jurisdiction under the Presidency Small Causes Court Act where the disputes are between a landlord and an unprotected tenant.

The date of unlawful occupation is the date when the tenancy of either protected or unprotected comes to an end. In suits where the tenant is protected, no notice is required to be issued, the grounds under Section 16 of MRC Act have to be satisfactorily proved to seek eviction. The grounds are satisfactorily proved only upon evidence being led and decree being finally passed. So, the tenancy will be severed only on the satisfaction of a ground proved by the landlord and so declared by the Court. This means that only upon a decree being passed by Court, recording its satisfaction of a ground available under the Rent Act, then the tenancy between a protected tenant and landlord comes to an end. Any period of occupation by the tenant subsequent to such decree will be considered unlawful. Hence, in RAE suits, if a decree is passed and the tenant goes in appeal, then tenant is liable to pay mesne profits for the period, during the pendency of appeal till such possession is handed over.

In so far as a tenant not protected under the Rent Act is concerned, there are no grounds to be proved. A simplicitor notice of termination has to be issued. The notice of termination becomes effective 30 days after receipt of the notice by the tenant. Thereafter, the occupation of the tenant is deemed to be unlawful.

Despite a notice of termination being served, if tenant does not vacate, a suit is required to be filed for the purpose of actually getting the decree from the Court. By filing a written statement, the defendant can take various defences to show that the notice is invalid. Merely because the suit is filed or suits take time to be disposed of, the date of unlawful occupation in such cases, is not the date of the decree, but the date of effective termination of notice, unless the notice is ultimately held to be invalid. In such cases, the tenant is liable to pay mesne profits from the effective date of the notice i.e. 30 days after service.

Next ingredient to decide mesne profits is the amount of mesne profits. This is defined to be the profits derived by the tenants during the period of such unlawful occupation.

In a case of **Uco Bank Vs. Asaram s/o. Mohanlal Samdani**[168], a challenge was made to the order passed by the learned Trial Court with regard to mesne profits for the period from 01.08.2001 to 31.12.2004 on the ground that the mesne profits for a period exceeding three years cannot be granted. Answering said question, the Honourable High Court, Judicature at Bombay, Bench at Aurangabad held that there is no restriction of period of

---

[168] 2017 (2) ALL MR 92

three years as per amendment in respect of mesne profits. It is clarified that the Trial Court was justified in determining future mesne profit exceeding the period of three years. As per the Bombay Amendment, there is no restriction of period of three years, which was earlier found in Rule 12 (c) (iii) of Civil Code. Therefore, no substance was found in the objection raised pertaining to grant of future mesne profits exceeding the period of 3 years. In spite of valid termination of tenancy, Uco Bank remained in occupation of the premises.

In the case of **Humayun Dhanrajgir Vs. Ezra Aboody**[169], Honourable Bombay High Court in para No. 31 of the Judgment observed that the various methods of valuation of mesne profits can be broadly summarized as under:- The claim for mesne profits remains floating till the decree of possession is passed in favour of the plaintiff, which can also be termed as royalty;

(ii) The measure of Mesne Profits is the value for the use of the premises and no necessarily the value of the property;

(iii) Value for use will be determined by;

(a) What that value will be in the hands of person in wrongful possession;

(b) Comparables, if available and applicable in sense;

(c) Finding out the prevailing rate of rental at which the wrongful person ought to have founds equivalent accommodation.

Applying the above well accepted principles, the Honourable Bombay High Court, recently in an unreported judgment in Civil Revision Application No. 348 of 2022 in a case of **Bharat Petroleum Corporation Limited Vs. Kalpatary Properties Pvt. Ltd.** held that the principle of value for use is determinable by the applicable comparable instances in real sense and finding out the prevailing rate of rent at which the wrongful person ought to have found equivalent accommodation.

[169] (2008) 6 Bom. C. R. 862

Honourable Supreme Court explored this aspect in great details, in case of **Bharat Petroleum Corporation Ltd. and Another Vs. ATM Constructions Pvt. Ltd**[170]. Decision in case of **Indian Oil Corporation Ltd. Vs. Sudera Realty Private Limited**[171] and a Full Bench decision of Honourable Allahabad High Court in case of **Ram Karan Singh and Others Vs. Nakchhed Ahir and Others**[172] were considered and reiterated. Thereby, it was ruled down while concluding that-

> "92. Therefore, it may not be appropriate to allow the appellant to raise the contention of limitation or to allow him to succeed on the same, based on the case falling under Article 51. This is, no doubt, despite noticing the averment in the plaint which appears to have been made with reference to Section 2(12) of the CPC. We would have to, however, bear in mind the principle laid down in Atmaram (supra) and the principles we have already considered. We are of the view that landlord by the suit seeks to realise, what in law is described as damages for unauthorised occupation by the tenant after the expiry of the lease. It is not to be conflated to the profits received within the meaning of Article 51 of the Limitation Act, as it involves finding out the rate at which the landlord could have let out the premises. It would be the residuary Article, namely, Article 113, which should apply.
>
> 93. The result would be that, in the factual context, it may not be possible to hold that the suit filed by the respondent, should still be found to fall under Article 51 of the Limitation Act and barred as regards part of the cause of action."

The test is not what the person out of possession could have got but what the person in possession actually received or might with ordinary diligence have received.

---

[170] 2023 SCC OnLine SC 1614

[171] 2022 SCC OnLine SC 1161

[172] AIR 1931 All 429 : 1931 SCC OnLine All 39

Mesne Profits from Obstructionists:

The Honourable Bombay High Court in a case of **Kumari Asha Parekh and Others Vs. Madhav Motors Stores Pvt. Ltd., Mumbai and Others**[173] observed that if obstructionist is in illegal occupation and possession, then he is liable to pay the mesnpe profits to the landlord. Option is given to the landlord to recover the mesne profits either from the original tenant or the obstructionist. The judicial principle laid down in the above case is based upon the dictum laid down in a case of **Marshall Sons & Co. (I) Ltd. Vs. Sahi Oretrans (P) Ltd. and another**[174].

Burden of Proof:

Obviously, the burden of proof in a case of mesne profits rests on the claimant / plaintiff.

Interest:

Mesne profits by definition includes interest on the mesne profits so decided by the Court. Thus, whether prayed or not, the Court is required to order interest to be payable on the mesne profits from the date of unlawful occupation i.e. decree or effective termination of tenancy till realisation i.e. till the defendant actually pays the mesne profits to the plaintiff.

Court Fees:

One more concept that may be of interest in scope of mesne profits is Court fees. Once a Court arrives at the mesne profits based on the evidence, then the Court directs the plaintiff to pay the Court fees. Alternately, unless and until the plaintiff pays the Court fees, the plaintiff is not entitled to execute a decree of mesne profits.

Order XV-A of the CPC:

In a case of **Bharat Petroleum Corporation Limited Vs. Mr. Thakorbai Ranchodji Desai**[175]**,** the Honourable Bombay High Court held that in suits between the lessor and lessee or licensor or licensee, specific provision is made under Order XV-A of CPC to ensure the recovery of amount or arrears as well as amount arising during the pendency of suit for

[173] 2012 (6) Mh. L. J. 722
[174] (1999) 2 SCC 325
[175] 2003 (3) Mh. L. J., 617

possession of premises by way of eviction of licensee or the lessee therefrom. It further observed that the said provision deal with the matters pertaining to payments or deposit of amount accruing during the pendency of suit either as a rent or as license fee or even as mesne profits. Order XV-A of the CPC empowers the Rent Court to grant mesne profits even during the pendency of suit.

Mesne Profits at Interim Stage:

Persons who suffer orders of eviction often exercise their right of appeal. It deprives successful landlords of the fruits of decree by postponing the execution of order of eviction. Law contemplates that the Appellate Court while exercising power under Order 41 Rule 5 and in granting stay impose reasonable conditions. It is appropriate to direct the appellant to compensate the landlord by paying of reasonable amount to him which is not necessarily the contractual rent. This contingency is governed in the case of **Atmaram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.**[176] and **State of Maharashtra Vs. Super Max International (P) Ltd.**[177]

---

[176] (2005) 1 SCC 705
[177] (2009) 9 SCC 772

Effect of declaration of tenanted premises as slum on eviction proceeding with reference to Section 22 of The Maharashtra Slum Area Act.

Chapter VI of Slum Act is named and titled as 'Protection of Occupiers in Slum Areas from Eviction and Distress Warrrants'. Section 22 of the Slum Act deals with such statutory protection. As per section 22 of the Slum Act, no suit for eviction of any occupier from any building or land in a slum area can be instituted without the permission of the competent authority and on an objection being raised or the Court noticing the non-compliance thereof, will not entertain the suit. Section 22 (1) starts with non obstante clause and it is clear from the provision contained in Clause (a) thereof that no person shall institute any suit or proceeding for obtaining any decree or order for eviction of the occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier or for both without the previous written permission of the Competent Authority.

The use of words 'no' and 'shall' in Sub-section (1) of Section 22 makes it abundantly clear that prior written permission of the Competent Authority for an action under Clause (a) thereof is a must. The role of the Competent Authority under the Slum Act is extremely important as the legislature has conferred power on it to carry out execution of works in improvement of the slum. Sub-section (2) of Section 22 requires the person desiring to obtain the permission to make an application in writing to the Competent Authority. As per Sub-section (3) on receipt of such application, the Competent Authority by an order in writing may either grant or refuse to grant such permission after giving an opportunity to the parties of being heard and after making such summary enquiries into the circumstances of the case as it thinks fit. Sub-section (4) of Section 22 requires the Competent Authority to take into account the factors set out therein for granting or refusing the permission. Sub-section (5) requires the Competent Authority to record a brief statement of reasons while refusing to grant a permission. These provisions contained in Section 22 are salutary in light of the scheme of 1971 Act and have to be followed.

Bar to Jurisdiction of Small Causes Court? If yes, to what extent?

Section 3T of Slum Act bars a suit or proceedings against the Competent Authority for anything done in good faith or intended to be done under the said Act, rules or Regulations. It also means that the grant or rejection of permission cannot be challenged in any suit or proceeding.

Section 42 of Slum Act provides that, no civil Court shall have jurisdiction is respect of any matter which the Appellate Authority, Competent Authority or Grievance Redressal Committee or Tribunal is empowered by or under this Act, to determine. It is also provided that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Precedents on Frequent questions in the context

What if the area was declared as slum during pendency of suit?

In a case of **Abdul Basu V. Smt. Teresa Rozario & Others[178]**, A single Judge of the Honourable Bombay High Court held that once the notification under Section 4 of the Maharashtra Slum Act is set aside, the very effect of it is washed away and consequently, there was no prohibition against filing of the suit without permission of the competent authority.

In a second Judgment in case of **Smt. Hasira Vs. Safiah D/o. ARI Fitwalla & Others[179]**, the learned single Judge of the Honourable Bombay High Court in the backdrop of the facts of that particular case held that the declaration under Slum Act was made on 26.11.1977 and a suit came to be instituted on 21.03.1979, while the declaration under the Slum Act was in force. The said declaration was set aside on 30.04.1982, on an appeal filed by the plaintiff, the learned single Judge held that before filing a suit against the tenant, it was open for the plaintiff to follow the requirement under Section 22(1) of the Slum Act or challenge the declaration declaring the area to be slum before the Slum Area Tribunal and after getting the declaration, the suit could have been instituted with the permission of the competent authority. The suit came to be filed when the declaration was in force without obtaining permission of the competent authority contemplated

[178] Writ Petition no. 848 of 1980, decided on 08.07.1985.
[179] Writ Petition no. 3331 of 1980, decided on 31.07.1986

under sub-section (1) of Section 22 of the Slum Act was held to be not maintainable and the decree passed was declared as illegal.

In case of **Hari S. Yadav Vs. Hiralal Prabhu Yadav & another[180]**, it was held that if the notification declaring slum is set aside before passing of a decree in the suit, there would be no bar of Section 22 of the Slum Act for passing effective decree of eviction against the tenant. In case of **Shri Hari Dhondu Gurav Vs. Shri Jhonney Augustine Gomes[181]**, the Honourable Bombay High Court observed that section 22 (1) (a) of Slum Act does not prohibit the Court from continuing with the suit which has already been instituted before the area is declared as slum. The Honourable Bombay High Court also ruled down in the said case that the notification of declaration of area as slum will not have retrospective effect.

In view of above conflicting judicial precedents, the question of law about the maintainability of suit for want of permission under Section 22 of the Slum Act was referred to the Larger Bench. Now, there is a decision of Larger Bench of the Honourable Bombay High Court over the reference in case of **Satish Shahu Bane & Another Vs. Dattatraya Tanaji Padam & another[182]**. Now the issue of maintainability of the suit in case of recovery of property declared as slum is set at rest. The ratio laid down by the larger bench is that when the suit was filed, the statute contemplated prior permission of the Competent Authority and since it was the mandate of statute, the suit filed without the permission of Competent Authority is bad-in-law. Thus, when a declaration is made under the statute declaring the area to be slum is set aside, at a subsequent point of time, it cannot be automatically held to be nonexistence and it it was a condition precedent under Section 22 of the Slum Act to institute a suit, it will not have an effect of wiping out a short fall at that point of time i.e. when the suit was instituted without permission of Competent Authority.

In case of **Fattechand Murlidhar Shop Vs. Shrikrishna Tejmalji Chandak[183]** the Honourable Bombay High Court ruled down that the

---

180 2002 (6) Bom. C. R., 177
181 2011 (7) ALL MR 662 : MANU/MH/0195/2011
182 2020 (5) Mh. L. J., 245
183 1984 Mh. L. J. 796 : AIR 1984 Bom. 428

objection regarding absence of permission of Competent Authority must be raised during trial of the suit. It was also observed that the Executing Court could not entertain and allow the said objection to the executability of the decree.

If the issue of said bar is raised and contested by the defendant in a Trial and said issue was already decided and confirmed up to the Appellate Court, then, said point cannot be allowed to be raised before the Executing Court. In this context, the scope of authority of the Executing Court is decided by the Divisional Bench of the Honourable Bombay High Court in case of **Chandrashekhar S/o Manohar Tanksale Vs. Pandharinath S/o. Vithobaji Neware**[184].

In other words, ratio is that the objection with regard to the maintainability of suit for want of permission of competent authority must be raised in the trial. If such objection is not raised in the trial and decree is passed, the executive Court cannot go into that objection. The executive Court would not be justified in interfering and allowing the said objection to the enforcement of the decree.

<u>Whether permission has retrospective effect?</u>

In case of **Kalawatibai Wd/o Lokumal Sindhi and others Vs. Gopala Ganpati Bhanarkar and others**[185], the Honourable Bombay High Court ruled down that the Competent Authority cannot grant permission with retrospective effect. It was also observed that the ipso facto permission cannot be granted.

<u>Whether it is necessary for the landlord to obtain fresh permission after death of original tenant against whom the permission was obtained?</u>

In case between **Sunanda Ramkrishna Ayare Vs. Harishchandra Gopal Parab**[186]**,** the Honourable Bombay High Court observed that the suit was brought by the landlord against the legal heirs of the original tenant under the same permission under section 22 of Slum Act obtained against the original tenant who died before suit could be filed. As the applicants

[184] 2013 (6) Mh. L. J. 377
[185] 1984 Mh. L. J. 261: MANU/MH/0688/1984
[186] 2020 (2) Mh. L. J. 251

traced their rights through the deceased original tenant the proceeding taken against the original tenant even under section 22 of Slum Act would survive and affect his legal heirs as well.

Whether such permission is needed against action against occupier or trespasser in premises of Slum Area?

The Honourable Supreme Case held in case of **Laxmi Ram Pawar Vs. Sitabai Balu Dhotre and another**[187], that the protection of the Slum Act is available even to a trespasser, who is included in the definition of occupier in Section 2 (e)(v) of the Slum Act. The Honourable Apex Court further held in the same case that the provision of Section 22 of the Slum Act is mandatory in nature.

Whether Jurisdiction of Civil Court will be barred as to issue of eligibility of slum dweller?

Parties claiming their rights as legal heirs of deceased occupant. Matter does not fall within jurisdiction of authorities under the Act. Therefore, jurisdiction of civil Court is not barred. It was held in case of **Ashok B. Nigudkar Vs. Sudhadra P. Nirgudkar & others**[188]**.**

Jurisdiction of Civil Court in case of Joint possession of transit premises

In case of **Bansanarayan Sitaprasad Patel Vs. Shri. Sairam Co-operative Housing Society Limited & Others**[189], it was held that where plaintiff claims entitlement to the joint possession of transit premises and defendant not denying right of the plaintiff but only of his other family member; such dispute over civil rights cannot be adjudicated by Tribunal under Slum Act. Thereby it was observed that jurisdiction of Civil Court was not barred.

----

187 (2011) 1 SCC 356
188 2013 (4) Mh. L. J. 175
189 2014 (1) All M.R. 76

Jurisdiction of the Small Causes Court in the light of Section 17 (4A), 34 and 35 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 and Jurisdiction of Small Causes Court in proceedings under the Insolvency and Bankruptcy Code, 2016.

Introduction

The object of Securitization and reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as 'SARFAESI Act' for brevity] was to entitle the banks and financial institutions as secured creditors to take possession and sell the secured assets without filing cases in Courts or the Debt Recovery Tribunals. Section 13 of SARFAESI Act provides procedure for recovery of secured debt.

Although, it may appear to be a simple and convenient method for recovery of debts by banks or financial institutions, but the recovery procedure becomes difficult and challenging, where the borrower has inducted persons such as tenants or lessees on such secured assets. Many times, the borrowers induct tenants in order to defraud or impede the process of taking over the possession or sale by banks or financial institutions of the secured assets.

Remedies available to the aggrieved person:

Section 17 (1) of the SARFAESI Act provides remedy to the aggrieved person. He may make an application to the Debts Recovery Tribunal [DRT] having jurisdiction in the matter within forty-five days from the date on which such measure had been taken. In view of section 34 of SARFAESI Act jurisdiction of Civil Court is barred. It provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Legal Position prior to recent Amendment:

In **Mardia Chemicals Vs. Union of India**[190]**,** the Honourable Supreme Court held that it is well known that in different states Rent Control legislations were enacted providing safeguards to the sitting tenants as against the existing rights of the landlords, which before coming into force of such law were governed by contract between the private parties. Therefore, it is clear that it has always been held to be lawful, whenever it was necessary in the public interest to legislate irrespective of the fact that it may affect some individuals enjoying certain rights. In **Hutchinsons Essar South Ltd. Vs. Union Bank of India Ltd**[191]**,** the Honourable Karnantaka High Court allowed the lessee's writ petition challenging the action of the bank under Section 14 of SARFAESI Act seeking a declaration that the petitioner's leasehold rights are not regulated and covered by SARFAESI Act. It was held that if a bona fide third party is in occupation of the secured asset, third party lessee cannot be thrown out and the secured person can acquire symbolic and not actual possession.

In **Vishal N. Kalsaria Vs. Bank of India**[192]**,** the Honourable Supreme Court held that the Rent Act being social welfare legislation must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Act. The two legislations, that is the SARFAESI Act and the Rent Act operate in completely different fields. While SARFAESI Act is concerned with Non-performing Assets of the Banks, the Rent Act governs the relationship between a tenant and the landlord. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Act.

It was further held that a tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act, as that would amount to stultifying the statutory rights and protection given to the tenant. A non obstante clause (appearing in text of Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Act.

---

190 2004 (2) Mh. L. J. 1090

191 AIR 2008 Kar 14

192 (2016) 3 SCC 762

Need for Amendment:

In case of **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others**[193], it was held that even if the DRT comes to the conclusion that any of the measures referred to in Sub Section (4) of Section 13 of the SARFAESI Act taken by the secured creditor were not in accordance within the provisions of the Act, in respect of a claim raised by a tenant/lessee, on account of the lease being made prior to the creation of the mortgage and was in accordance with the requirements of Section 65-A of the TP Act and thus was valid and binding; the DRT do not have any power to restore possession of the secured asset/leased property to the lessee, and therefore, there is no remedy available to the lessee, under Section 17 of the SARFAESI Act to protect his lawful possession under a valid lease.

In **Vishal Kalsaria's case**, the Honourable Apex Court also observed that-

> "when we read sub-section (3) of Section 17 of the SARFAESI Act, we find that the Debts Recovery Tribunal has power to restore possession of the secured asset to the borrower only and not to any person such as a lessee. Hence, even if the Debt Recovery Tribunal comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor are not in accordance with the provisions of the Act, it cannot restore possession of the secured asset to the lessee."

Recently, in order to resolve this issue and to remove the ambiguities existed in relation to the tenants and lessees and whether remedy given under Section 17 is an effective remedy or not; the Parliament amended Section 17 of SARFAESI Act through the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 and the word 'aggrieved person' has been inserted under Section 17 (3) of SARFAESI Act. It has been inserted to enable the Debts Recovery

[193] (2014) 6 SCC 1

Tribunals to order restoration of property to the borrower or any aggrieved person including lessees and tenants, who approaches Debts Recovery Tribuanl under Section 17. Section 17 (4-A) w.e.f. 01.09.2016, is added whereby power to decide the nature of the tenancy/leasehold rights and to pass orders thereupon under the provisions of the SARFAESI Act. Section 17 (4-A) provides that where any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy, —

a. has expired or stood determined; or
b. is contrary to section 65A of the TP Act, 1882 (4 of 1882); or
c. is contrary to terms of mortgage; or
d. is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act.

Legal Position After Amendment

The Honourable Karnataka High Court in **Aravindamma Vs. K.S. Jayalakshmammanni**[194] held that after the Amendment Act of 2016, a tenant or a lessee has a right to approach Debt Recovery Tribunals under Section 17 of the SARFAESI Act as an aggrieved person.

Thus, considering section 17 (4-A) of SARFAESI Act, the Small Causes Court has no jurisdiction to decide tenancy or lease matter, which is related to the SARFAESI Act. The DRT should first decide whether tenant is inducted prior to any mortgage deed or not. Moreover, purchaser of secured asset may come in the shoe of landlord or lessor, if DRT held that Small Causes Court has jurisdiction. In the light of section 17 (4-A) of SARFAESI Act, it can be concluded that DRT has prima facie jurisdiction in the tenancy and lease matters, which are related to secured asset or secured debt.

[194] 2018 SCC OnLine Kar 530

Insolvency and Bankruptcy Code, 2016 [IBC]

It provides a time-bound process for resolving insolvency in companies and among individuals. As defined, insolvency is a situation where individuals or companies are unable to repay their outstanding debt. Bankruptcy, on the other hand, is a situation whereby a Court of competent jurisdiction has declared a person or other entity insolvent, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one's inability to pay off debts.

Object:

The Government implemented the IBC to consolidate all laws related to insolvency and bankruptcy and to tackle Non-Performing Assets (NPA), a problem that has been pulling the Indian economy down for years. The IBC is different from the earlier resolution systems as it shifts the responsibility to the creditor to initiate the insolvency resolution process against the corporate debtor.

Authorities constituted under this Act:

There are two main authorities, which are constituted under the IBC. First is National Company Law Tribunal (NCLT) and Debt Recovery Tribunal (DRT). The National Company Law Tribunal is constituted to deal with the matters of companies and LLPs, whereas, the Debt Recovery Tribunal is constituted to deal with the matters of individuals and partnership firms.
Section 33 (5) of the IBC provides that when a liquidation order has been passed, no suit or legal proceeding shall be instituted by or against the corporate debtor. This is subject to the provisions contained in Section 52 of IBC. The proviso makes it clear that in such contingencies, a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of adjudicating authority.

Exclusion of the Jurisdiction of Civil Court:

Section 63 of IBC provides that no Civil Court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter, on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Section 231 of IBC further provides that no Civil Court shall have jurisdiction in respect of any matter, in which the Adjudicating Authority is empowered by, or under this

Code to pass any order. It is further provided that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority

Important Precedents:

In the case of **Adinath Jewellery Vs. Mr. Brijendra Kumar Mishra, Liquidator of Shrenuj & Co. Ltd.**[195]**,** the issue was whether National Company Law Tribunal does not possess jurisdiction in relation to matters relating to landlord and tenant i.e Eviction of tenant and payment of rent, which are matters to be dealt under the Rent Act, for which jurisdiction vests only with the Court of Small Causes. It was held that NCLT possesses the correct jurisdiction in considering an application for vacation of the premises in question and that the NCLT was correct in passing the impugned Order which would be necessary to put the premises in question with the Liquidator.

Conclusion:

To conclude, the Parliament has removed the ambiguity prevailing in SARFAESI Act in relation to tenant and lessees by amending Section 17 of the SARFAESI Act. After amendment, the jurisdiction of the Small Causes Court to that extent is barred. Whereas, the IBC also bars the jurisdiction of Civil Court in respect of those matters, which are within the domain of the adjudicating authority. Even no suit can be filed in Court of Small Causes against the Corporate Debtor if liquidation order has been passed.

----

[195] MANU/NL/0375/2023 : [Company Appeal (AT) (Insolvency) No. 748 of 2022, decided on 24.04.2023]

Whether arbitration clause in tenancy agreement ousts the jurisdiction of the Small Causes Court?

Introduction:

The Regulation of lease Agreements in India is governed by the TP Act, 1882. Similarly, the leave and license agreement is governed by the India Easement Act, 1882. Multiple states have also implemented their own Rent Laws to govern tenancy dispute providing exclusive jurisdiction to Small Causes Court. This creates an ambiguity regarding the governing law, jurisdiction and applicability of alternative dispute resolution like Arbitration.

Arbitration agreement and exclusive jurisdiction of the Small Causes Court:

Section 8 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'Arbitration Act'] deals with power to refer parties to arbitration where there is an arbitration agreement. A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

The section 2(3) of Arbitration Act prescribes that "This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to Arbitration." Thus, it would indicate that if a special law provides for resolution of the dispute exclusively by a machinery created thereunder, and, thereby implies that such disputes may not be amenable to Arbitration.

Validity of Arbitration Clause in Tenancy Agreement:

The issue of applicability of Arbitration clause in tenancy dispute was firstly arisen in the case of **Natraj Studios Ltd. Vs. Navrang Studios and others**[196]. The Honourable Supreme Court held that dispute between

[196] (1981) 1 SCC 523

landlord and tenant under the Bombay Rents, Hotel and Lodging Rates Control Act cannot be referred to an Arbitrator. This is because

a. The dispute was governed by the Bombay Rent Act,
b. Bombay Rent Act is a welfare legislature aimed at the definite social objective of protecting tenants against harassment by landlords. Accordingly, parties cannot be permitted to contract out of the legislative mandate which is rooted in public policy and
c. Bombay Rent Act conferred jurisdiction on the Court of Small Causes, under section 28 to entertain and decide all matter arising thereunder.

A Full Bench of the Honourable Bombay High Court also dealt with applicability of Arbitration clause in agreement between licensor and licensee in the case of **Central Warehousing Corporation, Mumbai Vs. Fortpoint Automotive Pvt. Ltd. Mumbai[197],** wherein the question was referred to the Full Bench as follows:

> "Whether in view of the provisions of section 5 of the Arbitration and Conciliation Act, 1996 , if any agreement between licensor and licensee contains a clause for arbitration, the jurisdiction of the Small Causes Court under the Presidency Small Causes Court Act, 1882 would be ousted?"

In para No. 40 of the judgment the position of law was summarized as follows:

> "In summation, we would hold that section 41 (1) of the Act of 1882 is a special law which in turn has constituted special Courts for adjudication of disputes specified therein between the licensor and licensee or landlord and tenant. The effect of section 41(2) of the Act of 1882 is only the suits or proceedings for recovery of possession of immovable property or of license fee thereof, to which, the provisions of specified Acts or any other law for the time being in force apply, have been excepted from the application of non-obstante clause contain in section

[197] 2010 (1) Mh. L. J. 658

> 41(1) of the Act. The expression "or any other law for the time being in force" appearing in section 41(2), will have to be construed to mean that such law should provide for resolution of disputes between licensor and licensee and landlord or tenant in relation to immovable property or license fee thereof, to which immovable property, the provisions of that Act are applicable. The Act of 1996 is not covered within the ambit of section 41 (2) in particular expression "or any other law for the time being in force" contained therein. The question whether the exclusive jurisdiction of the Small Causes Court vested in terms of Section 41 of the Act of 1882 is ousted, if an agreement between the licensor and licensee contains a clause for arbitration, the same will have to be answered in the negative. For section 5 of the Act of 1996 in that sense is not an absolute non-obstante clause. Section 5 of the Act of 1996 cannot affect the laws for the time being in force by virtue of which certain disputes may not be submitted to Arbitration, as stipulated in section 2 (3) of the Act of 1996. We hold that Section 41 of the Act of 1882 falls within the ambit of section 2 (3) of the Act of 1996. As a result of which, even if the license agreement contains Arbitration Agreement, the exclusive jurisdiction of the Courts of Small Causes under section 41 of the Act of 1882 is not affected in any manner. Whereas, Arbitration Agreement in such cases would be invalid and inoperative on the principle that it would be against public policy to allow the parties to contract out of the exclusive jurisdiction of the Small Causes Courts by virtue of section 41 of the Act of 1882."

The Honourable Supreme Court in the case of **Booze Allen and Hamilton Inc. Vs. SBI Home Finance Ltd & others**[198] dealt with the scope and nature of arbitral dispute. Three facets of arbitrability relating to the jurisdiction of Arbitral Tribunal were explained and the Honourable Apex Court held that:

> "36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise

[198] (2011) 5 SCC 532

> to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoyes statutory protection against eviction and only the specified Courts are conferred jurisdiction to grant eviction or decide the disputes. ”

Recently, in the case of **Vidya Drolia Vs. Durga Trading Corporation**[199] the Honourable Supreme Court overruled the judgment in case of **Himangini Enterprises Vs. Kamaljeet Singh Ahuwalia**[200]**.** It was held that disputes on tenancy which are regulated by the T. P. Act would be referred to Arbitration as these rights are subordinate right in personam which is based out of the right in rem. Honourable Supreme Court provided further clarity by observing that the provisions mentioned under the TP Act do not expressly bar arbitration, and an arbitrator appointed for any such dispute will be bound by such provisions. While doing so, the Court addressed the doubts on the credibility of an arbitration proceeding and held that they are in parlance with any other dispute resolution mechanism and conducted by experts who provide adequate consideration to the facts, the relevant information, and the judicial precedents related to the dispute.

However, the Honourable Supreme Court cautioned that such treatment will not extend to cases where such rights and obligations are exclusively governed by specific Courts or forums. It proposed a four-fold test to determine the classification of disputes as non-arbitrable and stated as follows:

- “when the cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem;
- when the cause of action and subject matter of the dispute affects third party rights, has erga omnes effect; requires centralised adjudication, and mutual adjudication would not be appropriate and enforceable;

[199] (2021) 2 SCC 1
[200] (2017) 10 SCC 706

- when the cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the state and hence mutual adjudication would be unenforceable; or
- when the subject matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statutes."

The Honourable Apex Court also observed that the test is not exclusive in nature, but a holistic and pragmatic application of the test helps determine the non-arbitrability of a dispute. It also provided clarifications regarding the argument of non-arbitrability and held that it can be raised at three stages:

- "before the Court on an application for reference under Section 11 of the A&C Act or for a stay of pending judicial proceedings and reference under Section 8 of the A&C Act; or
- before the arbitral tribunal during the course of the arbitration proceedings; or
- before the Court at the stage of the challenge to the award or its enforcement."

Recently the Honourable Bombay High Court in the case of **Bafana Motors Pvt. Ltd Vs. Amanulla Khan[201],** explained when the dispute is out of the exclusive jurisdiction of the Small Causes Court, then same is amenable to Arbitration. It was observed in para 25 of the judgment that:

> "25. A conjoint reading of sub-section (3) of section 2 of the Act, and section 41 of the Act, 1882 would indicate that if a special law provides for resolution of the disputes exclusively by an machinery created thereunder, and, thereby implies that such disputes may not be amenable to arbitration, Part I of the Act, 1996 is not attracted. Section 41 of the Act, 1882 confess exclusive jurisdiction on the Court of Small Causes to entertain and try all suits and proceeding between a licenser and licensee, or landlord and tenant, relating to the recovery of possession of any immovable property situated Greater Bombay, or relating to the recovery of the license fee or charge or rent therefore,

[201] 2022 SCC OnLine Bom 994

> irrespective of the value of the subject of such suits or proceedings."

It was further observed in light of observations in case of **Central Warehousing Corporation,** that-

> "45. As held by this Court in the case of Brainvisa Technologies Pvt. Ltd. (supra) license fee, charges and rent are periodical payments made for use and occupation. A claim for recovery of the same, legitimately falls within the exclusive jurisdiction of the Court of Small Causes. In the case at hand, the respondent professes to withold the security deposit on the ground that the applicant is liable to pay damages. Such a claim in my considered view, does not fall within the exclusive jurisdiction of the Court of Small Causes, and is amenable to arbitration."

<u>Conclusion</u>:

Though in view of recent judgment of the Honourable Supreme Court in the case of **Vidya Drolia**, the tenancy dispute governed by the TP Act only can be referred to the Arbitration but the exclusive jurisdiction of the Small Causes Court cannot be ousted by Arbitration clause in the agreement. Thus, in spite of Arbitration Agreement between the parties and non-obstante clause in section 5 of the Arbitration Act, the exclusive jurisdiction of the Small Causes Court to try and decide the dispute specified in section 41 of the PSCC Act is not ousted.

Difference between Tenancy Agreement and Agreement of Leave and License: Rights and Liabilities of Landlord-Tenant Vis-a-vis Licensor- Licensee

Introduction:

In India, immovable property may be occupied under two distinct legal instruments: the Tenancy (Lease) Agreement and the Leave and License Agreement. Although both permit occupation of premises, they differ fundamentally in their legal character, consequences, and the nature of the rights created. A tenancy transfers to the tenant a legally recognized interest in the property, whereas a leave and license arrangement merely grants permission to occupy the premises without creating any proprietary interest. The distinction between these two arrangements becomes crucial in determining the rights of the occupant, the extent of protection from eviction, heritability, transferability of rights, the legal process for recovery of possession and the applicability of rent control legislation. The judicial approach in India has consistently held that the substance of the arrangement must prevail over its nomenclature, and exclusive possession is the leading indicator in identifying whether an arrangement constitutes a lease or a license.

Legal Framework of Tenancy:

A tenancy agreement is governed principally by Section 105 of the TP Act, which defines a lease as a transfer of the right to enjoy immovable property for a specific period in consideration of rent or other value. The transfer creates a real and enforceable legal interest in the premises, commonly referred to as a leasehold interest. Once the tenant is placed in possession, the landlord cannot interfere arbitrarily, and the tenant becomes entitled to exclusive possession and peaceful enjoyment of the premises. In many states, including Maharashtra, tenancy arrangements also fall under the protection of Rent Control legislation, such as the MRC Act. Under these statutes, tenants can be evicted only on specific statutory grounds, making tenancy a secure and durable form of occupation.

Tenancy is generally transferable and heritable unless expressly restricted by contract. The Courts have consistently held that tenants derive statutory protection not merely from contractual terms but from the operation of the law itself.

Legal Framework of Leave and License:

A leave and license arrangement is fundamentally different. Governed primarily by Section 52 of the Easements Act, a license is the grant of a personal right to do something upon another person's property that would otherwise be unlawful. Unlike tenancy, the license does not transfer any interest in the property. Legal possession remains with the licensor, and the licensee merely receives permission to occupy and use the premises according to the terms of the agreement. The contractual nature of the license makes it inherently temporary, revocable and non-transferable. The rights created under such agreements are neither inheritable nor assignable and terminate automatically upon expiry of the license term or the death of either party. In Maharashtra, after the enactment of the MRC Act, leave and license agreements must be in writing and compulsorily registered, which ensures transparency and prevents such agreements from being later construed as tenancy.

Judicial Tests to Distinguish the Two:

Over time, Indian Courts have developed a consistent set of principles for determining whether an arrangement constitutes a lease or a license. The foremost test is that of exclusive possession, articulated in landmark cases such as **Associated Hotels of India Ltd. Vs. R. N. Kapoor**[202]. If the occupant is placed in exclusive possession and the landlord parts with control over the premises, the arrangement is likely to be a lease regardless of how the document is titled. The Courts also examine the intention of the parties, the extent of control retained by the owner, the right of inspection, the clauses regarding alterations or structural changes and the revocability of the arrangement. In **Delta International Ltd. Vs. Shyam Sundar Ganeriwalla**[203], Honourable Supreme Court held that the real nature of the transaction must be determined from the terms and surrounding circumstances and not from the label employed. These judicial principles prevent parties from disguising a lease as a license merely to evade statutory tenant protections.

---

202 (1960) 1 SCR 368 : AIR 1959 SC 1262

203 (1999) 4 SCC 545

The Paramount Judicial Test: Intention and Exclusive Possession:

Courts consistently look beyond the document's title (nomenclature) to ascertain the true intention of the parties and the substance of the transaction.

1. The Intention Test: Honourable Supreme Court in **C. M. Beena Vs. P. N. Ramchandra Rao**[204] held that the difference must be determined by the real intention of the parties, decipherable from a complete reading of the document and the surrounding circumstances.
2. The Exclusive Possession Test (The Acid Test): As established in the landmark case of Associated Hotels of India Ltd. Vs. R. N. Kapoor (cited earlier), the grant of exclusive possession is the most decisive factor.

A Lessee is granted exclusive possession and can protect that right even against the lessor, confirming the proprietary interest, as discussed in **Khalil Ahmad Basher Ahmad Vs. Tufelhussein Sans Bhai Sarangpurwala**[205]**.**

A Licensee is merely permitted use, with the Licensor retaining legal possession and control. A license does not create an interest in the property.

Impact of the MRC Act:

The MRC Act is critical because it affords strong statutory protection to tenants (lessees) in Maharashtra, particularly against arbitrary eviction and excessive rent.

1. Tenancy under MRC Act: A relationship determined to be a tenancy (lease) falls under the MRC Act. This gives the tenant:
    1. Security of Tenure: Eviction is only possible on specific, limited grounds defined in the Act.
    2. Controlled Rent: The rent is regulated and cannot be arbitrarily increased.
    1. Heritable Rights: The tenancy rights are heritable by family members.
    2. The Evasion Strategy: Owners frequently draft agreements as Leave and License agreements precisely to avoid the stringent provisions of MRC Act. If the agreement is successfully

[204] (2004) 3 SCC 595 : AIR 2004 SC 2103

[205] (1988) 1 SCC 155

construed as a true license, the MRC Act does not apply, allowing the owner to recover possession easily upon termination.

3. Statutory Requirement for Registration: In Maharashtra, the MRC Act and the Maharashtra Rent Control Rules mandate the compulsory registration of both tenancy and leave and license agreements. Section 55 of the MRC Act specifically requires the execution of a written agreement for premises let out, and registration is compulsory. Failure to register a tenancy agreement can have consequences, but it does not automatically convert a lease into a license if the substance of the agreement grants exclusive possession.

<u>Differences in Rights and Liabilities</u>:

The legal consequences of choosing one form of arrangement over the other are profound. A tenancy grants the tenant exclusive possession, statutory protection and enforceable rights under property and rent control laws. The tenant enjoys the right to peaceful enjoyment of the premises, protection against arbitrary or sudden eviction, and regulated rent, which cannot normally be increased except under permissible grounds. Tenants are obligated to pay rent regularly, maintain the premises in reasonable condition, avoid nuisance and use the premises only for lawful and permitted purposes. The landlord, in turn, is obligated to maintain the structural condition of the property, provide essential services, avoid interference with the tenant's peaceful occupation and follow due legal process before seeking eviction.

In contrast, a leave and license agreement leaves legal possession and full control with the owner. The licensee's occupation is limited to the permission granted and is purely contractual. The licensor has the right to enter the premises, impose restrictions, revoke the license upon expiry or breach of terms and recover possession without prolonged statutory proceedings. The licensee's rights are therefore narrow and personal, limited to using the premises for the agreed purpose during the licensed period. The licensee must pay the agreed license fee and maintain the premises in reasonable condition but has no legal claim to continued possession once the license ends. If the licensee refuses to vacate, the licensor may seek eviction through summary proceedings, such as under

Section 41 of the Presidency Small Causes Courts Act in Mumbai, which ensures swift recovery of possession. The difference can be put in tabular form as follows:

Feature	Landlord-Tenant (Tenancy/Lease)	Licensor-Licensee (Leave & License)
Interest in Property	The tenant receives a legal interest in the property (a proprietary right).	The licensee gets no legal interest in the property, only a personal privilege.
Possession	The tenant has the right to exclusive possession, meaning the landlord generally cannot enter without the tenant's permission.	The licensor retains legal possession and control, only granting the licensee the right of use. The owner can inspect the property.
Governing Laws	Falls under the TP Act, and specific state Rent Control Acts, which protect tenants.	Governed by the Easements Act, and the Indian Contract Act.
Transfer-ability	Tenancy rights can be transferred or sublet unless the agreement explicitly prohibits it.	The license is a personal right and cannot be transferred or assigned.
Eviction	Eviction requires adherence to the due process of law, which can be a lengthy and complicated Court process under rent control laws.	Eviction is generally simpler and faster as the licensee has fewer legal protections and no claim to ownership.
Heritable nature	Rights are generally heritable; the tenant's legal heirs may continue the tenancy.	The agreement ends automatically upon the death of either the licensor or the licensee.

Feature	Landlord-Tenant (Tenancy/Lease)	Licensor-Licensee (Leave & License)
Duration	Can be for long terms, sometimes indefinitely, often leading to statutory tenancy rights.	Typically short-term (commonly 11 months to avoid rent control laws), with frequent renewals.

Judicial Tests of Control and Documentary Scrutiny:

When classifying an agreement in the context of the MRC Act, Courts scrutinize specific clauses to determine who wields ultimate control. If the owner has, in substance, transferred exclusive control, the Courts will classify it as a Lease, regardless of the name.

Test of Control	Lease (Transfer of Control)	License (Retention of Control)
Exclusive Possession	Tenant has right to exclude all, including the owner.	Owner retains right to entry/inspection without tenant consent.
Revocable nature/ Notice	Owner must give statutory notice to quit (mandatory for lease).	Owner can revoke at will; notice clause suggests a tenancy formality.
Power of Renewal	Option to renew lies with the occupant (Licensee).	Renewal power reserved exclusively for the owner (Licensor).
Sub-letting Clause	Clause prohibiting sub-letting exists (restricting a right inherent to a lease).	Clause unnecessary for a license, which is inherently non-transferable.

Test of Control	Lease (Transfer of Control)	License (Retention of Control)
Additions/Alterations	Occupant is granted wide liberty for permanent work.	Occupant restricted to minimal, temporary alterations.

<u>Operational Differences and Final Legal Status</u>

Feature	Lease/Tenancy (MRC Act Applies)	License (MRC Act Does Not Apply)
Duration	Can be long-term, often leading to statutory tenancy rights.	Typically short-term (commonly 11 months to avoid MRC Act implications).
Transferability	Transferable and Heritable (generally)	Non-transferable and Not Heritable.
Eviction Process	Governed strictly by the MRC Act; difficult and lengthy.	Governed by the IEA; generally simpler and faster to reclaim possession.
Effect of Sale	Unaffected by sale of property.	Ends immediately upon sale of property.
Proprietary Interest	Interest in Property is Transferred.	No Interest in Property is Transferred (Municipal corporation of Delhi case).

Practical Consequences of the Distinction:

In the commercial and residential real estate sectors, landlords often prefer leave and license agreements because they offer greater flexibility, quicker remedies and immunity from rent control statutes. Tenants, however, prefer tenancy arrangements because they confer stronger rights, security of tenure and protection against eviction. The duration of the agreement also reflects the underlying legal philosophy: tenancies are long-term and stable, whereas licenses are commonly executed for short durations, frequently renewed and intended to retain the licensor's overall control. The issue assumes particular significance in cities like Mumbai, where the line between tenancy and license directly affects the power balance in eviction proceedings, the ability to revise rent and the extent of heritable rights.

Recent Judicial Trends:

Recent case law reinforces the long-standing principles. Indian Courts consistently rule that a party in possession under a lease cannot later dispute the landlord's title, as observed by the Honourable Supreme Court in **Jyoti Sharma Vs. Vishnu Goyal**[206].

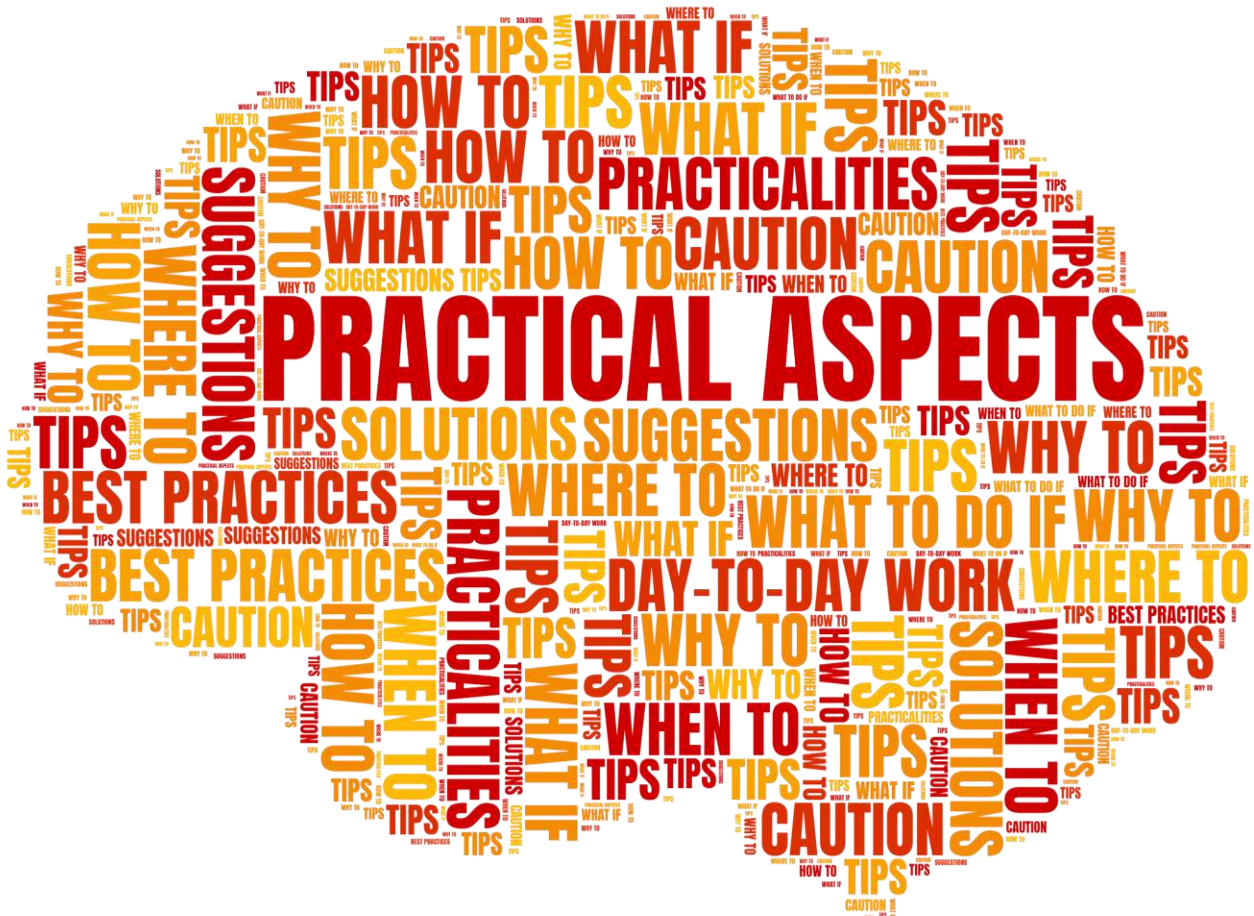
Similarly, Honourable Bombay High Court in **Bafna Motors Pvt. Ltd. Vs. Amanulla Khan**[207], held that while eviction matters between a licensor and licensee fall within the jurisdiction of Small Causes Courts, financial claims such as compensation or damages arising out of the agreement may be subject to arbitration if so provided in the contract. These pronouncements demonstrate the continued judicial insistence on distinguishing substance from form and applying legal consequences accordingly.

Conclusion:

The conceptual distinction between a tenancy agreement and a leave and license agreement lies in the legal character of possession and the rights flowing from it. A tenancy creates a legal and enforceable interest in immovable property, grants exclusive possession to the tenant and ensures

[206] 2025 INSC 1099 : 2025 SCC OnLine SC 1956
[207] 2022 SCC OnLine Bom 994

protection under rent control and property laws. A leave and license arrangement, by contrast, merely permits the licensee to occupy premises without transferring possession, allowing the licensor greater control and flexibility in termination. Understanding these differences is essential to determining the scope of rights, responsibilities, remedies and legal protections available to landlords and occupants.



PART C
Practical Aspects

Recording Consent Terms and precautions to be taken

Introduction:

Tenancy disputes constitute one of the most frequently litigations before Civil Courts and in the Mumbai, it before the Court of Small Causes. The legal framework governing landlord - tenant relations and dispute is mostly convered by the TP Act, MRC Act, Civil Code, PSCC Act, or ProSCC Act. The compromise agreements have become common in resolving issues of eviction, rent arrears, standard rent fixation, and termination of tenancy. Although these settlements facilitate swift resolution and reduce judicial backlog, they also carry substantial risks.

Honourable Supreme Court have repeatedly emphasized that compromises in tenancy matters require strict judicial scrutiny due to historically unequal bargaining power and the vulnerability of tenants, particularly in urban and metropolitan areas. A compromise decree in a tenancy suit operates as a decree on merits, giving it significant legal force and increasing the possibility of misuse through coercion, fraud, or collusion. Landmark judgments such as **K. K. Chari Vs. R.M. Seshadri**[208]**,** and **Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and others**[209], reflect judicial concern over improper compromises resulting in unjust evictions.

Against this backdrop, our endevour to examine judicial safeguards and responsibilities involved in recording compromises in tenancy disputes in this paper. Compromise decrees are difficult to challenge and significantly affect tenant rights, making scrutiny indispensable within welfare-oriented Rent Control Law.

Importance of Compromise in Tenancy Disputes:

Compromise plays a central role in tenancy litigation, offering an efficient means of dispute resolution under Order XXIII Rule 3 Civil Code. The compromise avoids lengthy trials involving statutory grounds and evidence and cut short appeals. Tenancy disputes involve competing but legitimate interests, landlords' personal requirements and tenants' statutory

[208] AIR 1973 SC 1311
[209] AIR 1974 SC 471

protections. Compromises provide flexibility absent in Rent Acts, allowing parties to negotiate time for vacating, revised rent, arrears payment, or withdrawal of related proceedings. Compromise is especially useful for financially or socially vulnerable tenants who cannot sustain prolonged litigation. In arrears of rent cases, settlements may allow retention of possession while ensuring landlords recover dues. Statutory provisions such as Section 89 of Civil Code and judicial encouragement of mediation further support settlement. However, because compromises often culminate in eviction an outcome with serious social consequences, the Courts insist that such agreements be voluntary, free of coercion, fraud, misrepresentation and legally valid. Thus, compromise is an effective tool in tenancy disputes, but its susceptibility to misuse necessitates robust judicial safeguards. In this parper, we by our exprience and judicial precedent identifies the concerns justifying heightened scrutiny of compromise.

Judicial concerns about Misuse, Fraud and Coercion:

Although Courts encourage settlement in civil disputes, compromises in tenancy matters require a higher degree of scrutiny. A compromise decree may dismantle statutory protections under Rent Acts, often affecting vulnerable tenants. The Courts are therefore alert to risks of coercion, fraud, and misuse etc.

A major concern is attempts to bypass statutory eviction requirements. The MRC Act allows eviction only on specific grounds, and landlords who cannot prove these may try to obtain eviction through consent terms. Honourable Supreme Court in **Ferozi Lal Jain Vs. Man Mal and another**[210], held that eviction cannot rest solely on agreement; a legally recognized ground is essential. The Courts also worry about coercion and unequal bargaining power, especially in long-standing or low-rent tenancies. Tenants may agree under economic pressure or fear of displacement. Fraud may appear through false statements in compromise petitions. In case of Nagindas (cited earlier) Honourable Apex Court held that such admissions must be independently verified by the Judge.

[210] AIR 1970 SC 794

Another concern is whether tenants fully understand the settlement. Many elderly or illiterate tenants may not realise they are consenting to eviction. The Court stressed the need to ensure informed consent. Compromises may also be collusive aimed at defeating rights of sub-tenants or third parties. The Courts therefore examine surrounding circumstances to prevent misuse.

These concerns statutory evasion, coercion, fraud, lack of informed consent, and collusion form the foundation for judicial precautions before recording compromises.

<u>Key Precautions which Courts must follow</u>:

Compromise decrees in tenancy matters have lasting consequences. Courts must therefore apply heightened scrutiny under Order XXIII Rule 3 Civil Code and Rent Control laws. Judicial experience shows power imbalances and vulnerabilities in tenancy disputes. Courts play a protective role in ensuring that settlements are genuine, voluntary, and lawful. The following are essential precautions:

i. **Ensuring the Compromise is Lawful and Not Void:** Courts must ensure the compromise complies with Rent Acts. Since Rent Acts allow eviction only on specific statutory grounds, an agreement permitting eviction without such grounds is invalid. Tenant protections, created for public welfare, cannot be waived. Courts must verify that eviction is based on a recognized ground and that no clause undermines statutory safeguards.

ii. **Verification That Consent is Free, Voluntary, and Informed: C**ourts must personally verify voluntariness, ensuring absence of coercion, fraud, or misrepresentation. This includes examining parties, ensuring clarity of explanation, and checking for undisclosed arrangements. If a party appears confused or hesitant, the compromise should not be recorded. **Banwari Lal Vs. Chando Devi (Smt.) (Through Lrs.) and another**[211], emphasizes this requirement.

iii. **Ensuring Full Disclosure and Clarity of Terms:** A compromise decree must be precise and unambiguous. Monetary components and

[211] AIR 1993 SC 1139

possession timelines must be exact. Ambiguous terms may cause disputes at execution, so Courts insist on meticulous drafting.

iv. **Ascertainment of Identity and Status of Parties:** Courts must confirm that the parties signing the compromise are the actual landlord and tenant, and that the property is accurately identified. Necessary parties, sub-tenants, co-owners, or legal heirs must be included to avoid ineffective decrees.

v. **Mandatory Inquiry Where Eviction is a Consequence:** If compromise results in eviction, Courts must ensure that a statutory eviction ground exists. In K.K. Chari (Supra), the Supreme Court held that Courts must record satisfaction that such ground is genuinely established, even if admitted.

vi. **Time for Parties to Reflect:** Courts may give parties time to reflect, especially where compromises result in eviction or major financial obligations. Same-day recording requires special caution.

vii. **Special Precautions for Vulnerable Tenants:** Courts must exercise extra care for elderly, illiterate, or economically weak tenants. Judges may conduct deeper questioning and ensure explanations in the tenant's language, consistent with Articles 14 and 21 of Construction of India.

viii. **Preventing Illegal Creation of New Tenancy Rights:** Compromises cannot bypass statutory restrictions on subletting, rent increases, or transfers. Courts must reject agreements violating such provisions.

ix. **Ensuring Proper Signatures, Attestation, and Affidavits:** A valid compromise must be in writing, signed by all parties, and usually supported by affidavits affirming voluntariness. Proper attestation prevents later disputes about authenticity.

x. **Recording Reasons:** Courts often record brief reasons when accepting compromises in tenancy matters, promoting transparency and enabling appellate review.

xi. **Legal Advice and Representation:** Courts must ensure that parties, particularly tenants, have access to legal advice and representation before entering a compromise.

xii. **Safeguards Against Collusive Compromises:** Courts remain vigilant against collusion aimed at defeating sub-tenants' rights or enabling redevelopment. Warning signs include sudden settlements after long litigation or disproportionate benefits to one party.

xiii. **Incorporation of Compromise into Decree:** Courts must ensure all terms are properly incorporated into the decree, avoiding inconsistencies.

xiv. **Precautions at Appellate Stage:** Compromises at the appellate stage require the same scrutiny as at trial. Appellate Courts must ensure that settlements do not prejudice non-party tenants or sub-tenants.

Order XXIII Rule 3 of Civil Code : Statutory Foundation:

Order XXIII Rule 3 of Civil Code enables Courts to pass decrees based on a '*lawful agreement or compromise in writing and signed by the parties'.* The primary issue in tenancy matters is 'lawfulness', as many compromises may violate rent control protections. Courts interpret the said Order XXIII Rule 3 of Civil Code with Rent Acts to determine validity. MRC Act prescribed limited eviction grounds and are treated as special welfare laws that override general Civil Code provisions. Compromises affecting eviction, surrender of tenancy, rent enhancement, or transfer of rights must comply with these substantive requirements. Even voluntary agreements to eviction cannot be mechanically recorded unless a statutory ground exists. In case of Nagindas Ramdas (cited earlier), it was held that statutory conditions must be factually established or specifically admitted. Courts apply the rule that special laws override general laws. Rent Acts, being welfare statutes, cannot be contracted out of by agreement.

A compromise violating non-derogable Rent Act provisions is unlawful even if voluntary. For example, tenants cannot waive the requirement of demonstrating bona fide need or lawful arrears notice. In the specific situations as under;

1. **Eviction**: Courts must ensure the statutory ground exists.
2. **Surrender/Transfer:** Compromises cannot assign or transfer tenancy rights contrary to statute.
3. **Rent Enhancement:** Any increase must follow the statutory method.
4. **Withdrawal**: Courts verify that withdrawal is not used to effect illegal possession changes.

Once recorded, a compromise decree becomes final and cannot be challenged in a separate suit under Order XXIII Rule 3A Civil Code. In tenancy matters, this finality makes scrutiny at the initial stage crucial, as eviction decrees arising from compromise cannot later be reopened except before the same Court.

Relevant Recent Case-laws

1. **Shakir Abdul Latif Pipi Vs. Eliyas[212].**
   Honourable Bombay High Court held and observed that the mere fact that Order XXIII Rule 3 of Civil Code is applicable to the proceedings in a suit under the Bombay Rent Act, does not remove that fetter on the Rent Court or empower it to make a decree for eviction de hors the statute. Even under that provision of the Code, the Court, before ordering that the compromise be recorded, is required to satisfy itself about the lawfulness of the agreement. Such lawfulness or otherwise of the agreement is to be judged, also on the ground whether the terms of the compromise are consistent with the provisions of the Rent Act. The observations in case of **Abedali Khan s/o. Rahematali Khan Vs. Devidas s/o. Dhonduji Poghe[213]** were relied upon.

2. **Amro Devi and others Vs. Julfi Ram (Deceased) Through LRs & others[214]**
   Honourable Supreme Court defined the strict Compliance with Order XXIII, Rule 3 Civil Code It was held that a valid compromise decree under Order XXIII Rule 3 of Civil Code requires a written agreement signed by the parties. Mere statements made orally by the parties before the Court do not satisfy the requirement of the said Rule 3. Since in this case there was no written and signed compromise, the so-called 'compromise decree' on the basis of those statements is invalid. This judgment strengthens procedural safeguards (under Civil Code) and prevents misuse of 'compromise' to mask transactions or transfers.

Conclusion:

To sum up, compromises play a significant role in resolving tenancy disputes. But their use must be carefully regulated to protect tenants from coercion, fraud, and statutory evasion. Given the welfare-oriented purpose of Rent Control laws and the inherent imbalance of bargaining power, Courts

[212] 2024 SCC OnLine Bom 4739
[213] 2012 (1) Mh. L. J. 466
[214] 2024 INSC 527 : 2024 SCC OnLine SC 1715

must ensure that compromise agreements are lawful, voluntary, and informed. **Judicial scrutiny is essential, particularly when eviction is a consequence, as compromise decrees carry finality and cannot easily be challenged later.** By enforcing strict safeguards, Courts uphold statutory protections, prevent misuse of process, and promote fair and equitable resolution of landlord tenant conflicts. Ultimately, vigilant judicial mind ensures that compromise serves justice rather than undermining tenant rights.

Applicability of law of Limitation Act, 1963 to the cases filed between the landlord and tenant as well as licensor and licensee

Introduction:

The fundamental principle underlying the Limitation Act, 1963 is that of '*vigilantibus non dormientibus jura subveniunt*'. It means that the law assists those who are vigilant, not those who sleep over their rights. Section 03 of Limitation Act makes it clear that every legal action must be taken in prescribed time limit. The provision mandates that any suit, application or appeal which is instituted, made or preferred after the prescribed period of limitation, must be dismissed. The section also makes it clear that such dismissal is inevitable even if limitation is not set up as defence. In the Schedule to the Limitation Act, different time limits are prescribed for different types of cases. The terms 'period of limitation' and 'prescribed period' are defined under section 2 (j) of Limitation Act. Former means the period prescribed in the Schedule whereas the latter means the period of limitation computed in accordance with provisions of Limitation Act. It must be added here that in view of section 09 of Limitation Act, the limitation continues to run unless it is stopped by virtue of any express or statutory provision.

Section 05 of Limitation Act is important provision in the context. It empowers the Court to condone delay in filing application or appeal, if sufficient cause is established. Thereby, the sufficiency of cause/causes is the important question for consideration, if the appeal is preferred or application is made after the prescribed period of limitation. Section 12 of Limitation Act excludes the period for obtaining certified copy of decree, when appeal is to be preferred or applications for leave to appeal, review or to set aside award are to be filed.

With reference to the disputes in between landlord-tenant or licensor-licensee, the Limitation Act is applicable with certain exceptions and considerations. The question of applicability of Limitation Act to rent disputes was before Honourable High Court in case of **Madhukar Narayan Rao Vs. Ramchandra Rajaram Wani & Others**[215]**,** it was laid down that the

[215] 2002 SCC OnLine Bom 834 : 2002 (4) Mh.L.J. 462

provisions of Limitation Act apply to actions under Rent Laws, unless expressly barred by any such law.

<u>Relevant provisions of Limitation Act</u>:

The following provisions of Limitation Act operate in the respective spheres, in the context. The gist is as follows-

- **Article 52:**
  It deals with the recovery of arrears of rent. The Article provides that the period for limitation is of three years and it starts to run when the arrears become due. This Article governs the suit for arrears of rent and not the suit for eviction on ground of arrears of rent. In the case of **Bhimsen Gupta Vs. Bishwanath Prasad Gupta[216],** it was observed that "it is well settled law that law of limitation bars the remedy of the claimant to recover the rent for the period beyond three years prior to the institution of the suit, but that cannot be a ground for defeating the claim of the landlord for decree of eviction on satisfaction of the ingredients of the said section."
- **Article 58:**
  This Article governs the suits for declarations. The prescribed period of limitation is three years from when the right to sue first accrues. The word 'first' was not there in the analogous Article 120 of Limitation Act, 1908. However, under the present Limitation Act, inclusion of the said word 'first' expects that the claimant must be more cautious and diligent to take action at the earliest.
- **Article 66:**
  As per this provision, the suit for possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of conditions, can be filed. The period of limitation is twelve years. Time begins to run when the forfeiture is incurred or the condition is broken.
- **Article 67:**
  This Article provides that the suit by landlord for possession from tenant can be instituted within 12 years. It is provided that the period starts to run from the date of termination of tenancy.

[216] (2004) 4 SCC 95

- **Article 113:**
  This Article is of residuary nature. It provides the period limitation for the suit for which there is no prescribed period, as three years. The said period begins to run when the right to sue accrues.
- **Article 122:**
  This Article deals with application to restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs. The period of limitation is thirty days. It starts to run from the date of dismissal.
- **Article 123:**
  Any application for setting aside exparte decree in suit or for re-hearing of an appeal which was heard exparte must be made within thirty days, in view of this Article. The period of limitation starts to run in two different contingencies. Firstly, if from the date of decree. Secondly from when the applicant had knowledge of decree, where the summons or notice was not duly served.
- **Article 124:**
  If anyone desires review of any judgment or order of any Court other than Honourable Supreme Court, it has to be done within 30 days from the date of such judgment or order.
- **Article 136:**
  This Article is applicable for the execution of any decree or order of a civil Court (other than a decree granting a mandatory injunction). The limitation period is 12 years. It runs from the date when the decree becomes enforceable.
- **Article 137:**
  This Article deals with any other application for which no period of limitation is prescribed in Limitation Act. As like Article 113, this Article is also of residuary nature. It provides for a period of three years and the period starts to run from when the right to apply accrues.

Timely actions under MRC Acts:

There are certain provisions in MRC Act, which are self-contained as to limitation or timely actions.

- **Section 15:**
  Until the expiration of 90 days, next after notice in writing of demand of the standard rent or permitted increases, has been served upon the tenants, the suit for recovery of possession shall not be instituted by a landlord against the tenant. It further provides that the tenant can avoid decree of eviction, if he pays within 90 days from service of summons, the entire due rent amount, along-with permitted increases and interest thereupon @ 15% per annum and the costs of suit. The mandate of section 15 (3) of MRC Act also mandates that the tenant shall thereafter pay/deposit the monthly rent, permitted increases and costs, continuously till disposal of suit. The purport of this provision expects timely action, as like the Limitation Act.
- **Section 16 (6):**
  Under this section, the period is given to the landlord to commence work of demolishing the premises not later than one month and shall be completed not later than 3 months from the date he recovers possession of entire premises. Clause (v) of said Section mandates that the work of erection of the new building or new floor of floors shall be completed by the landlord not later than fifteen months from the said date. This provision gives power to the Court to extend said period only up to three months by recording reasons for granting such extension.
- **Section 17:**
  As per section 17 (3) of MRC Act, if after the tenant has delivered possession, the landlord fails to commence the work of repairs within one month or fails to complete work within a reasonable time, the Court may on application of tenant made within one year of the specified date, order the landlord to place him in occupation of the premises or part thereof on terms and conditions existing on the date of passing of the decree for eviction.
- **Section 18:**
  If decree of eviction has been passed under section 16(1)(g) of the MRC Act, and if premises are not occupied within one month from the date the landlord recovers possession or the premises are re-let within one year of the said date, the original tenant has got right to file application within 13 months from such date, for order to the landlord to place him in occupation of the premises.

- **Section 19:**
  The tenant is entitled to make an application to the Court within six weeks from the date on which he delivers vacant possession of premises to the landlord under Section 16(1)(i) or (j) for demolition of the building intimating landlord to occupy premises on account of failure to work of demolition by the landlord. This section also shows the statutory timeline for a particular act under MRC Act. It is further provided that, if the Court is satisfied that landlord did not commence work of demolishing the premises within one months period in accordance with his undertaking, the Court shall have right to direct the landlord to deliver vacant possession in favour of tenant.
- **Section 20:**
  This section provides for the tenant's right to issue notice against landlord within six months from the date on which he delivered vacant possession of the premises to the landlord showing his intention to occupy tenement in new building.
- **Section 21:**
  As per Sub Section 2(a) of Section 21, if the tenant fails to occupy the premises within a period of one month from the date on which he is entitled to occupy it, the premises in new building, his right shall be terminated and landlord is entitled to recover from the tenant a sum equal to three times monthly standard rent in respect of the premises.
- **Section 24:**
  This section permits landlords to initiate summary eviction proceedings against licensees who fail to vacate the premises after expiry of the license. Under Section 24 (2), such proceedings must be filed within 180 days from the date of expiry of license. If the landlord does not file within this time, he/she must take recourse to a regular civil suit for possession.

<u>About Section 29 (2) of Limitation Act</u>:

Section 29 of the Limitation Act deals with cases where special or local laws prescribe different limitation periods. Thus, it gives precedence to special or local laws with different limitation periods.

Mesne Profits and the Limitation Act:

The purpose of mesne profits is to compensate the true owner, entitled party for loss of income from wrongful occupation. It is compensatory not penal. There is no separate Article in the Limitation Act exclusively for mesne profits. The applicable provision depends on how the claim is framed. Recently, Honourable Supreme Court dealt with this issue in case of **Choudappa and another Vs. Choudappa Since Decease By L. Rs. And others**[217]. The relevant observations are-

> "13. Now, such an inquiry is nothing but a continuation of the suit and is in the nature of preparation of the final decree and as such, it cannot be said that any application moved as a reminder for completing the inquiry is barred by limitation or is liable to be dismissed on the ground of delay or laches.
>
> 14. The learned counsel for the petitioners has placed reliance upon a recent decision of this Court in North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd. [North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd., (2023) 19 SCC 798 : 2023 SCC OnLine SC 1649] passed in Civil Appeal No. 2669 of 2013 on 11-12-2023 to contend that where no limitation is provided, steps ought to be taken for initiation of proceedings within a reasonable time and not decades later.
>
> 15. In the aforesaid relied upon decision, the Court has clearly stated that in a situation where no limitation stands provided either by specific applicability of the Limitation Act or by the special statute governing the dispute, the trial Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay. When no limitation stands prescribed, it would be inappropriate for a Court to supplement the legislature's wisdom by its own and provide a limitation.

[217] 2024 INSC 691 : (2024) 9 SCC 236

16. In view of the aforesaid decision also, no limitation as an absolute rule could be provided in such matters and it depends upon the facts and circumstances of each case whether the proceedings have been initiated in a fairly reasonable time."

Precedential shift for eviction on ground of unlawful sub-letting:

As regards to the suit for eviction on ground of unlawful sub-letting, Honourable Bombay High Court recently took view that it has a recurrent cause of action. In case of **Shree Durga Trading Co. Vs. Ateeq Anwar Agboatwala**[218], it was observed that-

> "18. In my view, the act of unauthorised subletting by a tenant constitutes a continuing breach of contract and therefore period of limitation would begin to run so long as the act of subletting continues. It is another case where the act of subletting comes to an end and Plaintiff fails to file the suit for recovery of possession within 12 years of reversal of act of subletting...."

These observations would change the perception while considering the question of limitation for suit where unlawful sub-letting is in question.

About different kinds of suits:

It is necessary to discuss the limitation aspect vis-a-vis different kinds of suits/applications under MRC Act or PSCC Act.

- **Suit for recovery of possession on the grounds of non-payment of the standard rent or permitted increases:**
  Until the expiration of 90 days, next after notice in writing of demand of the standard rent or permitted increases, has been served upon the tenants, the suit for recovery of possession shall not be instituted by a landlord against the tenant.
- **Suit for recovery of possession for breach of terms and conditions of tenancy agreement:**
  The landlord shall not file suit for recovery of possession on ground of non-user of the premises until, the expiry of a continuous period of 6 months of non-user.

[218] 2024 SCC OnLine Bom 3065

- **Suit for recovery of possession on demolition of building:**
  If the work of demolishing the premises has not been commenced by the landlord, within the period specified, then the tenant may make an application to the Court, within six weeks from the date on which he delivered vacant possession of the premises to the landlord.
- **Suit for recovery of possession in case of tenancy created during service period.**
  The landlord cannot file suit for recovery of possession of the tenanted premises before termination of service of the tenant. In other words, unless service is terminated suit cannot be filed. Retirement, resignation, death and termination of service, these are the modes by which the tenant ceases to be in employment.
- **Suit for recovery of possession in certain cases:**
  In **Ramchandra Keruji Deokar Vs. Raghunath Shankar Bichakar[219],** a landlord, who was a member of armed forces or held a scientific post in the department of Atomic Energy of the Central Government, wanted to recover possession of tenanted premises owned by him on the ground of bona fide requirement. Honourable Bombay High Court held that, as section provides no period of limitation, therefore provisions of limitation act must strictly be construed.
- **Application by tenant for taking legal action against landlord for cutting or withholding of essential supply or service:**
  This aspect is governed by section 29 of MRC Act. An application under this section may be made within 30 days. The period is to be counted from the date, when the essential supply or service was withhold or cut-off.
- **<u>Revision Application under section 34 (4) of MRC Act</u>**
  Most rent control laws provide specific time limits for revisions/appeals (e.g. 90 days). The Limitation Act applies where such statutes are silent, unless explicitly excluded. As per Article 131 of Limitation Act, the limitation for filing revision from a decree or order of Civil Court is 90 days from the date of the decree of the order.
- **Appeal against orders of Competent Authority:**

[219] 1993 (2) Mh.L.J. 1213

As per Section 44 of MRC Act, orders issued by Competent Authority under Section 43 of the Act are not appealable. However, as per Section 44 (2) the State Government or the officer authorised can reviewed this order at any time either *suo-moto* or upon application by aggrieved party. The time limit for filing application to the aggrieved party is 90 days from the date of impugned order.

- **Execution of Eviction Decrees:**
  It is governed by Article 136 of the Limitation Act. The period of limitation is 12 years from the date the decree becomes enforceable. But, the decrees for mandatory injunctions are specifically excluded from this limitation period.
- **Application for standard rent:**
  MRC Act does not set any limitation period for fixing standard rent, but the Courts have held that Article 137 applies for such applications. The limitation starts from when the cause of action arises. The limitation is of three years.
- **Limitation for application for bringing legal heirs of parties and setting aside abatement:**
  As per Article 120 of Limitation Act, application to bring legal representative on record of the parties is of 90 days from the date of death and as per Article 121 of limitation act, the limitation for setting aside abatement is 60 days from the date of abatement. The delay can be condoned under Section 5 of the Limitation Act if sufficient cause is shown.

Limitation under the PSCC Act:

- **For Prosecutions:**
  Section 97 of the Act provides that any prosecution purported to arise under the Act, must be commenced within three months of the offense having been committed.
- **For Civil Actions Related to Section 28 Orders**:
  Article 98 of Limitation Act, deals with actions by a person against whom an order under Section 28 of the PSCC Act has been made such as to establish the right claimed to property covered by that order must be initiated within one year from the date of that final order.

Conclusion:

The Limitation Act, though a general law, plays a pivotal role in rent control litigation. Courts have harmoniously interpreted it with rent control statutes to avoid miscarriage of justice. While landlords must act diligently, tenants cannot misuse rent laws to perpetuate possession indefinitely..

Injunctions in the suits before Small Causes Court, Mumbai.

Introduction:

An injunction is an equitable remedy, whereby a Court may issue two types of Injunctions;

1. **Prohibitory Injunction**: Prevents a party from engaging in a certain activity.
2. **Mandatory Injunction**: It requires a party to do specific action.

Injunctions may be temporary or perpetual, governed by Sections 94 and 95 read with Order XXXIX of the Civil Code. Sections 16 to 42 of the Specific Relief Act, 1963 are applicable in the cases of injunction. Both injunction may two types i.e. temporary and perpetual in nature.

- **Temporary Injunction:**
  It is granted during the course of a legal proceeding. It is to maintain the status quo until the final decision of the suit or proceeding. It is governed by Order XXXIX Rules 1 & 2 of the Civil Code.
- **Perpetual or Permanent Injunction:**
  It is granted at the time of final relief after the trial in the suit or proceeding. It governs and granted as part of the final decree under Section 38 of the Specific Relief Act, 1963.

Injunction in the suits before Small Causes Court:

The Small Causes Court in Mumbai established to decide the cases related to tenancy to landlord-tenant disputes for rent recovery, possession and minor monetary claims. It is to decreased the burden on civil Courts. The PSCC was enacted during British rule to establish special Courts in the three Presidency towns viz. Bombay (Mumbai), Calcutta (Kolkata), and Madras (Chennai). Under Section 33 of the MRC Act and 41 of the PSCC Act, exclusive jurisdiction is conferred upon the Small Causes Courts in the Mumbai to adjudicate disputes between landlords and tenants, lessor and lessee and licensors and licensees. These Courts are empowered to issue injunction in nature of temporary and permanent injunctions.

The grant or refusal of an injunction is guided by three well-established legal principles, often called the “Three Golden Rules.”

1. **Prima Facie Case**: The applicant/plaintiff must show a valid legal right and a strong case at first glance, worthy of further examination by the Court.
2. **Balance of Convenience**: The Court must assess which party would suffer more harm or loss, if the injunction is either granted or refused.
3. **Irreparable Injury**: The applicant/plaintiff must prove that without the injunction, they would suffer harm that cannot be adequately compensated by money.

In the context of disputes between landlords and tenants, lessors and lessees, or licensors and licensees, injunctions played a vital role in protecting possession and contractual rights. Generally, following types of case comes before us for the injunction. It is illustrative and exhaustive.

- **Tenant's Injunction Against Landlord**:
  To restrain illegal or forcible eviction. To stop harassment, disconnection of utility services, or interference in peaceful possession.
- **Landlord's Injunction Against Tenant:**
  To prevent unauthorized alterations or commercial use of premises. To restrain the creation of third-party rights, if tenant sublets without consent etc.
- **Lessee's Injunction:**
  To prevent unlawful dispossession after lease termination. If in lawful possession, lessee is entitled to protection even after expiry of lease.
- **Lessor's Injunction:**
  To stop lessee from causing damage or making material alterations. To prevent holding over or unauthorized occupation after expiry.
- **Licensee's Injunction:**
  To restrain licensor from forcible eviction without following due process.
- **Licensor's Injunction:**
  To prevent licensee from creating third-party interest. To stop licensee from continuing after revocation of license.

<u>Effect of granting or not granting injunction in the suits before Small Causes Court</u>:

The law of injunctions plays a crucial role in the rent laws by providing preventive or mandatory relief to parties. In the context of the Small Causes Court, Mumbai, which primarily deals with summary proceedings involving landlord-tenant, lessor and lessee and licensors and licensees. The power to grant or refuse an injunction can significantly influence the rights and remedies of the litigants. Following are the legal effects and judicial consequences of either granting or not granting an injunction in suits before the Small Causes Court.

Effect of Granting Injunction:

When the Small Causes Court grants an injunction, the following consequences ensue:

1. **Status Quo is Maintained:** It ensures that the existing state of affairs is preserved until the final disposal of the suit. For instance, in eviction matters, a tenant may be restrained from being dispossessed without due process.
2. **Protection of Rights:** A rightful litigant is protected from unjust actions such as unlawful eviction, demolition, or alienation of property.
3. **Prevention of Multiplicity of Proceedings:** An injunction can prevent further complications or escalation of disputes and multiplicity of proceeding in the Court of law.
4. **Judicial Discipline and Fair Trial:** By granting an injunction, the Court direct the parties that the matter deserves judicial scrutiny before a party can act unilaterally.
5. **Remedy:** A party violating an injunction order may face proceedings for contempt of Court under the Contempt of Courts Act, 1971, in case of breach of injunction order.

Effect of Not Granting Injunction:

The refusal to grant an injunction can have serious and sometimes irreversible consequences as under;

1. **Risk of Irreparable Harm:** The applicant may suffer harm that cannot be compensated by damages, for example, loss of shelter in tenancy matters.

2. **Encouragement of Self-help:** Denial of injunctions may embolden parties to take the law into their own hands, e.g., forceful evictions.
3. **Prejudicing the Suit:** If the subject matter is altered (e.g., demolition of disputed premises), the final judgment may become infructuous and ineffective.
4. **Delay in Justice:** Without interim relief, the affected party may have to wait years for a final decision while continuing to suffer prejudice.

Principles Governing Ex-Parte Injunctions:

The issuance of an exparte injunction, in an appropriate case, saves the party from irreparable injury. Stage of exparte hearing of interim injunction is quite crucial. A proper balance must be struck at such a stage itself, in order to examine probable chances of abuse of such an order. The intention of legislature is quite clear from wording used in Rule 3 of Order XXXIX of Civil Code. It lays down that the Court is required to issue notice to the opposite party before granting interim injunction except where it appears that the object of granting injunction would be defeated by the delay. Order XXXIX Rule 3A of Civil Code made it obligatory on the part of the Court to dispose of the application within 30 days from the date of on which an exparte injunction is granted. Honourable Supreme Court has crystallised principal in the matters of exparte ad interim injunction and guidelines are issued in case of **Morgan Stanley Mutual Fund Vs. Kartick Das[220],** as follows-

> "36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-
>
> (a) whether irreparable or serious mischief will ensue to the plaintiff;
> (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
> (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

[220] (1994) 4 SCC 225

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;
(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
(f) even if granted, the ex parte injunction would be for a limited period of time.
(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."

<u>Conclusion</u>:

The effects of granting or not granting injunctions in suits before the Small Causes Court, especially those related to tenancy, lease, licensing, injunctions serve as pivotal legal remedies. Recently, in the case of **Mohit Suresh Harchandrai Vs. Hindustan Organic Chemicals Ltd.**[221], Honourable Supreme Court has issued following directions to the Small Causes Court, Mumbai. It is apposite to note direction and observation as under;

> "14. Keeping in view the above, we request the learned Chief Justice, High Court of Judicature at Bombay, to take up this issue and call for a report from the concerned Courts regarding the period of pendency in landlord-tenant disputes. Should it be found that there are many such instances as the present case, then appropriate steps should be taken or directions issued to further the cause of expeditious disposal of these cases."

Thus, the decision to grant or refuse an injunction in Small Causes Court impacts the efficiency, equity, and outcome of landlord-tenant and related disputes.

---

[221] 2025 SCC OnLine SC 1362

Appeals and Revisions under Rent Act and Presidency Small Causes Court Act.

Introduction:

The Court of Small Causes, Mumbai was established under the PSCC Act, during British colonial rule. It was created to provide a specialised and speedy forum for resolving minor civil disputes, in between landlord and tenant, lessor and lessee & Licensor and licensee, related to rent, tenancy, and recovery of rent, possession etc. in the Mumbai (then Bombay) being a Presidency town. The Court was intended to reduce the burden of the regular civil Courts. Mumbai was and is the growing urban population and rental housing sector. So, Small Cause Court has evolved into a specialist Rent Court under various rent control laws, particularly the Bombay Rent Act and MRC Act.

To summarise, the relevant provision to deal with appeal and revision under the MRC Act and The PSCC Act can be expressed as below-

Appeals under MRC Act:

An appeal under Section 34 of MRC Act lies to a Bench of two Judges of the Court of Small Causes, Mumbai from any decree or order made by that Court exercising jurisdiction under Section 33, provided that the Judge who passed the decree/order is not on the appellate Bench. Section 34 (1) (b) deals with appeal outside Brihan Mumbai lies to the District Court. In view of the proviso to Section 34 (1) appeal is not maintainable in the following cases:

i. Where no appeal lies under the Civil Code
ii. Suits not involving possession but only rent recovery, where the value is ₹ 10,000 or less in Brihan Mumbai and within the pecuniary jurisdiction of Small Cause Court elsewhere.
iii. Orders on standard rent fixation or permitted increases, unless made in an appealable proceeding,
iv. Orders on restoration of essential services to tenants.

Section 34 (2) the appeal must be filed within 30 days from the date of the decree or order. Sections 4, 5, and 12 of the Limitation Act, are applicable, in normalcy. Section 34 (3) makes it clear that no second or further appeal lies from the decision of the Appellate Bench or District Court.

Revisions under MRC Act:

In view of section 34 (4) of MRC Act, where no appeal lies, the Courts have revisional powers with Bench of two Judges (same as appellate forum) and elsewhere District Court or a Judge delegated by District Judge. The revisional powers are to ensure the decree or order is according to law.

Landmark Judgments in the context:

1. **Lilabai Madre Pillay Vs. Taheralli Abdul Kayum[222].**
   An appeal was filed before the District Court, it was held to be incompetent. However, the same relief could be granted by treating it as a revision petition, as the nomenclature used at registration was for administrative purposes only.

2. **Bhartiben Shah Vs. Gracy Thomas[223]**.
   It is landmark judgment dealing Revision under Rent Acts and when maintainable. A Full Bench of Honourable Bombay High Court enlisted the revisable and non-revisable orders, in illustrative manner. This is the most important aspect and task for the Appellate Bench of Small Causes Court. It has to be examined cautiously.

3. **Jasraj Lalaji Oswal vs Raziya Mehboob Patel and Another[224].**
   It was held by Honourable Bombay High Court that the revision challenging order of rejection of plaint in view of Order VII Rule 11 of Civil Code is maintainable before the Appellate Bench of Small Causes Court, Mumbai.

<u>Appeals under PSCC Act</u>:

An appeal under Section 42 (1) lies to a Bench of two Judges of the Small Causes Court, Mumbai from any decree or order passed under Section 41. The Judge who passed the order must not be on the appellate Bench. Proviso say no appeal lies if barred under the Code of Civil Procedure. In

---

[222] 2003 (1) Mh.L.J. 716

[223] 2013 (2) Mh.L.J. 25 (FB) : 2013 SCC OnLine Bom 98

[224] 2019 SCC OnLine Bom 6077 : (2020) 5 Mah LJ 681

view of Section 42 (2), the appeal must be filed within 30 days from the date of decree/order. Sections 4, 5, 12 of Limitation Act are applicable. There is no further or second appeal in view of Section 42 (3) of PSCC Act.

Revisions under PSCC Act:

In view of Section 42 (4), where no appeal lies the Bench of two Judges may call for the record to ensure that the decree or order was according to law. The Court may pass such order as it thinks fit. Not all orders are revisable. Only those that involve jurisdictional errors, or failure to exercise jurisdiction, or illegality or material irregularity in exercise of jurisdiction. No revision lies for purely procedural orders e.g., delay condonation, etc.

Appeals under repealed Bombay Rent Act:

Section 29 of the Bombay Rent Act and Section 34 of the MRC Act are broadly akin to each other.

Procedure for appeals:

The procedure provided for an appeal is provided under Section 96, read with Order XLI and XLIII of Civil Code are applicable. There is no different of separate procedure prescribed under MRC Act or PSCC Act.

Appeals which are maintainable:

a. Against a decree or preliminary decree or
b. Rejection of plaint under Order 7 Rule 11 C.P.C.
c. Determination of any question within Section 144 (restitution)
d. Original decree passed ex-parte.

Where Regular first appeal does not lie:

a. Dismissal of suit in default
b. Decree passed by the Court with the consent of the parties.
c. From a decree in any suit of the nature when the amount or valuation of the subject matter of the suit does not exceed amount of ₹ 10000/-, except on a question of law.

Stay for Decree During Pendancy of Appeal:

Order XLI Rule 5 of Civil Code deals with the power of the Appellate Court to grant stay of execution of a decree during the pendency of an appeal.

There no automatic stay on filing of an appeal. The stay shall be granted upon the fulfilment of conditions viz.

- Substantial loss may result to the appellant if stay is not granted.
- Application must be made without unreasonable delay.
- Security must be furnished for due performance of the decree.
- The Court may impose just and equitable terms when granting stay.

In the famous case of **Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.[225],** it was held that a tenant continuing in possession after an eviction decree (even if stayed) must pay market rent/mesne profits for the duration of stay. This ensures equity and prevents unjust enrichment of the tenant at the landlord's expense.

Time limit for disposal of suits, proceedings or appeals:

Section 38 of the MRC Act provides that a suit or proceeding under the Act shall be heard and disposed of as expeditiously as possible and endeavour shall be made to dispose of the case, as far as may be practicable, **within a period of twelve months from the date of service of summons.** As regards to appeal against the decree or order made by the Court, it is provided that it shall be heard and disposed of as expeditiously as possible and endeavour shall be made to dispose of the appeal, as far as may be practicable, **within a period of six months from the date of service of notice of appeal on the Respondent.**

Conclusion:

The powers of Appellate Court under Rent Control Act are typically broad and encompass a re-evaluation of both facts and law determined by the trial Court. The appellate Court rehears the case because the appeal is deemed to be continuation of the original proceedings. The appellate Court re-appreciates, and re-analyses the evidence on record. The appellate Court can correct errors of both fact and law made by the trial Court. Appellate Court can condone delay in filing appeals if a sufficient cause is shown. This ensures that individuals are not denied justice due to minor procedural delays if valid reasons exist.

---

[225] (2005) 1 SCC 705

Joint Tenancy Vs. Tenancy in common: Differences and Legal Implications vis-à-vis Declaration of joint tenancy in view of Section 7 (15) (d) of the MRC Act

Introduction:

According to Section 7 (15) (d) of MRC Act and Section 5 (11) (c) of the Bombay Rent Act; upon the death of a tenant, the tenancy passes on to a member of tenant's family who was residing with the deceased tenant or doing commercial activities with the tenant in the premises at the time of his death. Tenancy rights in a property frequently result in legal disputes and litigation following the death of a tenant owing to the fact, that the Court cannot declare more than one person as a tenant under section 5 (11) (c) of the Bombay Rent Act. When a deceased tenant leaves more than one member and/or legal heirs in that situation, for the decision of as to who from the tenants family be declared as tenant, as well as to decide against which of the legal heir of the deceased tenant eviction suit is maintainable, question generally arise as to whether the members and/or legal heirs hold the tenancy jointly or in common.

What is Joint tenancy and what is Tenancy in common?

It is necessary to explore and understand these two terms, which though sound similar, are inherently distinct.

Joint Tenants:

In a joint tenancy, share of the deceased automatically transfers to the surviving joint tenant, without the option to designate alternate beneficiaries. The first characteristic is **Unity of Title.** In a joint tenancy, all tenants hold the property under a single title, meaning they share equal rights to the entire property. Secondly, there is **Right of Survivorship.** Upon the death of one joint tenant, their interest automatically passes to the surviving joint tenants.

The death of one joint tenant creates no vacancy in the seisin or possession. His interest is extinguished. If there were only two joint tenants, the survivor is now seized or possessed of the whole. It there were more than two, the survivors continue to hold as joint tenants. This incident, which is called the *jus accrescendi*, is the most important feature of joint tenancy.

Tenants-in-common:

In a tenancy-in-common, each tenant holds an undivided share, not necessarily equal in respect of which he is precisely in possession of the ownership of that share. On the death of a tenant-in-common, his estate does not pass to the survivors but devolves on his heir or passes under his will. The first characteristic is **Unity of Possession.** All tenants in common have the right to possess the entire property, but their ownership shares are separate and distinct. Secondly, there are **Separate Interests.** Each tenant in common holds a distinct share of the property, which may be unequal. There is no right of survivorship; upon death, a tenant's share passes according to their will or the laws of inheritance.

Distinction in the two concepts:

For better understanding the distinction between these two concepts, it is placed in tabular form as follows.

Sr. No.	Aspect	Joint Tenants	Tenants in Common
1.	**Devolution of Interest/ Mode of Succession**	The property of intestate devolves upon heirs by survivorship.	The heirs succeed together in property as tenants in common.
2.	**Succession After Death**	In case of joint owner, the property belongs to the surviving joint owners.	In case of tenants in common, his share goes to his representative and not by survivorship (not as joint tenant).
3.	**Collective Ownership**	All the joint owners together own the property.	Each owner owns or has a right in his share.
4.	**Share Definition**	In case of joint tenants, they do not have ascertain share. None of the owners has a specific or defined share.	In case of tenants in common, share is ascertained.

Sr. No.	Aspect	Joint Tenants	Tenants in Common
5.	**Unity of Title**	There is unity in title and unity is of commencement of title.	There is unity of possession, but there is no unity of title.
6.	**Unity of Interest**	Unity of interest.	The interests are differently held.
7.	**Equality of Shares**	Unity of equal share in joint estate.	Each co-tenant has different shares for the estate.
8.	**Survivorship Rights**	Joint tenants have right of survivorship.	The shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir, and none will have title to the entire leasehold property.
9.	**Notice of Termination**	Notice of termination of lease may be served upon any of the joint tenants, and after the death of joint tenant, it is not required to serve the notice on the heirs of the deceased joint tenant.	In tenants in common, there is only unity of possession, not of title or interest, and to determine a tenancy so held in accordance with Section 106 of the Transfer of Property Act, notice must be addressed to all the tenants.

Honourable Supreme Court in the case of **Suresh Kumar Kohli Vs. Rakesh Jain and Another**[226]**,** distinguished co-tenancy and joint tenancy as under-

[226] (2018) 6 SCC 708

"14. The issue at hand is what would be the status of the succeeding legal representatives after the death of the statutory tenant. In this regard, it would be worthy to discuss the two capacities viz. tenancy-in-common and joint tenancy, and the rights that one holds in these two different capacities. Fundamentally, the concepts of joint tenancy and tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different : joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship.

15. Tenancy-in-common is a different concept. There is unity of possession but no unity of title i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy. Consequently, the privity exists between the landlord and the tenant in common in respect of such estate."

In the case of **H. C. Pandey Vs. G. C. Paul[227],** Honourable Apex Court observed as follows-

"4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant.

...

It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is

[227] AIR 1989 SC 1470

> the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as **joint tenants.**"

The appeal in **Harish Tandon Vs. Additional District Magistrate, Allahabad**[228]**,** was referred, having regard to the apparent conflict between the two judgments in **Mohamed Azeem Vs. District Judge, Aligarh**[229]**,** and of **H.C. Pandey Vs. G.C. Paul** (cited earlier) to a bench of three judges. Honourable Supreme Court observed that it was difficult to hold that after the death of the original tenant, his heirs become tenants-in-common and each one of the heirs should be deemed to be an independent tenant in his own right. It was observed that if it was held that after the death of the original tenant, each of his heirs became independent tenant, then as a corollary it would also have to be held that after the death of the original tenant, the otherwise single tenancy would split up into several tenancies and the landlord could get possession of the tenanted premises only if he established one or the other grounds of eviction against each of the heirs of the original tenant. It was further held that it was a settled rule of interpretation of statutes that they should be interpreted in a manner which would not lead to an absurd situation. Honourable Supreme Court in case of Suresh Kumar Kohli (cited earlier) affirmed this proposition in the following words (para 24)-

> "We are of the view that in the light of H.C. Pandey, the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenants is occupation of all the joint tenants. It is not necessary for the landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of the deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of fling of eviction petition. An eviction petition against one of the joint tenants is sufficient

[228] AIR 1995 SC 676

[229] AIR 1985 SC 1118

against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs."

Implications:

What is passed on after the death of the deceased tenant is one unitary tenancy to such of the members of his family, who is residing with him at the time of his death or in default such member, any member or legal heir, who may be chosen by agreement between the family members or legal heirs, as the case may be, or in default of such agreement by the Court.

In the case of **Kanji Manji's Vs. Trustees of the Port of Bombay[230],** the Honourable Supreme Court observed that-

> "Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient and the suit for the same reason was also good. Mr. B. Sen, in arguing the case of the appellant, did not seek to urge the opposite, In our opinion, the notice and the frame of the suit were, therefore, proper, and this argument has no merit."

With reference to the Delhi Rent Control Act, 1958, Honourable Delhi High Court held in **Tahira Begum Vs. Sumitar Kaur and another[231]** that one heir of the tenant is capable of representing the entire estate unless shown to be in collusion with the landlord. In **Mina Srinivasan Krishnan Vs. Arun Bhaskar Adarkar[232],** [which was settled before Honourable Supreme Court subsequently] the Honourable Bombay High Court observed that in circumstances wherein it is to be decided as to who derived tenancy under the MRC Act, the legal heirs must agree as to who shall inherit tenancy from the original tenant within the meaning of the said Act and thereby would be liable to tender rent to the landlord. It was further held that in cases of default of an agreement between the legal heirs, the question can then be decided by the Special Court under the MRC Act. In case of **Ramesh**

[230] AIR 1963 SC 468
[231] 2010 SCC OnLine Del 84
[232] 2014 SCC OnLine Bom 1231

Ramgopal Daga Vs. Vasant Baburao Khandare[233], it was again held that once the petitioner was recognized as a tenant, in such cases, there was no question of considering the case of other relatives as a tenant or joint tenant. The landlord in no way would be concerned with the other occupants.

In the case of **Vasant Pratap Pandit Vs. Dr. Anant Trimbak Sabnis**[234], Honourable Supreme Court held that for the limited purpose of section 5(11)(c)(i) of the Rent Act the general law of inheritance is to some extent departed from. The relevant observations are-

> "…. It is only when such members of the family are not there, the 'heirs' will be entitled to be treated as tenants as decided, in default of agreement, by the Court. In other words, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. When Section 15, which prohibits sub-letting, assignment or transfer, is read in juxtaposition with Section 5(11)(c)(i) it is patently clear that the legislature intends that in case no member of the family as referred to in the first part of the clause is there the 'heir', who under the ordinary mode of succession would necessarily be a relation of the deceased, should be treated as a tenant of the premises subject, however, to the decision by the Court in default of agreement. The words "as may be decided in default of agreement by the Court" as appearing in Section 5(11)(c)(i) are not without significance. These words in our view have been incorporated to meet a situation where there are more than one heirs."

In the case of **Urmi Deepak Kadia Vs. State of Maharashtra**[235]**,** the Constitutional validity of section 7 (15) (d) of the MRC Act was challenged with the contention that it is inconsistent with the Hindu Succession Act, 1956 as amended from time to time. Honourable Bombay High Court addressed the issue of seeming departure of Section 7 (15) (d) of the MRC Act from the provisions of Hindu Succession Act, 1956, as legal heirs who

[233] 2006 (1) Bom C.R. 844

[234] (1994) 3 SCC 481

[235] 2015 (6) Mh. L. J. 462

would qualify as successors under the Hindu Succession Act, 1956 may not necessarily qualify as legal heirs to the tenancy rights under the MRC Act. It was held that there is no inconsistency since the areas covered by both the Acts differ.

In respect of the commercial premises when a tenant dies, it has has been observed by the Honourable Supreme Court in the case of **Gian Devi Anand vs. Jeevan Kumar and Others**[236]**,** that the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole.

<u>Declaration of joint tenancy: some key-points</u>:

Suits for declaration of tenancy are large in number. After death of the original tenant, such suits are instituted and it becomes the core dispute in between the heirs of the tenant. As the status of one or some of the heirs of original tenant is either denied or not recognised by the landlord, such suits are instituted with reference to the definition of 'tenant' under Bombay Rent Act or MRC Act, as the case may be. Some key-points must be considered while dealing with such suits, in addition to the implications herein-above.

<u>Meaning of word 'Family'</u>:

Succession in premises protected under the MRC Act can only be inherited by family members. In **Jaysen Jayant Rele & others Vs. Shantaram Ganpat Gujar & others**[237], Honourable Bombay High Court held that the word 'family' of the deceased tenant did not part with the ordinary meaning of the word 'family' as held in common parlance, and included family as consisting of father, mother, sons, daughters and all such blood relations and other relations arising from lawful marriages. It was held that the MRC Act protects only those who were really blood relations of the family.

<u>Residence must be Permanent</u>:

The word 'resides' as per the judgment given by Honourable Bombay High Court in the case of **Dharmvir I. Joshi Vs. Jayant Patwardhan and**

---

[236] (1985) 2 SCC 683

[237] AIR 2002 Bom 462

another[238] was construed to be something that is more than a temporary stay. The character of residence is adopted, and such residence must be permanent in nature, as held in the said case. Therefore the 'heir' who wishes to claim tenancy rights of the deceased tenant must prove that he/she was permanently residing with the deceased tenant at the time of his/her death. Only such an 'heir' will get priority over all other members of the family with respect to the inheritance of such tenancy rights over the premises.

Only one person can be recognized as Tenant:

In **Suresh Vs. Bhikaji Bhagwat Redkar**[239]**,** Honourable Bombay High Court held that the contention that on death of the original tenants, the all the heirs became tenants and the tenancy is joint, is not correct considering the scheme & purpose of the Rent Act. It was further observed and held that, only one person can be recognised as tenant.

Interpretation of the word 'Any Member':

In **Shamkant Tukaram Naik Vs. Smt. Dayanabai Shamsan Dighodkar**[240]**,** Honourable Bombay High Court observed that phrase 'any member' of the tenant's family residing with the tenant at the time of his death would not enable each and every member of the tenant's family to claim an independent right of tenancy in respect of the tenanted premises. It was simplified and observed that 'Any member' would mean 'any one member'.

Personal law of Succession- Not Applicable:

In **Miss Gool Rustomji Lala Vs. Jal Rustomji Lala**[241]**,** Honourable Bombay High Court held that whenever persons who are members of the tenant's family start a scramble for the tenancy rights, in a sense the war of succession begins. Succession to the property of the deceased is generally decided by applying the rules of succession forming part of the personal law of the parties. But the law of succession is substantially modified while resolving the disputes which arise after the death of the tenant, whether statutory or contractual.

---

238 2015 (6) Mh. L. J. 33
239 2009 (2) Mh. L. J. 917
240 1989 (1) Bom C.R. 554
241 1973 Bom. L.R. 600

Duty of Court in determining Tenency:

In the said case of **Miss Gool Rustomji Lala** it was further ruled that if the several members, who are residing as members of the tenant's family, fail to come to an agreement, then the Court has to make the choice and declare that one amongst them will be the tenant for claiming the protection of the Bombay Rent Act. The Court will have to take into account several relevant factors including the wishes of the deceased tenant. In all such cases the Court should have regard to the paramount collective interest of the family of the deceased tenant. The Court should make the choice in such a way that the person selected to be the tenant is likely to act in the interest of the family, like the Karta of a Hindu joint family or the paterfamilias. If the Court has in mind such considerations then it is likely that the Court will select the right person for looking after the collective interest of the tenant's family after his death.

In **Vimalabai Keshav Gokhale Vs. Avinash Krishnaji Biniwale & others[242],** it was held thatit is, therefore, for the Court to find out who really can get the benefit of section 5(11)(c) of Bombay Rent Act. For this the Court has to take into consideration various factors such as who was accepted as a tenant by the landlord, whether other members who are putting up a claim had accepted that person as a tenant or whether they had resisted the claim of that person to tenancy at any time, and in some cases wishes of the deceased tenant.

In **Dattaram Khurase Vs. Harikisandas Ghaswallla[243],** It was ruled that it is no doubt true that so far as the landlord is concerned, there is only one tenancy and merely because the tenants are more than one in number, there cannot be said to be more than one tenancy in respect of the suit premises as between the tenants on the one side and the landlord on the other.

Conclusion:

To sum up and to conclude; joint tenancy and co-tenancy are different concepts. In relation to the tenancy, the legal heirs of a deceased tenant acquire the tenancy as joint tenants. Therefore, all the legal heirs would not

[242] 2004 (1) Mh. L.J. 540

[243] 1979 Mh. L.J. 663

become tenants, instead only one of them would be recognized as tenant. Legal heirs who would qualify as successors under the Hindu Succession Act, 1956 may not necessarily qualify as legal heirs to the tenancy rights under the MRC Act but this does not mean that the provisions of MRC Act and the Hindu Succession Act, 1956 are inconsistent to each other. Instead, succession to tenancy rights under MRC Act is a clear departure from the general rules of succession laws, as heirs who would normally qualify as successors under the succession laws may not qualify as heirs to the tenancy rights Act.

The legislative intent behind the provision is to protect the family members of the tenant who were residing with him at the time of his death. The underlying rationale for this protection is that when a tenant occupies premises, the tenancy is not only for the tenant's benefit but also for the benefit of the family members living with him. Therefore, upon the tenant's death, it is only just to extend protection to the family members who were beneficiaries of the tenancy and for whose needs, the tenancy was originally secured. Joint tenancy may be created at the inception of the tenancy through an agreement that grants equal rights and shares to all tenants. Succession to tenancy rights under the MRC Act is a distinct departure from general succession laws, as those who would ordinarily qualify as heirs under the general laws of succession may not automatically inherit the tenancy rights under this Act.

Legal effects of non-registration of Tenancy Agreement

<u>Introduction</u>:

A tenancy agreement is a contract between a landlord and a tenant, outlining the terms and conditions under which the landlord rents the property. These agreements are typically written and may range from short-term leases (months or weeks) to long-term leases (year or more). A tenancy agreement is essentially a contract between a property owner (landlord) and a tenant for the rental of a property. The terms of the tenancy are outlined in this agreement, which often include details, like the rental amount, the duration of the lease, responsibilities for maintenance, and rights to terminate the agreement.

<u>Object of Section 55 of MRC Act</u>:

Section 55 of the MRC Act governs such agreements. The main object of the same is to avoid any dispute as to the terms of the tenancy or licence. As per Sub-section (1) of Section 55, every agreement for leave and licence or letting of premises between a landlord and the tenant or the licensee shall be in writing and shall be registered under the Registration Act, 1908. Therefore after the commencement of the MRC Act, there cannot be an oral agreement for tenancy or licence. The non obstante clause [‘notwithstanding anything contained in this Act or any other law’] gives an overriding effect to this provision and it therefore overrides the Transfer of Property Act, 1882, the Registration Act, 1908 and the Easements Act, 1882.

The topic came before Honourable Supreme Court as well as Honourable Bombay High Court in various cases. A detail study of the relevant observations is necessary to understand the purpose and object behind the provision. So, it can be understood and explored with reference to various precedents, covering different aspects, as below.

<u>Constitutional validity of Section 55</u>:

In the matter of **M/s. Labhshetwar and Sakkarwar Constructions and Others Vs. State of Maharashtra and Another[244],** Division Bench of Honourable Bombay High Court observed that-

[244] 2018 (4) Mh. L. J. 242

> "…The provisions of Section 55 of the Maharashtra Rent Control Act, Section 17 of the Indian Registration Act, 1908 and the provisions of Indian Easement Act, 1882 can be harmoniously interpreted, and there is no inconsistency as such giving rise to challenge and judicial scrutiny, to hold that said provisions are inconsistent…"

Unregistered Lease and it's use for collateral purpose:

In the case of **Shri Prasram s/o. Damduji Amte Vs. Shri Deepak s/o. Madanmohan Gupta**[245], while dealing with effect of unregistered lease deed under the Transfer of Property Act, 1882, it was observed that-

> "11. Under Section 107 of the Transfer of Property Act such as lease is to be made only by a registered instrument. So far as the effect of non-registration of lease-deed is concerned, Section 49 in clear and unambiguous words speaks that it can be used only for collateral purpose. It means, the factum of tenancy and possession if disputed between landlords and tenant can be considered even on the basis of unregistered lease-deed, but when it touches the terms and conditions of lease-deed the same can not be admitted and read in evidence."

Determination of terms of unregistered tenancy-Statutory advantage to the tenant:

It was held by the Honourable Bombay High Court in the case of **Suhdha Rajendra Mahajan and others, Vs. Vikas Narayaan Patil and Others**[246]**,** that:

> "plain reading of the aforesaid section would show that agreement requires to be in writing besides it's registration. Sub-clause (2) provides consequences of non-registration that contentions of the tenant about terms and conditions subject to which a premises have been given shall prevail unless proved otherwise. It can be thus observed that consequences of non-registration of the agreement is limited to the extent that tenant

[245] 2017 (6) Mh. L. J. 883
[246] 2024 SCC OnLine Bom 2111

is given advantage in the matter of interpretation of document and clause (3) provides for penal consequences against the landlord."

Effect of an agreement in writing, but if same is unregistered:

In case of **Raj Prasanna Kondur Vs. Arif Taher Khan**[247], it is observed in paragraph no. 14 that-

> "though it is mandatory for the landlord to get the agreement of leave and license recorded in writing and registered under the Registration Act, 1908, failure in that regard would warrant consequences as stipulated under Section 55 of the said Act, however, once the matter reaches the stage of evidence, and if there is an agreement in writing, though not registered, even then the facts stated in such agreement could be deemed to be conclusively established on the basis of such written agreement itself and there would be no other evidence admissible in that regard. On the other hand, the provisions of Section 55(2) and 55(3) of the said Act relate to the consequences of failure on the part of the landlord to comply with the requirement of registration of the agreement. In other words though, in terms of Sub-section (2) of Section 55 of the said Act, there will be presumptive value to the contentions of the licensee in respect of the terms and conditions of the agreement in the absence of the registered written agreement, nevertheless, once the agreement is in writing and even though it is not registered, the same, as regards the facts stated therein, would be deemed to have been proved conclusively on production of the agreement itself, and in which case, any presumption arising in relation to the terms and conditions of the license contrary to the facts stated in such agreement would stand rebutted."

Unregistered licence not governed by consequences under Section 49 of Registration Act:

The Honourable Bombay High Court in case of **Amit B. Dalal Vs. Rajesh K. Doctor**[248] observed that-

---

[247] 2005 (4) Bom C.R. 125
[248] 2010 (7) Mh.L.J. 1

"17. The aforesaid observations and conclusions by this Court is complete answer to the contentions raised on behalf of the petitioners. Once document is in writing and it's contents are proved by producing original leave and license on record, there is no impediment in accepting it in evidence, particularly, on the ground that it has not been registered. As observed by this Court, drastic consequences of non-registration of the document compulsorily registrable under section 17 of the Registration Act are not akin to consequences provided under section 55 of the Rent Act. Therefore, analogy and effect of non-registration of the document contemplated under registration Act cannot be borrowed while dealing with unregistered leave and license agreement in proceeding for eviction."

Unregistered licence: neither blanket bar to accept version of landlord, nor to consider version of tenant as a gospel truth:

Recently, in case of **Deepak S. Kavadiya Vs. Additiona. Divisional Commissioner Konkan Division and others[249],** it is observed by Honourable Bombay High Court that-

"Thus, the Legislature has not provided for acceptance of version of tenant/licensee to be gospel truth. On the contrary, it has recognised the right of the landlord/licensor to prove the version of tenant/licensee to be incorrect. Therefore, in a given case, where tenant contends that licensed premises are given for commercial purposes on account of non-registration of license agreement, landlord can prove that the same are granted for residential purposes. For proving such use, landlord can lead evidence by relying upon external documents. Thus, the broad scheme of Section 55 read with Section 24(3)(b) of the MRC Act is such that when there is a registered Leave and License Agreement, parties are bound by the terms and conditions of such registered agreement. In case the Leave and License Agreement is either reduced to writing or is not registered, tenant's interpretation of terms and conditions would prevail subject to the right of the landlord to prove such interpretation

[249] 2024 SCC OnLine Bom 3544

> to be incorrect. This is not to suggest that unregistered agreement creates a higher right in favour of landlord as compared to a registered agreement. **However, at the same time, it cannot be contended that in respect of an unregistered agreement, everything that tenant says must be accepted as gospel truth. The Legislature has consciously protected landlord's right to prove tenant's contention wrong.**"

<u>Unregistered agreement not a legal bar to sue for the landlord or licensor</u>:

In the matter of **Raj Prasanna Kondur Vs. Arif Taher Khan and others**[250]**,** it was held that-

> "…the right of a landlord under Section 24 to get a person evicted from the premises on expiry of license is not curtailed in any manner on account of absence of the agreement being in writing or registered, as contemplated by Section 55 of the Act."
>
> ...
>
> "In other words, on account of failure of the landlord to get the agreement registered, he cannot be precluded or prohibited from presenting a plaint in Civil Court seeking recovery of rent…"

<u>Nature of Offence</u>:

It was examined by the Honourable Bombay High Court in case of **Rohit Vs. State of Maharashtra**[251]. It was observed and held that-

> "…The non obstante clause in section 55, which is a special statute in itself, is indicative that provisions of Criminal Procedure Code and particularly Section 468 thereof will not be applicable. The requirement of Section 55 is, so long as tenant /respondent no.2 occupies the premises, the obligation flows to the petitioners to get the document executed and registered. The offence thereof certainly continues…13. Law requires the petitioners, in fact, for each continuation of the lease period to

[250] 2005 (4) Bom C.R. 383
[251] 2014 (5) Mh. L. J. 317

> get the document registered, which as indicated, having cast an obligation, failure warrants the action**...”**

<u>About relationship between parties and Section 55</u>:

In **Mrs. Supriya S. Kale Vs. Mr. Ranjit Diwadkar[252],** law is elucidated in the case of declaration of tenancy claimed by in fact a licensee, and it is held that**-**

> “The privilege does not extend to claiming a relationship or a right different from that mentioned in the agreement. If the legislature desired to extend the privilege beyond the terms and conditions in the agreement, it would have specifically granted it in the provision, by saying that the contention of the tenant/licensee as regards the right/relationship created under the agreement shall prevail. To put the construction on Section 55(2) as suggested by Mr. Mehta, will mean reading something more into the provision, than what occurs therein. The rules of interpretation, do not permit this, unless the provision as it stands, is either meaningless or of doubtful meaning. The provision of Section 55(2) as it stands, can neither be said to be meaningless nor of doubtful meaning. Therefore, there can be no substance in the argument that, as a consequence of non-registration of the agreements for leave and licence, the contention of the applicants that they are the tenants in respect of the suit premises, shall prevail. The applicants needed to establish the right of tenancy claimed by them by independent positive evidence, which they have failed to do…”

<u>Conclusion</u>:

Two consequences are enumerated under Sub-sections (2) and (3) of Section 55 of MRC Act, in case of failure to comply, with the obligation of the landlord to register such agreement. Under Sub-section (2), in the absence of registration of such agreement, the contention of the licensee regarding terms and conditions of the license would prevail, unless proved otherwise. In other words, the contention regarding the terms and conditions by the

[252] <u>Civil Revision Application no. 451 of 2012</u>, decided on 13.12.2012 by Hon. Bombay High Court.

licensee will have initial presumptive value unless same is displaced by the landlord. Secondly, in terms of Sub-section (3) of Section 55 of the said Act, the landlord will be liable for imprisonment which may extend to three months or fine not exceeding ₹ 5,000/- or both.

How to deal with an Obstruction Notice

Introduction:

When a person obtains a decree from a Court of law against another person next step is to get the decree satisfied. It empowers the decree holder to get the fruits of the judgment. If any obstruction is put by any person including the judgment debtor or somebody at his behest or by third party, the matter has to be dealt with by the executing Court in accordance with the procedure contemplated under the Civil Code. The provisions contained in sections 51 to 74 of Civil Code deal with the substantive law relating to execution of decree. The numerous rules of Order XXI of Civil Code take care of different situations, providing effective remedies not only to decree holder, auction purchaser and Judgment debtors but also to objectors claiming independent rights, title and interest in the property. Third party may make an application to the executing Court for ventilating their grievances.

Various provisions under the Civil Code for dealing with obstructionist notice:

Section 47 of the Civil Code provides that all questions arising between the parties to the suit in which the decree was passed or their representative and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. If the decree is for the possession or delivery of immovable property, then the provisions of section 51 and Order XXI Rule 35 are to be followed if the immovable property is directly in possession of the judgment debtor. If it is in the occupancy of the tenant of the judgment debtor, then the provisions of Order XXI Rule 36 are to be followed. Order XXI Rule 97 of Civil Code provides for resistance or obstruction to possession of immovable property. In the case of **Bramhadeo Chaudhary Vs. Rishikesh Prasad Jaiswal[253],** the Honourable Apex Court highlighted importance of the provision in Order XXI Rule 97 of Civil Code. Where the holder of a decree for possession of immovable property or the purchaser of any property sold in execution of a decree is resisted or obstructed by 'any person' in obtaining possession of the property, he may make an application to the Court complaining of such

[253] AIR 1997 SC 856 : (1997) 3 SCC 694

resistance or obstruction. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

Order XXI Rule 99 of Civil Code provides for dispossession by decree holder or purchaser. Where 'any person' other than the judgment debtor is dispossessed of immovable property by the holder of a decree for possession of such a property or, where such property is sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. The procedure has been provided in Rules 98 to 103.

Thus, if a decree holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI Rule 35 of the Civil Code, then the decree holder has to move an application under Order XXI Rule 97 of Civil Code for removal of such obstruction. After hearing the decree holder and the obstructionist, the Court can pass appropriate order on adjudicating the controversy between the parties. After such adjudication, if it is found that the resistance or obstruction was occasioned without just cause by the judgment debtor or by some other person at his instigation or on his behalf, then such obstruction or resistance would be removed as per order XXI Rule 97 sub-Rule (2) of Civil Code and the decree holder would be permitted to be put in to possession. Even in such an eventuality, the order passed would be treated as a decree under Order XXI Rule 103 of Civil Code and no separate suit would lie against such order. The only remedy would be to prefer an appeal before the appropriate appellate Court against such deemed decree.

The right of an innocent and denying occupant as an obstructor is recognized under Order XXI rule 97 of the Civil Code. But such a right cannot be converted into tool in the hand of high handed and self-sitting person/judgment debtor in order to defeat the rights of the parties and to render the decree and order of the Court nothing more than piece of paper. Order XXI Rule 99 of the Civil Code is intended to protect a person who is genuinely in possession of the property claiming independent right. So, under Order XXI Rule 101 of the Civil Code the Court is required to go into all allegations of title, right and interest as if it is a suit by itself.

If for any reason, a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on spot on account of his absence from the place or for any other valid reason, then his remedy would lie in filing an application under Order XXI Rule 99 of Civil Code claiming that his dispossession was illegal and deserves to be restored to him.

Order XXI Rule 105 of Civil Code provides for hearing of application and procedure to be followed by the Court in the obstructionist notice. As per said provision, the Court before which an application under any of the Rules of Order XXI is pending may fix a day for hearing of the application. If on the day of hearing or on the adjourned day, the applicant does not appear, the Court make an order that the application be dismissed.

Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application exparte and pass such order as it thinks fit. When such exparte order is passed, the party against whom such order is passed may apply for setting aside exparte Order under order XXI Rule 106 of Civil Code. If that party satisfies the Court that there was sufficient cause for non-appearance when the application was called for hearing, the Court may set aside the order on such terms as to cost or otherwise as it thinks fit. In the entire Order XXI of the Civil Code, the procedure for trial of obstructionist notice is provided in the Rule 105 only. Sub-Rule (2) of Order XXI Rule 97 and 99 provides that where any application is made to the Court under Sub-Rule (1), the Court shall proceed to adjudicate upon the application in accordance with provisions contained therein. It means, the Court has to adjudicate the obstructionist notice as per Order XXI Rule 105 of Civil Code. Similarly, section 141 of Civil Code deals with miscellaneous proceedings. As per said provision, the procedure provided in Civil Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. Para 345 of Civil Manual provides that when disputes arise in the course of execution proceedings, the provisions as to suits, unless inapplicable, should be followed. In such cases, issues must be framed, evidence taken and judgment written according to the law applicable to suits.

As per the Honourable Bombay High Court Amendment (Vide Maharshtra Government Gazette, Pt. 4Ka, page 418, dated 15th September, 1983, w.e.f. 1.10.1983), Rule 102 of Order XXI is deleted and sub-rule (2) of Rule 98 is substituted and a proviso to Rule 100 is introduced to include the provisions relating to transferee pendente lite. It is therein provided that if the transferee pendente lite continued his obstruction in obtaining possession of the property, the Court may, at the instance of the applicant, order the judgment debtor or any person acting at his instigation or on his behalf, to be detained in civil prison. The Court may also order the person or persons whom it holds responsible for such resistance or obstruction to pay jointly or severally in addition to cost, reasonable compensation to the decree-holder or the purchaser as the case may be for the delay and expenses caused to him in obtaining possession. As per the newly added proviso to Rule 100, where it is determined that the application under Rule 101 is made by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed, the Court shall dismiss the application. As per Order XXI Rule 103 Of Civil Code where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

The Honourable Supreme Court in the case of Brahmadeo Choudhary (cited earlier)**,** observed as follows:

> "In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist in only under Order XXI Rule 97 sub-rule (1) and he cannot bypass

> such obstruction and insist on re- issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree."

These provisions make it clear that, if the resistance is from judgment debtor or any person claiming through him; then the scope of inquiry will be of summary nature. Whereas, if the resistance is from a third person claiming an independent right, title or interest in the immovable property, then the scope of inquiry will be wider.

<u>Conclusion</u>:

It can be summarized that Order XXI of Civil Code is an independent Code in itself and it not only provides procedure to be followed by the decree-holder to get the fruits of the decree, but also an opportunity to the judgment-debtor or the third party/objection petitioner to raise the grievances or objection in the execution proceeding itself. Recourse to independent proceedings by filling a separate suit is clearly prohibited. Therefore, objections if are raised by the judgment-debtor or the third partly in execution proceedings, the same are required to be adjudicated by executing Court following the same procedure as if it was a suit and the orders by the executing Court having the force of a decree.

<u>Important Case Laws on the sub-topic</u>:

1. **Silverline Forum Pvt. Ltd. vs. Raju Trust and another[254]:** The words "*all questions arising between the parties to a proceeding on an application under Rule 97*" would envelop only such questions as would legally arise for determination between those parties. In other words, the Court, is not obliged to determine a question merely because the resistor raised it. The questions which executing Court is obliged to determine under Rule 101 must possess to adjuncts. First is that such questions should have legally arisen between the parties, and second is, such questions must be relevant for consideration and

[254] AIR 1998 SC 1754

determination between the parties, e.g. if the obstructer admits that he is transferee pendent lite, it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by decree holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceeding. Hence, it is necessary that the questions raised by the resistor or the obstructer must legally arise between him an the decree holder.

2. **Riyaz Khan s/o Rahim Khan vs. Dnyaneshwar Vitthalrao Chamat & others[255]:** Adjudication under Order XXI Rule 97 (2) of the Civil Code need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. On appreciation of material on record, if the Courts below found that the appellant/objector has failed to establish his possession over the suit property and it is not necessary to direct the parties to adduce evidence, in such a case the appellant can be permitted to lead evidence in support of the objection raised.

3. **Arihant Builders Pvt. Ltd. vs. Manjula Vithaldas Kapadia & others[256]**: The purport of Rule 101 is wide enough to encompass the claim of the petitioners that they have acquired right, title and interest in the suit property on account of certain transaction with their predecessors who claim through the Judgment debtor. For the time being it is unnecessary to dilate on the controversy as to whether the petitioners have acquired such right after the institution of the suit for eviction; so as to disentitle them to independently contest the obstructionist proceedings-keeping in mind the tenor of Rule 102 of Order XXI of the Civil Code.

4. **N. S. S. Narayana Sarma vs. Goldstone Exports (P.) Ltd.[257]:** The legislature vested the power in the executing Court to deal with all

[255] 2015 (8) LJSOFT (NAG) 87
[256] 2008 (6) Bom CR 597
[257] AIR 2002 SC 251

questions arising in the matter, irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting around the relevant issues arising in the case. The position is manifest that when any person claiming title to the property in his possession is obstructing the attempt by the decree-holder to dispossess him from the said property, the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and to pass an appropriate order, which under the provisions of Order XXI Rule 103 is to be treated as a decree.

Approach towards Replications, Rejoinder, Sur-Rejoinders, Sur-Sur-Rejoinders etc.

Introduction:

As like many other nuances, one comes across terms like 'Rejoinder', 'Sur-Rejoinder', 'Sur-Sur-Rejoinder' and so on, while working in Court of Small Causes, Mumbai. It is the practice at rampant here, which is nowhere in rest of Maharashtra. In this Court of Small Causes Mumbai (Small Causes Court, Mumbai), these replications (called as 'Rejoinders', 'Sur-rejoinders', 'Sur-sur-rejoinders' etc.) are always filed. Adjournments are sought and given to file such replications, rejoinders etc. It seems to be an adopted practice. In every other suit and for every other application before this Court, the learned Advocates rightfully seek time to file these replications, as fondly known as above. It is even argued that the pleadings are not complete, unless the Rejoinder, Sur-Rejoinder, Sur-Sur-Rejoindet etc. are not on record.

So, it becomes necessary to deal with them, with certain theoretical references.

Here, useful reference can be made to observations of Honourable Delhi High Court in case of **Anant Constructions (P) Ltd. Vs. Ram Niwas**[258]. Honourable Delhi High Court observed that-

> "5. The point at controversy has been seriously argued at the Bar. The present case provides a just opportunity for examining the law and practice relating to replications and rejoinders, especially in Delhi High Court (Original Side). In the case at hand valuable time of the Court has been wasted in adjournments enabling filing of reply and replication to a simple application for amendment in the written statement...."
>
> "6. A practice has developed in the High Court of Delhi of filing rejoinders/replications. Counsel appearing for the parties in contentious matters seek adjournments as of right enabling them to file rejoinder/replication. Time and again I have asked the learned members of the bar to enlighten me on the fountain

[258] 1994 SCC OnLine Del 615

source of this practice. Does this practice have any sanction in law? Till this day none has obliged me. However, Ms Ritu Bhalla advocate invited my attention to a Practice Direction (see Delhi High Court Rules Practice & Procedure by R.C. Khera, III Edn 1994. It will be referred to at an appropriate place.

Honourable Delhi High Court further observed that-

"7. Sitting on the original side, I have experienced bottlenecks being created in smooth progress of cases by this practice. Replications are being filed by the plaintiffs to every written statement filed by the defendants. These replications are nothing but mere denials of the averments made in the written statements. Mostly they reproduce and restate several averments of the plaint. These replications do not serve any utility. They merely add to the bulk of the file and increase the job of the Judge going through the pleadings. Then there are some cases where unscrupulous plaintiffs exploit the opportunity of filing replication for the purpose of introducing a case inconsistent with the case set out in the plaint. To illustrate, while the plaint seeks to challenge a transaction as vitiated by fraud, the replication introduces a case of the transaction having been vitiated by misrepresentation. While the plaint alleges title in the plaintiff by virtue of succession, the replication sets out a case of acquisition of title under a will. This results in confusion and serious embarassment at the trial. All this is over and above the adjournments perpetuated for the purpose of filing the rejoinder/replication.

7.1 In court proceedings, the terms - rejoinder and replication - are being loosely used as interchangeable terms or synonyms, which they are not.

7.2 Strangely enough, not only replications are filed by the plaintiffs to the written statements, even simple interlocutory applications such as those under Order 6 Rule 17, Order 13 Rule 2, Order 26 Rule 9 CPC are insisted on being supplemented by replications by the applicants on replies being filed by the opposite parties. Ordinarily such applications are supposed to be disposed off on the first date of hearing even without awaiting for a reply unless it be considered necessary by the court.

7.3 These rejoinders/replications perpetrate adjournments, avoidable otherwise and contribute colossal delay in hearing and disposal of matters, far from expediting the trial. More often then not distinction between introducing a plea by way of amendment of pleading and introducing plea by rejoinder/replication is being lost sight of. Opportunity of filing rejoinder/replication is being exploited to avoid the necessity of amending the plaint, even if necessary…"

It must be made clear that 'Rejoinder' and/or 'Sur-rejoinder' or similar terms are used but none is defined anywhere. Civil Code does not provide definitions of these terms. Similarly, these terms are not defined in the Civil Manual, The Bombay City Civil and Sessions Court Rules, 1948, The Bombay High Court Original Side Rules, 1960, The Bombay High Court Appellate Side Rules, 1960 and even not in Presidency Small Causes Court (Bombay) Rules. To reiterate, no such definitions could be found in the said set of rules. However, **Chapter IXA of Bombay High Court Original Side Rules, 1960** provides direction no. 129 which relates to 'Rejoinder'. It is as under-

129 IX-A. No Affidavit in Rejoinder without leave – No Affidavit in Rejoinder shall be filed without leave of the Court.

The next reference to term 'Rejoinder' can be found in Chapter XLIV of the Bombay High Court Original Side Rules, 1960 which relates to Rules under The Indian Divorce Act, 1869. Thereafter the word 'Rejoinder' can be found in Appendix III of the said Rules where rules in regard to the records at the office on the Original Side of Honourable Bombay High Court.

The next and last reference to 'Rejoinder' can be found in Appendix IV of the said Rules. Except the first reference, all the other references are irrelevant to the working of Court of Small Causes, Mumbai. **So, it is evident that the practice of filing replications, rejoinders, sur-rejoinders etc. is**

borrowed from the spirit behind the said Practice Direction. But it must be mentioned that, the Bombay High Court Original Side Rules, 1960 are applicable to the practice and procedure before Honourable High Court of Judicature, Bombay. Evidently, there is no corresponding Practice Direction in the PSCC Rules, which may be applicable to practice before this Court.

The question was briefly taken up by Honourable Bombay High Court, in the case of **Madhukar Eknathrao Dalal Vs. Vilas Gangadhar Dalal and others**[259]. Honourable Bombay High Court observed the said case as below-

> "7. I have carefully gone through the papers and impugned 'orders. There cannot be any dispute about the fact that the learned Judge did not undertake any scrutiny as to the merits of the request for filing subsequent pleadings and was content in dismissing the Application (Exhibit-89) and refusing to take on record the rejoinder (Exhibit-84) simply on the ground that there was no provision in law. One need only to point out that in the circumstances covered by the Order VIII Rule 9 of the Code of Civil Procedure there could be a subsequent pleading as well. It was therefore expected of the learned Judge to have simultaneously dealt with and made an endeavour to point out if the petitioner could have been allowed to file subsequent pleadings within the frame work of that provision. He has clearly abdicated his jurisdiction."

It means that, Honourable High Court did not rule down that the aforesaid Practice Direction is applicable to practice before other Courts than it. Significance was given to provision relating to 'subsequent pleadings' under Order VIII Rule 9 of Civil Code. The observations in cases of **Shakkor and etc. Vs. Jaipur Development Authority**[260] and **Payal Gopi Vs. Tiebeam Technologies India Pvt. Ltd. Secundarabad and others**[261]., are relied upon in the context, always. In both these cases as well, Order VIII Rule 9 relating to 'subsequent pleadings' was referred to and 'Rejoinder' was considered to be under such umbrella. The provision is as under-

---

[259] MANU/MH/2457/2020
[260] AIR 1987 Raj 19
[261] MANU/AP/0310/2015

> **9. Subsequent pleadings**- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

The textual makes it clear that such subsequent pleadings (may be termed as 'replications', 'rejoinder', 'Sur-rejoinder', 'Sur-sur-rejoinder' etc.) can be filed only with the leave/permission of the Court.

In the aforesaid case of Anant Constructions (cited earlier), Honourable Delhi Court also recorded observations that-

> "13. Decided cases in India use the term rejoinder loosely for a reply or replication filed by the plaintiff in answer to the defendant's plea. Strictly speaking a reply filed by the plaintiff (when permissible) is a replication. A pleading filed by the defendant subsequent to replication is a rejoinder.
>
> 14. A replication is not to be permitted to be filed ordinarily, muchless in routine. A replication is permissible only in three situations: (1) when required by law; (2) when a counter claim is raised by the defendant; (3)when the Court directs or permits a replication being filed. The Court may direct filing of a replication when the court having scrutinised the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement. The plaintiff may also feel the necessity of joining additional pleading to put forth his positive case in reply to the defendant's case but he shall have to seek the leave of the court by presenting the proposed replication along with an application seeking leave to file the same. The court having applied its mind to the leave sought for, may grant or refuse the leave......"

It also means that, if the practice of filing 'replications', 'rejoinder', 'Sur-rejoinder', 'Sur-sur-rejoinder' (and so on) etc. is to be continued in this Court as like the Original Side of Honourable High Court; permission of the Court must be sought. After application of judicial mind, the Court may or may not give such permission. It will also fetter the endless practice. It also brings this Court to conclude that the parties or their learned Advocates cannot file all the above as of right.

At the same time, it must be kept in mind that the opportunity to file such replications, rejoinder, sur-rejoinder etc. shall be given, judging the need in the given facts and circumstances. The mode and manner of seeking such permission must be preferably an application in the context, which the Court would decide, forthwith. Moreover, oral permission is also nowhere barred. The aim must be that such opportunity must be given if it irons out every possible injustice or prejudice, and at the same time it shall not defeat the mandate of Order VIII Rule 9 of Civil Code.

Role and Jurisdiction under Mumbai Municipal Corporation Act, 1888

The Chief Judge or Additional Chief Judge working at Court of Small Causes, Mumbai has to deal with certain proceedings under the provisions of Mumbai Municipal Corporation Act, 1888 [hereunder referred to as 'MMC Act' for brevity]. It is necessary to unfold the relevant aspects.

Election Petitions:

The MMC Act confers exclusive jurisdiction upon the Chief Judge of the Small Causes Court in a suit/matter relating to the election matters. The election petitions are not triable by any other Courts where the special tribunal out of ordinary course is appointed by an Act of Legislature to determine the questions as to rights which are creation of Act, then, except so far as otherwise expressly provided or necessarily implied the jurisdiction of that tribunal to determine those questions is exclusive.

Section 33 of the MMC Act, the Court trying the election petition is a creature of the Bombay Municipal Corporation Act and its powers and jurisdiction have been circumscribed by the said Act. The Court exercising its power under section 33 cannot travel beyond the four corners of the said Act. What is expected by the Legislature under section 33 is final decision of the election petition. There is no provision for interim orders to be considered and granted before the election petition is considered on merits and material produced by them. The MMC Act has provided a complete code of election petition and it lays down the manner of trial of the election petition and even the degree of proof required.

Any person enrolled in the Municipal Election roll may at any time within ten days from the date on which list prescribed under section 28K was available for the sale or inspection may file election petition on various grounds including disqualification enumerated under section 16 of the MMC Act or non-compliance of section 5B of the MMC Act as well as corrupt practices under section 28F of the MMC Act, interalia on following grounds

i. If the qualification of any person declared to be elected for being a councilor is disputed, or

ii. if the validity of any election is in question, improper rejection of a nomination by the commissioner

iii. improper refusal of a vote or for any other cause, if a person declared to be elected, committed a corrupt practice within the meaning of section 28F.

iv. committed a corrupt practice within the meaning of Section – 28F of the MMC Act.

The provisions of the Representation of the People Act are not straight way applicable so far as election petition filed under section 33 of the MMC Act is concerned. However, analogy and principles of the Representation of the People Act can be made applicable to the Election Petition even under the MMC Act. In case of **Eknath Bayaji Gadkari Vs. Mumbai Municipal Corporation**[262] Honourable Bombay High Court held that in the matter of corrupt practice under section 28F of the MMC Act the petitioner is required to give the detail material facts and material particulars, mere reproduction of section will not constitute a pleading in a election petition.

In case of **Rajendra Dhanji Sakhla Vs. State Election Commissioner and others**[263] Honourable Bombay High Court held that the provisions of section 5 of the Limitation Act do not apply to the Election Petition filed under section 33 of the MMC Act.

After inquiry, if the Chief Judge finds that the election was valid election and that the person whose election is objected to is not disqualified, he shall confirm the declared result of the election. If the Chief Judge finds that the person whose election is objected to disqualified for being councilor, he shall declare such person's election null and void and set aside the said election. When an election of a person is disqualified on the ground that he has committed a corrupt practice within the meaning of section 28F, the Chief Judge shall if he is satisfied that a candidate has committed such corrupt practice, declare the candidate disqualified for both the purpose of that election and of such fresh election as may be held during the current

[262] 2011 (5) Mh. L. J. 36
[263] 2008 (1) Mh. L. J. 398 (DB)

terms of the office of the councilor elected at the general election and shall set aside the election of such candidate if he has been elected.

In view of Section 33(1) of the MMC Act the Hon'ble Chief Judge of the Small Cause Court only has jurisdiction to hear and dispose of election petitions.

Sections 503, 504, 505, 506 & 507 of MMC Act:

Section 503 of the MMC Act enables the Commissioner of General Manager to recover the expenses of any work executed or of any measures taken or things done by or under his authority within the meaning of Section 491 of the Act. Section 491(2) no doubt provides that Commissioner or the General Manager subject to the provisions of Sub Section (2) of Section 503 may recover the said expenses by distress and sale of the goods and chattels of the defaulter as if the amount thereof were a property tax due by the said defaulter. In all other cases not covered by Section 491 the Commissioner or the General Manager has to refer the dispute to the Chief Judge of the Small Causes Court.

Section 504 of this Act contemplates that if in any case not falling under Section 491, any person is required by this Act, or by any regulation or by-law framed under this Act, to pay any expenses or any compensation, the amount to be so paid and, if necessary, the apportionment of the same, shall, in case of dispute, be determined, except as is otherwise provided in sections 503 and 515, by the Chief Judge of the Small cause Court on application being made to him for this purpose at any time within one year from the date when such expenses or compensation first became claimable.

In view of Section 505 of this Act if the amount of any expenses or compensation ascertained in accordance with the last preceding section is not paid by the person liable to pay the same on demand, it shall be recoverable as if the same were due under a decree of the Small Cause Court.

Section 507 of the Municipal Corporation Act has contemplated the proceeding before the Chief Judge of the Small Cause Court. As per Sub-section (1) of Section 507 of this Act, if the owner of any building or land is prevented by the occupier thereof from complying with any provision of this Act or of any regulation or by-law made under this Act or with any requisition made under this Act or under any such regulation or by-law in respect of such building or land, the owner may apply to the Chief Judge of the Small Cause Court.

As per sub-section (2), the said Chief Judge, on receipt of any such application, may make a written order requiring the occupier of the building or land to afford all reasonable facilities to the owner for complying with the said provisions or requisition and may also, if he thinks fit, direct that the cost of such application and order be paid by the occupier.

The reference made by Commissioner[1] under Sub section (1) of section 503 is not an application. Therefore, Article 137 of the Limitation Act does not apply to the said reference. If a suit is filed under section 506 of the Act, the provisions of Limitation Act will apply and time will begin to run fronm the date of the order made under section 503 of the Act.

The Chief Judge or Additional Chief Judge (on delegation by the Chief Judge) deal with the applications of owner/landlord in view of section 507 of MMC Act. It is in fact Statutory Remedy of owner of building or land against occupier who prevents his complying with any provisions of this Act.

Under Sub-section (1), if the owner of any building or land is prevented by the occupier thereof from complying with any provision of this Act or of any regulation or by-law made under this Act or with any requisition made under this Act or under any such regulation or by-law in respect of such building or land, the owner may apply to the Chief Judge of the Small Cause Court.

In view of sub-section (2), the Chief Judge, on receipt of any such application, may make a written order requiring the occupier of the building or land to afford all reasonable facilities to the owner for complying with the said provision or requisition and may also, if he thinks fit, direct that the cost of such application and order be paid by the occupier.

Sub-section (3) provides that after eight days from the date of any such order, it shall be incumbent on the said occupier to afford all such reasonable facilities to the owner for the purpose aforesaid as shall be prescribed in the said order; and in the event of his continued refusal so to do, the onwer shall be discharged, during the continuance of such refusal, from any liability which he would otherwise incur by reason of his failure to comply with the said provision or requisition.

Section 508 to 512 of the MMC Act provide the procedure and powers for such inquiry.

Municipal Assessment:

The MMC Act empowers the Corporation to levy and collect property taxes from the occupant of the property. Section 128 of the Act lays down the provision as well as procedure to fix the rates of taxes. Section 139 of the said Act explains which taxes are within the purview of the Municipal Taxation. What consists of property taxes and at what rate the same should be levied is provided under Section 140 of the MMC Act. The term 'rateable value' is not defined in the MMC Act. In Mumbai till 31.03.2010, the property tax was levied on the basis of rateable value. Since 01.04.2010 property tax is levied on the basis of capital value of the property instead of rateable value. Section 154 of MMC Act deals with the determination of rateable value or capital value. Section 154 (1) of MMC Act deals with determination of rateable value. In order to fix rateable value of any building or land assessable the property tax, there shall be deducted from the amount of annual rent for which such land or building might reasonable be expected to let from year to year, a sum equal to 10% of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or any other count. Land and building assessable to property tax are defined under Section 3(r) and Section 3 (s) respectively under MMC Act as under :

> 'Land' includes land which is being built upon or built upon or covered with water, benefits to arise out of land things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street.
>
> 'Building' includes a house outhouse, stable shed, hut tank (except tank for storage of drinking water in a building or part of a building) and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever.

The rateable value of building must be fixed on basis of the annual rate for which the building might reasonably be expected to let from year to year. In case of **Dr. Balbirsingh and others Vs. M/s. MCD**[264], it was held that the rateable value of the building whether tenanted or self-occupied, is limited by the measure of standard rent arrived at by the Assessing Authority by applying the principles laid down in the Rent Act. It has also been held that the test for determining standard rent is not what the standard rent actually is, but the rent which the owner reasonably expect to receive from hypothetical tenant. Such expectations cannot go beyond the standard rent.

The rateable value of the building must be fixed on the basis of annual rent for which the building might reasonably be expected to let from year to year. An appropriate entry to that effect is to be made in the assessment book by the Commissioner. Thereafter a notice is to be given to the person affected by the entry. The burden is cast on the person challenging the entry to show that the rateable value fixed by the Commissioner or the increase proposed by him is not justified. The assesse is required to file a complaint and if the Commissioner finds on investigation that the complaint is unjustified, the assesse has given a right under Section 217 of MMC Act to file an Appeal to the Chief Judge of the Court of Small Causes. It is open to the assesse to satisfy the Court, if necessary, by examining the witness in order to show that the Commissioner has not fixed the rateable value of the property correctly. If the appeal before the Chief Judge fails, the assesse is given a further opportunity to file an appeal before the Honourable High Court under Section 218D of the MMC Act. The burden must always rest on the assesse to establish that the rateable value has not been fixed properly by the Commissioner.

In case of **Municipal Corporation of Greater Mumbai and others Vs. Dalamal Tower Premises Co-operative Society Ltd. and another**[265], it was held that

> "Where the premises are exempt from the operation of the Maharashtra Rent Control Act, 1999, by the provisions of section

---

264 AIR 1985 SC 339

265 2012 (6) Mh. L. J. 856.

> 3, the assessing authority in determining the annual rent at which the premises might reasonably be expected to let from year to year is not constrained by the outer limit of standard rent".

It was further held that -

> "Where the premises are exempt from the provisions of the Maharashtra Rent control Act, 1999, it is not unlawful for the landlord to claim or receive an amount in excess of standard rent. In such a case, the actual rent received by the landlord is in the absence of special circumstances a relevant consideration while determining rateable value for the purposes of taxation under Section 154 (1) of MMC Act, 1888."

The State of Maharashtra has passed an Act No. XI of 2009 and since April 2010, property tax is levied on the basis of capital value of the property instead of rateable value. As per Section 140A, the Corporation may pass a resolution to adopt levy of property taxes on the basis of capital value of building and land on and from such date and at such rates as the Corporation may determine in accordance with the provision of Section 128. It is further provided that for the period of five years from the date of changeability of property tax on the basis of capital value, the tax shall not exceed in respect of residential building used for, two times and land or building used for non-residential purposes, three times the amount of property tax leviable in respect thereof in the year immediately preceding year. For the purpose of revision of the property taxes in case of capital value-based assessment, it shall not exceed 40% of the amount of the property tax payable in the year immediately preceding the year of such revision. For the units of residential buildings having carpet area 46.45 sq.mt. (500 sq.ft.) or less, shall not exceed the amount of property tax levied and payable in the year immediately preceding the year of such adoption of capital value as the basis.

As per Section 154 (1A), in order to fix the capital value of any building or land assessable to a property tax the Commissioner shall have regard to the value of any building or land as indicated in the Stamp Duty Ready Reckoner for the time being in force as prepared under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, framed under the provisions of the Bombay Stamp Act, 1958, or where the Stamp

Duty Ready Reckoner does not indicate value of any properties in any particular area wherein a building or land in respect of which capital value is required to be determined is situate, or in case such Stamp Duty Ready Reckoner does not exist, then the Commissioner may fix the capital value of any building or land taking into consideration the market value of such building or land, as a base value, and also have regard to several other factors

Thus, while determining capital value of the property, all relevant factors mentioned in the Section 154(1A) and rules framed under Section 154(1B) of MMC Act, 1888 shall be kept in mind.

Section 217 of MMC Act:

Section 217 of the MMC Act, provides the remedy of appeal against rateable value or capital value, as the case may be or tax fixed or charged under that. The appeal under Section 217 of this Act shall be heard and determined by the Chief Judge of the Small Cause Court. But the Section 217 of this Act has laid down the following conditions for filing the appeal against valuations and taxes before the Chief Judge of Small Causes Court.

1. The appeal should be brought within 21 days after the accrual of the cause of complaint.

2. A complaint previously should have been made to the Commissioner under Section – 163 and such complaint should have been disposed of by the Commissioner of Municipal Corporation.

3. In the case of an appeal against any amendment made in the assessment book under Section 167 during the official year, a complaint has been made by the person aggrieved within 21 days after he first received notice of such amendment, and his complaint should have been disposed of.

4. In case of an appeal against a tax, or in the case of an appeal made against a rateable value or the capital value, as the case may be, the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, up to the date of filing of the appeal, should have been deposited by the appellant with the Commissioner. Such appeal should be accompanied by a receipt of full amount of tax to which appeal relates.

Where the appeal is not filed in accordance with the aforesaid provisions, the appeal shall be liable to be summarily dismissed. As per Section 217(3) of this Act, in the case of any appeal entertained by the Chief Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporation (Amendment) Act, 1975, the Chief Judge shall not hear and decide such appeal, unless the amount of the dispute tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be, up to the date of filing the appeal, has been deposited by the appellant with the Commissioner within 30 days from the date of publication of a general notice by the Commissioner in this behalf in the local newspapers.

Section 394 of MMC Act:

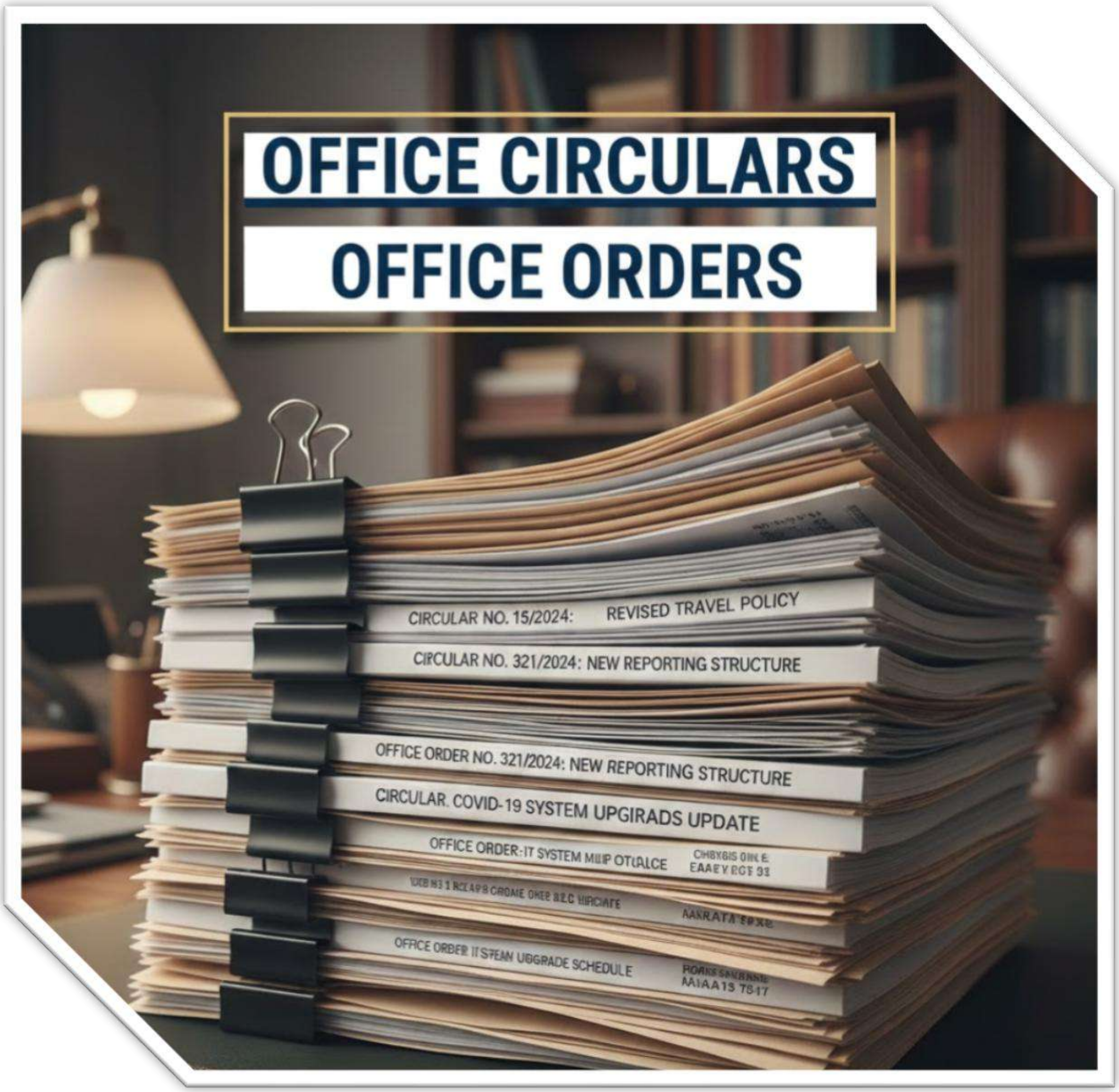
Section 394 of the MMC Act deals with the provisions concerning to keeping certain articles or animals not to be kept, and certain trades, processes and operations not to be carried on, without a licence, and things which are dangerous and nuisance are liable to be seized. This section says that certain articles or animals not to be kept, and certain trades, processes and operations not to be carried on, without a licence; and things liable to be seized, destroyed, etc., to prevent danger or nuisance. If the Commissioner of the Municipal Corporation finds a person contravening this provision may issue written notice, require the person contravening this provision to take such measures. If any article or animal so seized and carried away or sealed is of an explosive or dangerous nature, the Commissioner may by order in writing cause the same to be forthwise destroyed or otherwise disposed of, as he thinks fit. The Commissioner may withhold any such licence and record his reasons in writing for such withholding and furnish the person concerned a copy of his order containing the reasons for such withholding.

As per Section 394(5) of this Act, any person aggrieved by an order of the Commissioner under this sub-section may, within sixty days of the date of such order, appeal to the Chief Judge of the Small Cause Court, whose decision shall be final.

The object of this section is to devise measures ensuring protection and safety of citizens. This is to prevent keeping or storing without license or articles harmful to the public health and safety and specified in schedule 'M' of this Act. Section 394 clearly prohibits not only carrying out trade without a license but also carrying on the same in breach of any terms and conditions mentioned in the license.

PART D
Useful Bare Acts

PART – D USEFUL BARE ACTS (indexed in alphabetical order) Click on the name of Enactment to open it	
Sr. No.	**Name of Enactment/Bare Act**
1.	Bombay Rents, Hotel and Lodging House Rates Control Act, 1947
2.	Central Provinces and Berar Letting of Houses Rent Control Order, 1949
3.	Easements Act, 1882
4.	Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954
5.	Indian Evidence Act, 1872
6.	Limitation Act, 1963
7.	Maharashtra Court-Fees Act, 1959
8.	Maharashtra Rent Control Act, 1999
9.	Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971
10.	Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975
11.	Mumbai Municipal Corporation Act, 1888
12.	Presidency Small Causes Courts Act, 1882
13.	Provincial Small Causes Courts Act, 1887
14.	Public Premise (Eviction of Unlawful Occupants) Act, 1971
15.	Transfer of Property Act, 1882



PART E

Useful Administrative References

PART – E USEFUL ADMINISTRATIVE REFERENCES Click on the heading to open relevant file	
Sr. No.	**Heading**
1.	**Various Officer Circulars** **(which are useful for day-to-day work)**
2.	**Various Officer Orders** **(which are useful for day-to-day work)**

Highlights

Legislative History of Rent Laws

Unfolded history of the laws governing landlords and tenants, licensors and licensees; disputes among them & exclusive Jurisdiction of Courts

Comprehensive coverage of precedents

Precedents with all the binding force and exploration of Doctrine of Precedent

Practical Solutions on usual problems

Solutions from Judges who worked and dealt with the relevant cases

Useful Administrative References/Circulars

Handy compilation of all the references/circulars for Day-to-day work and problems