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M/S. HOTEL KINGS AND ORS.
v.
SARA FARHAN LUKMANI AND ORS.

NOVEMBER 8, 2006

B

[B.P. SINGH AND ALTAMAS KABIR, JJ.]

Rent Control and Eviction:

C

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947:
Section 12(3)(a).

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Lease deed—Landlord leased a plot of land to a company who in turn transferred and assigned the demised property to some other company—By virtue of the deed of assignment the said company became the lessee of the said land for the unexpired period of the lease and became a tenant under the landlord—As the said company defaulted in payment of rent for more than six months, the landlord issued a notice to the said company—Having refused to accept the rent tendered by the lessee, the lessors filed a suit claiming possession on the ground that the lessee had defaulted in payment of rent—There were allegations of sub-letting also—The trial court dismissed the lessors' suit for possession holding that rent of the suit property was payable every six months—But the appellate court decreed the suit for possession under Section 12(3)(a) holding that the rent for the demised premises was payable every month and not after six months—High Court affirmed the view of the appellate court—Held: The lease deed makes it abundantly clear that the lease rent was required to be paid on a monthly basis—Hence, suit for possession rightly decreed—However, the decree for possession passed against the lessee will not bind those tenants who have been inducted into the premises by the lessee since they were lawfully inducted into the premises by virtue of the lease deed—Transfer of Property Act, 1882, S. 105.

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Words & Phrases:

"Consideration"—Meaning of—In the context of S. 105 of the Transfer of Property Act, 1882.

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The respondents were the owners of a plot of land. The said land was leased to one company which in turn transferred and assigned the demised property to 'Y'. The original lease was for 98 years. By virtue of the deed of assignment 'Y' became the lessee of the said land for the unexpired period of the lease and became a tenant under the respondents. As 'Y' defaulted in payment of rent for more than six months, the respondents issued a notice to the said company. Having refused to accept the rent tendered by the lessee, the lessors filed a suit claiming possession on the ground that the lessee had defaulted in payment of rent. There were also allegations that the lessee had unlawfully sublet the demised property.

The trial court dismissed the lessors' suit for possession holding that rent of the suit property was payable every six months. The appellate court decreed the suit for possession under Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 holding that the rent for the demised premises was payable every month and not after six months. The High Court affirmed the view of the appellate court. Hence the appeal.

Disposing of the appeal, the Court

HELD: 1. The decision of the appellate court holding that the lease was governed under Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 was correct. The lease deed makes it abundantly clear that the lease rent was required to be paid on a monthly basis.

[728-F]

2. In the instant case, the lessee is required to pay the rates and taxes and other outgoings for the demised premises in respect whereof the landlord has been given the right to effect permitted increase equivalent to the amount paid towards rates and taxes. The same does not make such payment a part of the rent though it may be a consideration for the grant of lease. The 'permitted increase' in the instant case serves as a yardstick for the landlord to increase the rents on account of payment of rates and taxes by the landlord.

[729-F, G; 730-A]

Kranti Swaroop Machine Tools Pvt. Ltd. v. Kanta Bai Asawa (Smt.), [1994] 2 SCC 289, *M/s. Sarwan Kumar Onkar Nath v. Subhas Kumar Agarwalla*, [1987] 4 SCC 546, *Kamani Properties Ltd. v. Augustine*, [1957] SCR 20, *Puspa Sen Gupta v. Susma Ghose*, [1990] 2 SCC 651 and *Dinkar S. Vaidya v. Ganpat S. Gore*, AIR (1981) Bom. 190, referred to.

The Bombay Municipal Corporation v. The Life Insurance Corporation

A of India, [1970] 1 SCC 791 and *Raju Kakara Shetty v. Ramesh Prataprao Shirole*, [1991] 1 SCC 570, held inapplicable.

B 3. Consequently, even though the lease deed contained a provision for payment of the rates and taxes exclusively by the lessee and it is also stipulated that the lessor will have no liability therefor, the lease will still be governed under Section 12(3)(a) of the Bombay Rent Act as held by the appellate court and affirmed by the High Court. The expression "consideration" indicated in Section 105 of the Transfer of Property Act, 1882 has been used in a generic sense to include the price paid or promised or of money, a share of crops, service or any other thing of value. On the other hand, the lease deed specifies the amount to be paid as rent each month while the rates and taxes and other outgoings are treated to be the separate liability of the lessee, no doubt having regard to the intention of the parties that a building was to be erected by the lessee on the demised land. [730-A, B, C]

D 4. However, having regard to the provisions of the lease deed, there can be little doubt that the decree for possession passed against the lessee will not bind the appellants who have been inducted into the premises by the lessee as they have acquired an independent status under the provisions of the deed of lease permitting assignment of the structure to be erected on the demised land. Since these appellants were lawfully inducted into the premises by virtue of the lease deed they will not be affected by the decree for possession passed against the lessee. [730-D, E, F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4732 of 2006.

From the Judgment and Order dated 8.2.2006 of the High Court of Judicature at Bombay in W.P. No. 6813 of 2005.

WITH

Civil Appeal No. 4733 of 2006.

G R.F. Nariman, Soli J. Sorabjee, M.L. Verma, Anil Gala, Sanjeev Puri, Rohit Puri, Farrukh Rasheed, Ashok Kumar Gupta and N. Ganapathy for the Appellants.

C.A. Sundaram, Ranjit Kumar, Mukul Tally and Jatin Zaveri for the Respondents.

The Judgment of the Court was delivered by:

H ALTAMAS KABIR, J. Leave granted in both the special leave petitions.

Respondent Nos. 1 to 4 in both the special leave petitions are the owners of a plot of land measuring about 2739.50 sq.yds. bearing survey No. 37, situated at Juhu, Greater Bombay. The said land was leased to one M/s.H. Bloch Engineering Pvt. Ltd. by a registered deed of lease dated 3rd November, 1966. By a deed of assignment dated 8th June, 1970, the said lessee transferred and assigned the demised property to M/s. Yashdhir Hotels Pvt. Ltd., a company registered under the Companies Act. The original lease was for 98 years commencing from 1st November, 1966. By virtue of the deed of assignment dated 8th June, 1970, M/s.Yashdhir Hotels Pvt. Ltd. became the lessee of the said land for the unexpired period of the lease and became a tenant under the respondent Nos. 1 to 4. The lease rent was initially fixed at Rs.3,215/- per month, but was thereafter increased to Rs.3,450/- per month. As M/s. Yashdhir Hotels Pvt. Ltd. defaulted in payment of rent for more than six months, the respondent Nos. 1 to 4 issued a notice dated 1st February, 1983 to M/s. Yashdhir Hotels Pvt. Ltd.. It appears that on receipt of the notice, M/s. Yashdhir Hotels Pvt. Ltd. tendered rent to the lessors for a period of fourteen months but the same was refused as the same did not constitute the entire arrears of rent payable by the lessees. It was also the claim of the lessors that the lessee had unlawfully sublet the demised property.

Having refused to accept the rent for fourteen months tendered by the lessee, the lessors filed a suit, being R.A.E.No.732/2538/1983, claiming possession on the ground that the lessee had defaulted in payment of the rents.

Apart from the lessee, certain other parties were made defendants in the suit on the allegation that the suit property had been sublet by the lessee in their favour. The defendants filed their written statements and while admitting that M/s. Yashdhir Hotels Pvt. Ltd. had become the tenant of the leasehold premises by virtue of the deed of assignment, denied that the lessee was in arrears of rent as alleged. According to the defendants, the lease rent, which was initially fixed at Rs.3,215/- per month and was thereafter enhanced to Rs.3,450/- per month, was payable after every six months and not monthly as claimed by the lessors. It was also contended that although the rent had been tendered by cheque along with a letter dated 23rd April, 1983, the same had been wrongly refused by the lessors. It was also contended that since the period of lease was 98 years which was still subsisting, and there was no breach of any of the terms and conditions of the lease, the lessors were not entitled to get possession of the suit property. It was the specific case of the

A defendant Nos. 2 to 5 that under the deed of lease, the lessee was entitled to let out the structure erected on the leasehold property or any part thereof.

The learned trial judge, on an assessment of the evidence adduced by the parties, came to the conclusion that the rent of the suit property was payable every six months. Consequently, even if the defendants were in arrears of rent for more than six months on the date of the notice dated 1st February, 1983, the lessors were not entitled to possession in view of the provisions of Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, (hereinafter referred to as the "Bombay Rent Act.") On the basis of the aforesaid finding, the learned trial court dismissed the lessors' suit for possession.

C The lessors preferred an appeal against the said order of the learned trial judge which was numbered as Appeal No.76/1997. In the appeal, the Appellate Bench of the Small Causes Court, Bombay, came to a conclusion that the rent for the demised premises was payable every month and not after six months as held by the trial court. Holding further that the notice terminating the defendants' tenancy was legal and valid, the appellate court decreed the suit for possession on the ground mentioned in Section 12(3)(a) of the Bombay Rent Act.

E Aggrieved by the order of the Appellate Bench of the Small Causes Court, Bombay, the lessee filed a Writ Petition, being No.6812/2005. Other defendant Nos. 2 to 5 also filed a separate Writ Petition, being No. 6813/2005. As both the writ petitions arose out of the same judgment, they were taken up together for disposal by the Bombay High Court and were disposed of by a common judgment dated 8th February, 2006, which is the subject matter of challenge in both these appeals.

F After looking into the various provisions of the lease, the High Court affirmed the view of the Appellate Bench of the Small Causes Court that the rent was payable each month and not after every six months and that the finding in this regard was unassailable. The High Court was also of the view that since the lessee had committed breach of the conditions of the lease deed and had become a defaulter, it was not entitled to the protection of Section 114 of the Transfer of Property Act, 1882.

G These appeals have been filed by the lessee and the defendant Nos. 2 to 5. M/s.Yashdhir Hotels Pvt. Ltd. has filed Civil Appeal arising out of SLP

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(C) No. 7400/2006 and defendant Nos. 2 to 5 have filed Civil Appeal arising out of SLP (C) No.7186/2006. A

Since both the appeals arise out of a common judgment passed by the High Court, with the consent of the parties, they have been taken up together for hearing and disposal.

Appearing on behalf of the lessee-M/s. Yashdhir Hotels Pvt. Ltd., Mr. R.F. Nariman, senior advocate, urged that both the Appellate Bench of the Small Causes Court at Bombay, as also the High Court, had committed a grave error in holding that the rents for the demised premises were payable on a monthly basis and not after every six months. His main contention was based on the definition of "rent" in Section 105 of the Transfer of Property Act, 1882, which provides as follows:- B C

"105. *Lease Defined.*- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. D

Lessor, lessee, premium and rent defined.— The transferor is called the lessor, the transferee, is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent." E

It was urged that the aforesaid definition was very wide and included payment of consideration of various kinds. It was urged that in clause (a) of paragraph 3 of the terms and conditions of the lease, it has been categorically indicated that in addition to the monthly rents, the lessee is required to pay and discharge all existing and future rates, and municipal taxes, dues, duties, development, betterment and other charges of any nature whatsoever for the time being payable either by the landlord or the tenants in respect of the lands and premises or any building or structure for the time being standing thereon or on any part thereof. It was also indicated that the ground rent would be a net payment to the lessors without any deduction whatsoever and the lessors would not in any event be liable to pay any rates, taxes and assessment and/or outgoings whatsoever at any time during the continuance of the lease. It was contended that the said condition clearly indicates that the rates and taxes and other outgoings in respect of the demised premises and the building F G H

A to be erected thereon formed part of the rent payable by the lessee in respect of the demised premises. According to Mr. Nariman, the rent stipulated under the lease deed and the rates and taxes payable in respect of the demised premises formed the components of the rent payable in respect of the demised premises.

B Mr. Nariman urged that while no amount above the standard rent could be claimed by the landlord in respect of a premises let out, the Act made provision for certain "permitted increases" which has been defined in Section 5(7) of the said Act. In this regard, reference was made to Section 10 of the Act which provided for increase in the rents above the standard rent on account of increase in rates, cess, charges, tax, land assessment, ground rent, land or any other levy on lands and buildings. Section 10(3) indicates that the amount of the increase in rent would be recoverable from each tenant in proportion to the rent payable by them. Reference was also made to Section 11(2) of the said Act which provides that if there is any dispute between the landlord and the tenant regarding the amount of permitted increase, the Court may determine such amount. It was submitted that since the municipal rates and taxes were payable after every six months and the same formed an integral component of rent, it must also be held that the rents for the demised premises were also payable after every six months.

E Mr. Nariman referred to the decision of this Court in the case of *Raju Kakara Shetty v. Ramesh Prataprao Shirole And Anr.*, [1991] 1 SCC 570, wherein the provisions of Section 12(3) (a) of the Bombay Rent Act in relation to permitted increases and payment of education cess was under consideration. In the said decision, the permitted increases referred to the education cess payable by the tenant in addition to the standard rent inasmuch as under the Maharashtra Education (Cess) Act, 1962, payment of education cess was an annual liability to be paid by the landlord but with the right to recover the same from his tenant in addition to the standard rent. In the said decision, it was held that since education cess was specifically recoverable as rent, by virtue of Section 13 of the 1962 Act, it was a part of 'rent' within the meaning of the Bombay Rent Act and when the same is claimed in addition to the contractual or standard rent, it constitutes a 'permitted increase' within the meaning of Section 5 (7) of the Bombay Rent Act. It was also held that since the cess was payable on year to year basis and a part of the rent became payable annually, the rent ceased to be payable by the month within the meaning of Section 12(3)(a) of the Bombay Rent Act.

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Mr. Nariman contended that his contention was further strengthened by the definition of “*standard rent*” in Section 5 (10) of the Bombay Rent Act which made reference to Section 11 which included various components such as “permitted increases” which were related to the increase in municipal rates and taxes and other outgoings in respect of the demised premises. Mr. Nariman submitted that the same was in consonance with the concept of ‘rent’ as understood in Section 105 of the Transfer of Property Act wherein the same has been referred to as the “consideration.”

Referring to the terms of the lease deed executed in favour of the original lessee M/s. H. Bloch Engineering Pvt. Ltd., Mr. Nariman pointed out that the premises had been leased with the specific intention that the lessees would be entitled to erect and construct buildings and structures thereon for residential purposes and for garages and while there was a provision in the deed of lease that the lessee would not be entitled to assign, transfer, mortgage underlet or otherwise part with its interest in the demised premises or the building or building erected thereon without the prior consent in writing of the lessors, the same was subject to the provisions of clause 6 which, on the other hand, provided that the lessee would after the buildings and/or structures are completed, be at liberty to assign the demised premises to co-operative housing societies and/or limited company or any person whatsoever. Mr. Nariman urged that since assignment had been specifically permitted under the aforesaid provision of the lease deed, the induction of the respondent Nos. 2 to 5 was in accordance with the provisions of the lease deed and could not be faulted or made a ground for eviction of the lessee. Though reference was made to the definition of the expression “tenant” in Section 5 (11) (aa) of the Bombay Rent Act, the same does not appear to be relevant for deciding the present civil appeals.

Mr. Soli J. Sorabjee, Sr. advocate, who also appeared for the appellants, reiterated Mr. Nariman’s submission that ‘permitted increases’ under the Act became part of the rent and was, therefore, a component of the rent itself. Mr. Sorabjee, in support of his contention, referred to the decision of this Court in *The Bombay Municipal Corporation v. The Life Insurance Corporation of India, Bombay*, reported in [1970] 1 SCC 791, wherein the question arose as to whether the levy of educational cess should be taken into consideration in fixing the annual valuation of a building. While considering the said question, this Court was also called upon to consider the issue as to whether a permitted increase under Section 5 (7) of the Bombay Rent Act, would be part of the rent which the landlord is entitled to receive from the tenant. On

A the second issue, this Court inter alia held as follows:-

“It is quite clear that Section 7 does not prohibit the recovery of the increase to which landlord may be entitled under the provisions of the Act in addition to the standard rent. The obvious implication of the definition of “permitted increases” in Section 5 (7) is that such an increase becomes a part of the rent. The language which has been employed in Sections 9, 10 and 10AA seems to indicate that the Legislature treated the permitted increase as a part of the rent which the landlord would be entitled to receive from the tenant.”

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C Appearing for the private respondents who had been inducted into the premises by the lessee, Mr. M.L. Verma, Sr. advocate, pointed out that all the forums had failed to take note of the fact that a certain amount of money had been kept in deposit with the lessors which ought to have been adjusted against the arrears of rent but had not been taken note of in the notice demanding the arrears of rent. Reference was made to the decision of this Court in *Kranti Swaroop Machine Tools Pvt. Ltd. And Anr. v. Kanta Bai Asawa (Smt.) and Ors.*, [1994] 2 SCC 289 and it was contended that the notice demanding arrears of rent was in itself illegal to the provisions of Section 12 (3) (a) of the Bombay Rent Act, *inasmuch* as, there were no arrears of rent for a period of six months or more, if the said amount was taken into consideration towards adjustment of the arrears of dues. It was contended in such circumstances the relief for eviction ought not to have been granted to the lessors.

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A somewhat similar view was expressed in *M/s. Sarwan Kumar Onkar Nath v. Subhas Kumar Agarwalla*, [1987] 4 SCC 546, wherein this Court held that since the rent for two months had been paid in advance by the tenant to the landlord on the understanding that the advance amount would be liable to be adjusted towards arrears of rent whenever necessary or required, the tenant could not be evicted on the ground of default in payment of rent of two months even if the tenant failed to ask the landlord to make adjustment of the advance amount.

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A submission was made that a lawful sub-tenant who had been inducted under the terms and conditions of the lease also became the lessee of a portion of a proportionate area of the land under the structure and decree for eviction obtained against the lessee would not bind the lawful sub-tenant. Reference was made to a decision of the Bombay High Court in *Dinkar S.*

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Vaidya v. Ganpat S. Gore and Ors., AIR (1981) Bombay 190, wherein in

paragraph 37 it was explained that the defendants who were tenants or owners in respect of the structures only must be deemed to be sub-tenants in respect of the land and since no notice had been given to them under Section 12 (2) by the plaintiff-landlord, demanding all the arrears of rent, no decree for eviction could be passed against them to hand over vacant and peaceful possession of the land to the plaintiff.

It was urged that, in any event, since the private respondents had been lawfully inducted into the premises in respect of the portion of the structure thereon and the lease was still subsisting, they had acquired a right to remain in the premises under the lease deed itself and, were not, therefore, bound by the eviction decree passed against the lessee.

On behalf of the lessors it was denied that the lessee was not a monthly tenant and was required to pay rents after every six months. Mr. Sundaram, Sr. advocate, urged that the said case was an innovation and had not been argued before the courts below. Referring to the provisions of the lease deed wherein it had been made clear that during the term of the lease, the lessees were required to pay the monthly rent reserved therein, Mr. Sundaram urged that this new plea was being introduced on behalf of the respondents in order to avoid the consequences of Section 12 (3) (a) of the Bombay Rent Act. It was urged that such a plea had been made only to be rejected in view of the categorical provisions of the lease deed itself. It was further urged that on an erroneous interpretation of the relevant provisions of the lease deed, the trial court had arrived at the conclusion that the present case would be governed under Section 12 (3) (b) of the Bombay Rent Act, 1947, prior to its amendment in 1987 and not under Section 12 (3) (a) thereof. However, the Appellate Bench of the Small Causes Court at Bombay had rectified the error and had correctly held that the case being made out orally on behalf of the lessee that the rent was payable after an interval of every six months could not be accepted having regard to the written document in which it had been stipulated that the rents were payable on a monthly basis.

The High Court supported the view taken by the Appellate Bench of the Small Causes Court at Bombay and granted the defendants time till 31st May, 2006 to vacate the suit property.

On the question of default, it was pointed out by Mr. Sundaram that the trial court had come to a finding that the entire arrears of rents had not been sent by the lessee to the lessors prior to 7th March, 1983 and since only a part of the rent in arrears had been offered to the lessors by cheque, the same

A had been returned back to the lessee. Despite such finding, the trial court on an erroneous interpretation that the lease was governed under Section 12 (3) (b) of the Bombay Rent Act, dismissed the suit for eviction. The said position was reversed by the Appellate Bench of the Small Causes Court which allowed the appeal and set aside the judgment and order of the trial court and further decreed the suit for possession as well as for arrears and mesne profits.

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It was then argued that the interpretation sought to be given to the expression "*permitted increases*" as being part of the rent payable by the tenant was fallacious, as would be evident from Section 10 of the Bombay Rent Act. Sub-section (1) of Section 10 of the said Act reads as follows:-

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"10. *Increase in rent on account of payment of rates etc.* - (1) On and after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1986, 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 on lands and buildings, or increase in rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, he shall, notwithstanding anything contained in any other provisions of this Act but save as otherwise expressly provided in any other law for the time being in force, be entitled to make an increase in the rent of such premises.

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Provided that, the increase in rent shall not exceed the amount of any such rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, as the case may be."

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Mr. Sundaram submitted that the wording of the above provision would indicate that on account of increase in the rates, cess, charges, tax, land assessment, ground rent of land or any other levy payable by the landlord to the government or any local authority or statutory authority, he would be entitled to make an increase in the rent of such premises. Mr. Sundaram submitted that it had not been indicated that the increase in rates and taxes would themselves become part of the rent and the suit had been rightly decreed by the Appellate Bench of the Small Causes Court at Bombay for possession, arrears of rent and mesne profits.

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Mr. Ranjit Kumar, learned Sr. counsel who appeared for the lessors in

Civil Appeal arising out of SLP (C) No. 7186/06 assailed the judgment both of the Appellate Bench of the Small Causes Court and that of the High Court in so far as they related to the appellants in the said appeal who had been inducted into the premises by the lessee. Referring to the Deed of Lease, Mr. Ranjit Kumar submitted that though by virtue of clause 6 thereof the right to assign the buildings and structures to be erected on the demised premises had been given to the lessee, the same could not be read in isolation of clause 3 (o) which makes it clear that the lessee would not be entitled to assign, transfer, mortgage, under-let or otherwise part with its interest in the demised premises or the building or buildings thereon without the prior consent in writing of the lessors.

Reference was also made to Section 14 of the Bombay Rent Act which provides as follows:-

"Certain sub-tenants and licensees to become tenant on determination of tenancy.

(1) 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 before the 1st day of February 1973 shall subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant, if the tenancy had continued.

(2) Where the interest of a licensor, who is a tenant of any premises is determined for any reason, the licensee, who by section 15A is deemed to be a tenant shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the terms and conditions of the agreement consistent with the provisions of this Act."

Mr. Ranjit Kumar urged that there is no pleading to indicate whether the appellants had been inducted into the premises prior to 1st February, 1973, to entitle them to the benefit of the aforesaid provision. On the other hand, Section 15 of the said Act disentitled a tenant from sub-letting or assigning his interest in the tenanted premises.

Mr. Ranjit Kumar urged that in such circumstances both the Appellate Bench of the Small Causes Court as well as the High Court were correct in directing the appellants in Civil Appeal arising out of SLP (C) 7186/06 to

A vacate the premises along with the lessee.

Responding to the submissions made by Mr. Sundaram and Mr. Ranjit Kumar, Mr. Nariman reiterated his earlier submissions and referred to a decision of this Court in *Karnani Properties Ltd. v. Augustin*, [1957] SCR 20 which was followed in the case of *Puspa Sen Gupta v. Susma Ghose*, [1990] 2 SCC 651

B holding that where certain special amenities were to be provided by the landlord, the same could be taken into consideration for fixation of the standard rent. In other words, the same would form part of the consideration contemplated in Section 105 of the Transfer of Property Act to be a component of the expression "rent".

C The fate of the Civil Appeal arising out of SLP (C) 7400/06 hinges on the question as to whether despite the specific provisions of the lease deed for payment of the lease rents on a monthly basis in advance on or before the 5th day of each and every English calendar month, whether the trial judge was right in holding that in effect having regard to the provisions relating to payment of rates and taxes and other outgoings by the lessee, the lease would be governed under Section 12 (3) (b) and not 12 (3) (a) of the Bombay Rent Act.

E The fate of Civil Appeal arising out of SLP (c) 7186/06 will depend on the question as to whether the appellants therein had been lawfully inducted into the demised premises and, if so, whether they would be bound by the decree for possession passed against the appellant in Civil Appeal arising out of SLP (C) 7400/06.

F Having given our anxious consideration to the submissions urged on behalf of the respective parties and the provisions of the Bombay Rent Act and the various decisions cited, we are of the view that the decision of the Appellate Bench of the Small Causes Court at Bombay as affirmed by the High Court holding that the lease was governed under Section 12 (3) (a) of the Bombay Rent Act was correct. The lease deed makes it abundantly clear that the lease rent was required to be paid on a monthly basis. In fact, in paragraph 1 of the terms and conditions of the lease deed it has, *inter alia*, been indicated as follows:-

".....TO HOLD THE DEMISED PREMISES unto the Lessee for the term of 98 years commencing from the 1st day of November, 1966 but renewable and determinable as hereinafter provided yielding and paying

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therefore for the period ending on the 31st day of October, 1968 a token rent of Rupee one per month and from the 1st day of November, 1968 yielding and paying during the remainder of the said term of 98 years the monthly rent of Rs.3,215/- (Rupees three thousand two hundred and fifteen) payable in advance regularly or before the 5th day of each and every English Calendar month the first of such monthly payments to be made on or before the 5th day of November, 1968 and subsequent payments to be made on the corresponding day of each succeeding month during the remainder of the term hereby granted.....”

The said position has been further reiterated in paragraph 3 (a) of the said deed of lease.

The argument advanced on behalf of the lessee that notwithstanding the said stipulation, since the lessee was required to pay the rates and taxes which formed part of the permitted increase and was, therefore, a part of the rent payable, does not appeal to us. The consequential submission made in this regard that since the rates and taxes were payable either annually or after every six months, and the same formed part of the rent, it must be held that the rents were payable not each month but after every six months, does not also appeal to us.

Notwithstanding the decisions in the *Bombay Municipal Corporation* case and *Raju Kakara Shetty* (supra), the views expressed therein are distinguishable on facts with the facts of these two appeals. Both the said judgments deal with payment of education cess under the Maharashtra Educaation (Cess) Act, 1962, under which the landlord is liable to pay such cess annually but has the right to recover the amount so paid by him from the tenant in addition to the standard rent as a part of the rent itself. By operation of law education cess has been made a component of the rent payable by the tenant in respect of the tenanted premises. In such a case, the concept of ‘permitted increase’ would include the cess payable as part of the rent itself. In the instant case, however, the lessee is required to pay the rates and taxes and other outgoings for the demised premises in respect whereof the landlord has been given the right to effect permitted increase equivalent to the amount paid towards rates and taxes. The same does not, in our view, make such payment a part of the rent though it may be a consideration for the grant of lease. The ‘permitted increase’ in the instant case serves as a yardstick for the landlord to increase the rents on account

A of payment of rates and taxes by the landlord.

Consequently, even though the lease deed contained a provision for payment of the rates and taxes exclusively by the lessee and it is also stipulated that the lessor will have no liability therefor, the lease will still be governed under Section 12 (3) (a) of the Bombay Rent Act as held by the Appellate Bench of the Small Causes Court at Bombay and affirmed by the High Court. The expression "consideration" indicated in Section 105 of the Transfer of Property Act has been used in a generic sense to include the price paid or promised or of money, a share of crops, service or any other thing of value. On the other hand, the lease deed specifies the amount to be paid as rent each month while the rates and taxes and other outgoings are treated to be the separate liability of the lessee, no doubt having regard to the intention of the parties that a building was to be erected by the lessee on the demised land.

Once we have arrived at the aforesaid conclusion, the other submissions made on behalf of the appellant in Civil Appeal arising out of SLP (C) No.7400/06 become irrelevant.

However, having regard to the provisions of the lease deed, there can be little doubt that the decree for possession passed against the lessee will not bind the appellants in the Civil Appeal arising out of S.L.P. (C) No. 7186 of 2006 who have acquired an independent status under the provisions of the deed of lease permitting assignment of the structure to be erected on the demised land. In their case, the question of induction prior to 1st February, 1973, would have no application. Although, it has been submitted by Mr. Ranjit Kumar that the provisions of clause 6 of the lease deed must be read with clause 3(o) thereof, the intention of the parties on the reading of the lease deed as a whole appears to be that the lessee would be entitled to make construction on the demised premises which could be assigned by it to third parties who would acquire an independent right therein subject to the terms and conditions of the head lease. Since the appellants in the Civil Appeal arising out of S.L.P. (C) No. 7186 of 2006 were lawfully inducted into the premises by virtue of clause 6 of the lease deed they will not be affected by the decree for possession passed against the lessee.

Civil Appeal arising out of SLP (C) No.7400/06 is, therefore, dismissed, while Civil Appeal arising out of SLP (C) No. 7186/06 is allowed. The judgment and decree of the Appellate Bench of the Small Causes Court as well as High

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Court are affirmed as far as Civil Appeal arising out of SLP (C) 7400/06 is concerned, and is set aside as far as it relates to the appellants in Civil Appeal arising out of SLP (C) 7186/06. **A**

In the facts of the case, the parties will bear their respective costs.

V.S.S.

C.A. 4732/06 allowed and C.A. 4733/06 dismissed. **B**