

A

CARONA LTD.

v.

M/S PARVATHY SWAMINATHAN & SONS

B

OCTOBER 5, 2007

[C.K. THAKKER AND P. SATHASIVAM, JJ.]

C *Maharashtra Rent Control Act, 1999—s. 3(1)(b)—Applicability of—Tenant a company having paid up capital share of more than Rs. one crore—Suit for eviction before regular Court—On the ground of default in payment of rent—Tenant-company reducing its paid up capital share to less than Rs. one crore, subsequent to institution of suit—Trial court passing decree, holding that s. 3(1)(b) was not*
D *applicable—Confirmed by appellate court as well as High Court—After interim order of Supreme Court partial payment of rent—Plea that the trial court did not have the power to decide the case in absence of jurisdictional fact of ‘paid up capital’—Held: Eviction decree was*
E *rightly passed—Section 3(1)(b) is not applicable to the present case, as the jurisdictional fact of ‘paid up capital’ was existing on the date of termination of tenancy and institution of suit—The subsequent unilateral act of reduction of paid up capital by tenant would not take*
F *away the accrued right in favour of Landlord—In the facts of the case, tenant is also not entitled to equitable relief—Rent Control and Eviction—Constitution of India, 1950—Article 136.*

Code of Civil Procedure, 1908—‘Jurisdictional fact’ and ‘adjudicatory fact’—Distinction between.

G *Jurisdiction—Jurisdiction of Court/Tribunal—Held: A Court can decide the issues of a case only if the jurisdictional fact exists.*

Subsequent Events—Effect of—Held: An accrued right by virtue of existing fact at the time of institution of suit cannot be put at naught by a subsequent event.

H

Respondent-landlord had let out the premises in question to the appellant-tenant (a Public Limited Company having a paid up share capital of more than rupees one crore). Applicability of Maharashtra Rent Control Act, 1999 was exempted to such tenants by Section 3(1)(b) thereof. Due of default in payment of rent, landlord gave a notice to the tenant on 23.2.2001 determining the tenancy w.e.f. 31.3.2001. Since the premises was not vacated, landlord filed a suit for eviction before Small Causes Court. It also prayed for payment of *mesne profits*. Subsequent to filing of suit Tenant Company passed a resolution to reduce the paid up share capital to less than Rs. one crore. But the said resolution was never approved by BIFR. Trial Court passed decree of eviction holding that provisions of the Act were not applicable to the suit premises. The same was confirmed by a Bench of Small Causes Court in appeal and by High Court in Writ Petition. On interim order of this Court, the tenant deposited part payment in the Court.

Appellant-tenant contended that in view of pendency of the question regarding constitutional validity of Section 3(1)(b) of the Act, the matter should not have been decided by the courts below; that even if constitutionality thereof was assumed, it was not applicable to the present case, the company having its paid up capital less than Rs. one crore; that the landlord should have made out the grounds under the Act for eviction; that the fact of 'paid up capital' being a 'jurisdictional fact' and in absence thereof, the Court had no power to deal with and decide the matter; and that the proceedings could not have continued as the same stood suspended in view of Section 22 of Sick Industrial Companies Act, 1985, the Company being a sick company.

Respondent-landlord inter alia contended that constitutional validity had been covered by decision of High Court; that subsequent resolution of the Company reducing the share capital to less than Rs. one crore would not deprive the owner to the 'right accused' as the 'jurisdictional fact' was very much in existence at the time of initiation of the proceedings; and that the appellant was not entitled even to any equitable relief.

A Dismissing the appeal, the Court

B HELD: 1. All the Courts were, right in holding that the provisions of the Rent Act were not applicable to the present case. It is an admitted fact that the appellant-tenant is a Public Limited Company having a paid up share capital of more than one crore rupees. The Courts below considered the contention as to constitutional validity of clause (b) of Section 3(1) of Maharashtra Rent Control Act, 1999 and observed that the vires of the provision was upheld by the High Court in some other case. It also appears that as the point was concluded by that decision, the issue as to vires was not pressed by the tenant before the Trial Court. The courts below were, therefore, fully justified in proceeding to decide the matter on merits.

C [Paras 13, 15, 16 and 34] [666-C-D; 669-D, F; 675-H; 676-A]

D *M/s Crompton Greaves Ltd. v. State of Maharashtra*, AIR 2002 Bom., referred to

E 2. The High Court noted that it was not in dispute between the parties that notice terminating the tenancy was issued by the landlord on February 23, 2001 and tenancy was determined with effect from March 31, 2001. On that day, i.e. March 31, 2001, paid up share capital of the Company (tenant) was more than rupees one crore. If it were so, Small Causes Court was right in proceeding with the matter and in passing the decree of eviction against the tenant.

F [Para 18] [670-E-F]

G 3. The Courts were also right in holding that eviction proceedings initiated by the landlord against the tenant were maintainable even if the Company was 'sick' under SICA and Section 22 of that Act would not operate as bar to such proceedings.

[Para 19] [670-G]

H *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*, [1992] 3 SCC 1, relied on.

4.1. The fact as to 'paid up share capital' of a Company can be said to be a 'preliminary' or 'jurisdictional fact' and said fact would

confer jurisdiction on the Court to consider the question whether the provisions of the Rent Act were applicable. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess. The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a Court or Tribunal.

[Paras 20, 21 and 23] [671-A, D, E, H; 672-A]

Halsbury's Laws of England, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114-15, referred to.

4.2. There is distinction between 'jurisdictional fact' and 'adjudicatory fact' which cannot be ignored. An 'adjudicatory fact' is a 'fact in issue' and can be determined by a Court, Tribunal or Authority on 'merits', on the basis of evidence adduced by the parties. It is no doubt true that it is very difficult to distinguish 'jurisdictional fact' and 'fact in issue' or 'adjudicatory fact'. Nonetheless the difference between the two cannot be overlooked. For assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue.

[Paras 24 and 31] [672-B-C; 674-D]

Jagdish Prasad v. Ganga Prasad, [1959] Supp 1 SCR 733; *Arun Kumar v. Union of India*, [2007] 1 SCC 732 and *Roshanlal v. Ishwardas*, [1962] 2 SCR 947, referred to.

R. v. Fulham Rent Tribunal, (1950) 2 All ER 211; *Brittain v. Kinnaird*, (1819) 1 B and B 432 and *Eversole v. Smith*, 159 SW 2nd 35, referred to.

A *Halsbury's Laws of England*, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114-15, referred to.

B 4.3. The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit. Thus, if the plaintiff has no cause of action on the date of the filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising subsequent to the filing of the suit. Conversely, no relief will normally be denied to the plaintiff by reason of any subsequent event if at the date of the institution of the suit, he has a substantive right to claim such relief. [Para 37] [677-D-E]

C *Gajanan Dattatraya v. Sherbanu Hosang Patel and Ors.*, [1975] 2 SCC 668, relied on.

D *Pasupuleti Venkateswarlu v. Motor and General Traders*, [1975] 1 SCC 770; *Goppulal v. Thakurji Shriji Dwarkadheshji*, [1969] 3 SCR 989 : [1969] 1 SCC 792 and *Maganlal Narandas Thakkar v. Arjan Bhanji Kanbi*, (1969) 10 Guj LR 837, referred to.

E 4.4. In the instant case, the courts below were right in holding that the date on which tenancy was determined, the right in favour of the landlord got accrued. Such right could not have been set at naught by the tenant by unilateral act by passing a resolution to reduce 'paid up share capital' of the Company. [Para 38] [677-F]

F 4.5 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 BIFR. 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

H

provision which would frustrate the legislative intent and primary A
object underlying such provision. [Para 44] [682-D-F]

5. The appellant-tenant does not deserve discretionary and B
equitable relief under Article 136 of the Constitution of India. The
tenant has not paid 'rent'/'*mesne profits*' since more than ten years.
Even after approaching this Court, it had made part payment
pursuant to interim order. But nothing was paid/deposited thereafter
even though two years have passed. These facts have not been
disputed by the appellant. [Para 45] [682-G-H; 683-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2805 of C
2005.

From the Judgment and final Order dated 01.11.2004 of the High
Court of Judicature at Bombay in Writ Petition No. 8781 of 2004.

Jaideep Gupta and Chander Shekar Ashri for the Appellant. D

P.H. Parekh, E.R. Kumar, Sanand Ramakrishnan and Rajeev Mishra
(for P.H. Parekh & Co.) for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. This appeal by special leave is filed by E
the appellant-Carona Ltd. (hereinafter referred to as 'the tenant') against
the judgment and order passed by the High Court of Judicature at
Bombay on November 1, 2004 in Writ Petition No. 8781 of 2004. By
the said order, the learned Single Judge of the High Court dismissed the F
writ petition filed by the tenant and confirmed the order passed by a Bench
of Small Causes Court at Bombay on August 3, 2004 in Appeal No.
277 of 2003 which in turn confirmed the judgment and decree of eviction
dated February 11, 2003, passed by a Judge of Small Causes Court at
Bombay in T.E. & R. Suit No. 226/240 of 2001 in favour of the G
respondent-partnership firm (hereinafter referred to as 'the landlord').

FACTS

2. To appreciate the controversy raised in the present appeal, few H

A relevant facts may be stated.

3. The appellant-tenant was the original defendant whereas the respondent-landlord was the original plaintiff in the suit instituted in the Court of Small Causes at Bombay. The landlord is a partnership firm registered under the Partnership Act, 1932. It owned a premises, bearing Shop No. 2, situated at ground floor of Plot No. 3, A.M. Ward, Chembur, Govind Road, Mumbai (hereinafter referred to as 'the suit premises'). According to the landlord, the suit premises was let out to the tenant. It was alleged that tenant was not paying rent regularly. It also initiated certain proceedings against the landlord. The landlord did not want the tenant to continue to occupy the suit premises. Accordingly, by a notice dated February 23, 2001, the landlord determined the tenancy with effect from March 31, 2001. In spite of determination of tenancy, the tenant did not hand over vacant and peaceful possession of the suit premises to the landlord. The landlord, therefore, filed a suit in the Small Causes Court, Bombay on April 2, 2001. In a written statement, dated August 1, 2001, the tenant disputed the averments made and allegations levelled by the landlord and contended that it was not liable to be evicted. The Small Causes Court, Bombay, however, passed a decree of eviction against the tenant on December 16, 2002 which was confirmed by a Bench of that Court as also by the High Court. The said order is challenged in the present appeal.

INTERIM ORDER BY THIS COURT

4. On February 21, 2005, notice was issued by this Court. Status quo as regards possession was ordered to be maintained. On April 18, 2005, leave was granted. Pending appeal, stay of dispossession was continued subject to the tenant depositing a sum of Rs. twenty four lakhs with the Registry of the Court within eight weeks which was allowed to be withdrawn by the landlord without furnishing security. The matter was ordered to be placed for final hearing and that is how the matter is before us.

SUBMISSIONS

5. We have heard the learned counsel for the parties.

H

6. Mr. Gupta, learned counsel for the appellant-tenant contended that all the courts committed an error of law and of jurisdiction in passing the decree of eviction against the tenant. He submitted that the suit filed by the landlord was not maintainable and it ought to have been dismissed by the courts below. He also submitted that the question as to constitutional validity of clause (b) of sub-section (1) of Section 3 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'the Rent Act') is pending before this Court and in view of the said fact, the courts below ought not to have proceeded to decide the matter. Alternatively, it was argued that even if it is assumed that the provision is legal, valid and *intra vires*, it would not apply to the case on hand inasmuch as tenant's net worth/paid up share capital has been substantially eroded and it was not rupees one crore or more when the proceedings were initiated by the landlord. The provisions of the Rent Act, therefore, applied to the suit premises and unless and until one of the grounds of eviction specified in the Rent Act had been made out, the landlord was not entitled to a decree for possession. The learned counsel urged that the fact as to 'paid up capital' of the Company was a 'jurisdictional fact' and in absence of such fact, the Court had no power, authority or jurisdiction to consider, deal with and decide the matter.

7. It was further contended that the proceedings could not have been continued in view of the fact that the tenant was a 'sick company' within the meaning of the Sick Industrial Companies Act, 1985 (hereinafter referred to as 'SICA'). In accordance with Section 22 of that Act, hence, all proceedings against a sick company stood suspended. No order of eviction, therefore, could have been passed by the courts below. On all these grounds, it was submitted that all the courts were wrong in passing a decree of eviction against the tenant and the said order deserves to be set aside by this Court.

8. Mr. Parekh, learned counsel for the respondent-landlord, on the other hand, supported the decree passed by the Small Causes Court, confirmed by a Bench of that Court as also by the High Court. He submitted that as far as constitutional validity of Section 3(1)(b) of the Rent Act is concerned, the point is covered by a decision of the Division Bench of the High Court of Bombay in *M/s Crompton Greaves Ltd. v.*

A *State of Maharashtra*, AIR (2002) Bom 65. The Small Causes Court as well as the High Court were, therefore, wholly justified in proceeding with the matter and in deciding it on merits. He submitted that tenancy was terminated in accordance with law. It was, therefore, obligatory on the tenant to hand over vacant and peaceful possession of the property to the landlord, but it failed to do so. The landlord was, therefore, constrained to approach a Court of law which passed a decree for possession in favour of the landlord holding that since the paid-up share capital of the Company was more than rupees one crore, the provisions of the Act were not applicable to it. The counsel urged that there was no illegality in the said finding and obviously, therefore, the landlord was entitled to possession of suit-premises and the tenant could not resist eviction. An appellate Court confirmed the said decree. Before the High Court it was contended by the tenant that a unanimous resolution was passed by the Company to decrease the share capital to less than rupees one crore (Rs. 41 lakhs from Rs. 8.20 crores). Such unilateral action at a subsequent stage, submitted the counsel, would not deprive the owner of the property to the 'right accrued' in favour of the landlord. The 'jurisdictional fact' (paid up share capital of more than rupees one crore) was very much in existence at the time when the proceedings were initiated against the Company. But even otherwise, considering the factual situation, the tenant was not entitled to any relief. It was stated that though the so-called resolution was said to have been passed, it had not been approved by the Board for Industrial and Financial Reconstruction (BIFR). 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. The counsel also submitted that this Court is exercising discretionary and equitable jurisdiction under Article 136 of the Constitution. The tenant is not entitled to such equitable relief. It was submitted that the tenant has not paid rent since several years i.e. from January 1, 1995. According to the counsel, the amount due and payable by the tenant as on August 31, 2007 comes to Rs. 56,22,000/- pursuant to interim order passed by this Court on April 18, 2005, an amount of Rs. 24 lakhs was deposited by the appellant in this Court which was withdrawn by the landlord, but even excluding that amount, the tenant is liable to pay to the landlord an amount of Rs. 32,22,000/-. It was

further stated that after order dated April 18, 2005 i.e. for more than two years, the tenant has not paid even a pie to the landlord. Such tenant, urged the counsel, does not deserve sympathy and cannot claim equitable relief. On all these grounds, the counsel prayed for dismissal of the appeal. A

CONSIDERATION OF CONTENTIONS B

9. We have given anxious and thoughtful consideration to the rival contentions of the parties. And in our opinion, no case has been made out by the appellant-tenant for grant of discretionary and equitable relief from this Court.

CONSTITUTIONAL VALIDITY OF SECTION 3(1)(b) C

10. As far as constitutional validity of Section 3(1) (b) of the Rent Act is concerned, in our opinion, the courts below were right in rejecting the contention raised by the tenant and in proceeding to decide the matter on merits in view of the decision in *M/s. Crompton Greaves Ltd.* D

11. Our attention has been invited by the learned counsel for the parties to the relevant provisions of the Act. The Act came into force with effect from March 31, 2000. It repealed the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Preamble of the Act recites; E

An Act to unify, consolidate and amend the law relating to the control of rent and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return on the investment by landlords and to provide for the matters connected with the purpose aforesaid. F

Whereas it is expedient to unify, consolidate and amend the laws prevailing in the different parts of the State relating to the control of rents and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return and to provide for the matters connected with the purposes aforesaid. G

12. Section 3 grants exemption and enacts that the Act would not apply to certain premises. Clause (b) of sub-section (1) of the said section H

A declares that the Act would not apply “to any premises let or sub-let to
Banks, or any Public Sector Undertakings or any Corporation established
by or under any Central or State Act, or Foreign Missions, International
Agencies, Multinational Companies, and Private Limited Companies and
Public Limited Companies having a paid up share capital of rupees
B one crore or more”.

(emphasis supplied)

13. It is an admitted fact that the appellant-tenant is a Public Limited
Company having a paid up share capital of rupees more than one crore
C (Rs.8.20 crores). The Courts below considered the contention as to
constitutional validity of clause (b) of Section 3(1) of the Rent Act and
observed that the vires of the provision was upheld by the High Court in
M/s. Crompton Greaves Ltd. In that case, constitutional validity of
D Section 3(1)(b) was challenged on the ground that it was arbitrary,
discriminatory and unjust. It was contended that the so-called distinction
between the Companies having a paid up share capital of less than rupees
one crore and the Companies having a paid up capital of more than rupees
one crore was arbitrary, discriminatory and unreasonable neither founded
E on any intelligible differentia nor the so-called classification has rational
or reasonable nexus to the object sought to be achieved by the Legislation.
It was urged that denial of protection of the Act to the Companies solely
on the basis of ‘paid up share capital’ was based on irrational criterion
and was hit by Article 14 of the Constitution.

14. The Court, however, negated the contention and upheld the
F validity of the provision. The Court stated;

“10. We do not see any force in any of these contentions. The
Bombay Rent Act was enacted originally as a temporary measure
in order to protect the tenants from eviction from their premises
and also from arbitrary enhancement of rent. The necessity for the
G control of rents by special legislation for properties located within
the urban areas was felt during World War II. At that time not much
by way of new construction for civil population was possible. A
good proportion of private accommodation was requisitioned by
the authorities for the war effort. In consequence, rents were
H

beginning to shoot up. Landlords were trying to get rid of their existing tenants to get better rents. The legislation was undertaken primarily to save the tenants from harassment of unscrupulous landlords. To quote the words of *Sarkaria J, Nagindas Ramdas v. Dalpatram Ichharam*, [1974] 1 SCC 242 at page 248 : AIR (1974) SC 471 at page 474. "The strain of the last World War, industrial Revolution, the large scale exodus of the working people to the urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their concomitant evils. The country was faced with spiralling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Rack renting and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils the Legislatures of the States in India enacted "Rent Control Legislations".

11. The rent control laws are in force in the State for more than 60 years. As a result of these legislations a host of 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 house owners 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.

12 The State of Maharashtra appointed a Committee known as Rent Acts Enquiry Committee (for short Tembe Committee) which observed as under :

".....The result of all this has been that the supply of rental

A housing in the market is gradually shrinking. Except in the public sector, the growing tendency is to dispose off houses on ownership or hire purchase basis. Rental housing has, therefore, almost come to a halt in cities like Bombay. This has adversely affected the economically weaker sections of the society";

B "...The rent law that was enacted for the benefit of the tenants is thus operating to the detriment of their interest in that the flow of rental housing is gradually shrinking".

C Tembe Committee had recommended exemption of premises of floor area more than 65 sq. meters for business, trade or storage and 125 sq meters for residential purpose".

The Court, therefore, concluded;

D "It is already seen from the Statement of Objects and Reasons that the object of the Act is not merely, to protect tenants but also to provide fair returns to the landlords and to encourage housing activity so as to augment rental housing in the form of construction of buildings and letting them out. It is also meant to legitimise the *pagadi* or premium system which was prohibited earlier. Thus the Act has been enacted in order to strike a balance between the interests of landlords and tenants and for giving a boost to house building activity and in doing so the legislature in its wisdom has decided and thought it fit not to extend the protection of the Rent Act 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. This is essentially a matter of legislative policy. The legislature would have repealed the Rent Act altogether. It could also withdraw the protection under the Rent Act on rental basis [see *D.C. Bhatiya v. Union of India*, [1995] 1 SCC 104] or on income basis [see *Delhi Cloth and General Mills Ltd. v. S. Paramjit Singh*, [1990] 4 SCC 923] or any other understandable basis. In our view it is for the legislature to decide" what should be the appropriate basis for the purpose of classification and the legislature as of necessity must

H

have a lot of latitude in this regard. Whether any particular category of tenants needs to be protected under the Rent Act is a matter of legislative determination. There is nothing arbitrary if such protection is taken away in case of certain categories of tenants having regard to their position determined on objective and reasonable criterion. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious or to bring about grossly unfair results, judicial policy should be one of judicial restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary".

15. It also appears that as the point was concluded by a decision in *M/s. Crompton Greaves Ltd.*, the issue as to vires was not pressed by the tenant before the Trial Court. This is clear from the following observations made by the Court;

"However, the advocate for Defendant not argued on this issue, may be in view of judgment dated 20.7.2001 of the Hon'ble High Court of Judicature at Bombay. The said judgment is reported in AIR 2002 Bombay 65 (*M/s Crompton Greaves Ltd., v. State of Maharashtra*) (not cited at Bar). In the said ruling, Hon'ble High Court upheld the constitutional validity of the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act. Therefore, this issue does not survive. Accordingly issue No.2 is answered".

16. The courts below were, therefore, in our opinion, fully justified in proceeding to decide the matter on merits.

MERITS OF THE MATTER

17. The Trial Court framed necessary issues and held that the defendant-Company was the tenant; the Rent Act was not applicable; the tenancy was legally and validly terminated; and defendant was liable to be evicted. A prayer was also made by the plaintiff for payment of mesne profits. The Court held that the landlord was entitled to a decree for possession. But since the proceedings were pending before BIFR, Section 22 of SICA was applicable and the landlord could recover amount of

A mesne profits only after taking requisite permission from BIFR. The Court, in the light of the above findings, issued the following directions;

“The Defendants shall deliver vacant repossession of the suit premises to the Plaintiffs within 4 months.

B The Defendants shall pay mesne profits to the plaintiffs in respect of suit premises for the period from the date Operating Agency suit till the Plaintiffs recover possession of the suit premises.

For determination of quantum of mesne profits, enquiry under O. 20 R. 12(c) of the Code of Civil Procedure is directed.

C However, the order to pay mesne profits shall be subject to the Plaintiffs obtain permission of the BIFR to recover mesne profits against the Defendants.

D Preliminary decree be drawn accordingly”.

18. A Bench of Small Causes Court, Bombay confirmed the above order and dismissed the appeal. Before the High Court, again all the contentions were reiterated by the tenant, but the High Court negatived them and dismissed the writ petition. The High Court noted that it was not in dispute between the parties that notice terminating the tenancy was issued by the landlord on February 23, 2001 and tenancy was determined with effect from March 31, 2001. On that day, i.e. March 31, 2001, paid up share capital of the Company (tenant) was more than rupees one crore. If it were so, observed the High Court, Small Causes Court was right in proceeding with the matter and in passing the decree of eviction against the tenant.

19. The Courts were also right in relying upon *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*, [1992] 3 SCC 1 and in holding that eviction proceedings initiated by the landlord against the tenant were maintainable even if the Company was ‘sick’ under SICA and Section 22 of that Act would not operate as bar to such proceedings.

JURISDICTIONAL FACT

H

20. The learned counsel for the appellant-Company submitted that the fact as to 'paid up share capital' of Rs. one crore or more of a Company is a 'jurisdictional fact' and in absence of such fact, the Court has no jurisdiction to proceed on the basis that the Rent Act is not applicable. The learned counsel is right. The fact as to 'paid up share capital' of a Company can be said to be a 'preliminary' or 'jurisdictional fact' and said fact would confer jurisdiction on the Court to consider the question whether the provisions of the Rent Act were applicable. The question, however, is whether in the present case, the learned counsel for the appellant tenant is right in submitting that the 'jurisdictional fact' did not exist and the Rent Act was, therefore, applicable.

21. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

22. In *Halsbury's Laws of England*, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114-15, it has been stated:

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

23. The existence of a jurisdictional fact is thus a *sine qua non* or condition precedent to the assumption of jurisdiction by a Court or

A Tribunal.

JURISDICTIONAL FACT AND ADJUDICATORY FACT

24. But there is distinction between 'jurisdictional fact' and 'adjudicatory fact' which cannot be ignored. An 'adjudicatory fact' is a 'fact in issue' and can be determined by a Court, Tribunal or Authority on 'merits', on the basis of evidence adduced by the parties. It is no doubt true that it is very difficult to distinguish 'jurisdictional fact' and 'fact in issue' or 'adjudicatory fact'. Nonetheless the difference between the two cannot be overlooked.

C 25. In *Halsbury's Laws of England*, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114-15, it is stated:

D "There is often great difficulty in determining whether a matter is collateral to the merits or goes to the merits. The distinction may still be important; for an erroneous decision on the merits of the case will be unimpeachable unless an error of law is apparent on the face of the record of the determination or unless a right of appeal lies to a court in respect of the matter alleged to have been erroneously determined. An error of law or fact on an issue collateral to the merits may be impugned on an application for an order of certiorari to quash the decision or in any other appropriate form of proceedings, including indirect or collateral proceedings. Affidavit evidence is admissible on a disputed issue of jurisdictional fact, although the superior courts are reluctant to make an independent determination of an issue of fact on which there was a conflict of evidence before the inferior tribunal or which has been found by an inspector after a local inquiry".

G 26. In *R. v. Fulham Rent Tribunal*, (1950) 2 All ER 211, it was held that the question whether premium for renewal of tenancy was or was not paid was a jurisdictional fact and, therefore, was held to be a condition precedent for the lawful exercise of jurisdiction by a Rent Tribunal. In *Brittain v. Kinnaird*, (1819) 1 B&B 432, however, the factum as to possession of a 'boat' with gunpowder on board was held to be a part of the offence charged and thus a finding of fact or adjudicatory fact.

H

It was stated: “*The logical basis for discriminating between these cases and other falling on opposite sides of the line, is not easily discernible*”.

(emphasis supplied)

27. Likewise, the fact whether the petitioner was an ‘adult’ in adoption proceedings was not held to be a ‘jurisdictional’ fact (*Eversole v. Smith*, 159 SW 2nd 35).

28. In *Jagdish Prasad v. Ganga Prasad*, [1959] Supp 1 SCR 733, the question was whether the landlord was entitled to enhancement of rent. Under the Act, he was not entitled to such rent unless a ‘new construction’ had been made after June 30, 1946. It was held by this Court that the question whether construction was new or not was a ‘jurisdictional fact’ and if the court wrongly decided the said fact and thereby conferred jurisdiction not vested in it, the High Court could interfere with the order. The Court stated that “once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided”. [See also *Arun Kumar v. Union of India*, [2007] 1 SCC 732].

29. But, in *Roshanlal v. Ishwardas*, [1962] 2 SCR 947, this Court held that the Rent Controller had jurisdiction to fix standard rent for new construction made after March 24, 1947. The question was as to when the construction was made. The Rent Controller recorded a finding of fact that the construction was put up after March 24, 1947. The finding was confirmed by the District Judge. But the High Court interfered in revision.

30. Setting aside the decision of the High Court, this Court stated:

“It is clear from the orders of the Rent Controller and of the District Judge in appeal that the question whether the second floor was newly constructed or not was really a question of fact, though undoubtedly a jurisdictional fact on which depended the power of the Rent Controller to take action under s. 7A. If the Rent Controller had wrongly decided the fact and assumed jurisdiction where he had none, the matter would be open to reconsideration in revision. The High Court did not, however, go into the evidence,

A nor did it say that the finding was not justified by the evidence on
record. The High Court referred merely to certain submissions
made on behalf of the landlord and then expressed the opinion that
what was done to the second floor was mere improvement and
not a new construction. *We think that the High Court was in*
B *error in interfering with the finding of fact by the Rent*
Controller and the District Judge, in support of which finding
there was clear and abundant evidence which had been
carefully considered and accepted by both the Rent Controller
and the District Judge”.

C (emphasis supplied)

31. It is thus clear that for assumption of jurisdiction by a Court or
a Tribunal, existence of jurisdictional fact is a condition precedent. But
once such jurisdictional fact is found to exist, the Court or Tribunal has
D power to decide adjudicatory facts or facts in issue.

32. As already seen earlier, in the case on hand, the appellant
Company was having ‘paid up share capital’ of more than Rs. one crore,
not only when the notice was issued and tenancy was determined but also
when the suit for possession was instituted. What was stated was that a
E resolution was passed by the Board of Directors to reduce ‘paid up share
capital’ from Rs. 8.20 crores to Rs. 41 lakhs (less than Rs. 1 crore). But
it was not approved by BIFR. The Small Cause Court considered this
aspect and stated;

F “The reasons are that the above suit is filed on 4.4.2001.
Whereas undisputed document Ex.B. annual report of the
Defendant Company shows that on 30.9.1999 the paid up shares
capital of the Defendant Company was more than Rs.1 crore. If
the Defendants have moved BIFR by reference of 1997, by that
G time the Defendant ought to have received favourable orders
reducing the paid-up capital of the Defendants to less than Rs. one
crore. But no such evidence is produced by the Defendants to
rebut the annual report Ex.B of the Defendants showing paid up
capital of more than Rs. 8 crores as on 30.9.1999. There is nothing
before the court to show that the paid up share capital of the
H

Defendants is brought down to Rs.41 lacs as per para 1.3(1) of the revised rehabilitation proposal in BIFR case No. 74/1999 (Ex.4). The advocate for Defendants has not pointed out any order to show that the said proposal is accepted. A

In the absence of such order of the appropriate court or authority accepting the proposal Ex.1 to reduce share capital to less than 1 crore rupees, I am unable to accept the case of the Defendants that the said share capital of the Defendant Company is reduced to less than Rs.1 crore". B

(emphasis supplied) C

33. The High Court also dealt with this aspect and concluded;

"It is not in dispute between the parties that the tenancy of the petitioners was terminated with effect from 31.3.2001 and on that day the paid up share capital of the petitioners/Company was more than Rupees one crore, no fault can be found with trial Court taking cognizance of the eviction proceedings initiated against the petitioners, as the trial Court definitely had jurisdiction to entertain such proceedings, considering the provisions of law comprised under Section 3(1)(b) of the said Act, as rightly submitted by the learned advocate for the respondents. The clause (b) of Section 3(1) of the said Act clearly provides that "the said Act shall not apply to any premises let or sub-let to banks, or any Public Sector Undertaking or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more". *Undisputedly, the petitioner/Company is a Public Limited Company having share capital of more than Rupees one crore". D E F G*

(emphasis supplied)

34. All the Courts were, therefore, in our considered opinion, right in holding that the provisions of the Rent Act were not applicable to the H

A present case.

SUBSEQUENT EVENTS

B 35. The learned counsel for the tenant then submitted that it was
C obligatory on the courts below including the High Court to take into
D consideration subsequent events. In support of the submission, our
attention has been invited by the counsel to a leading decision of this Court
in *Pasupuleti Venkateswarlu v. Motor & General Traders*, [1975] 1
SCC 770. In that case, the plaintiff filed a suit for possession on the ground
of personal requirement for starting business. A decree for possession
was passed in his favour which was confirmed by the Appellate Court.
At the stage of Revision, however, due to subsequent event of acquisition
of non-residential building by the plaintiff-landlord, an application for
amendment was made by the defendant-tenant. The High Court allowed
the amendment. The plaintiff challenged the said order by approaching
this Court. It was contended that the High Court committed an error in
taking cognizance of subsequent event which was 'disastrous'. This Court,
however, held that the High Court had not committed any illegality in doing
so.

E 36. Referring to leading cases on the point, Krishna Iyer, J. stated;

F "We feel the submissions devoid of substance. First about the
jurisdiction and propriety vis-à-vis circumstances which come into
being subsequent to the commencement of the proceedings. It is
basic to our processual jurisprudence that the right to relief must
be judged to exist as on the date a suit or institutes the legal
proceeding. Equally clear is the principle that procedure is the
handmaid and not the mistress of the judicial process. If a fact,
arising after the lis has come to court and has a fundamental impact
on the right to relief or the manner of moulding it, is brought
G diligently to the notice of the tribunal, it cannot blink at it or be
blind to events which stultify or render inept the decretal remedy.
Equity justifies bending the rules of procedure, where no specific
provision or fairplay is not violated, with a view to promote
substantial justice—subject, of course, to the absence of other
disentitling factors or just circumstances. Nor can we contemplate
H

any limitation on this power to take note of updated facts to confine A
it to the trial Court. If the litigation pends, the power exits, absent
other special circumstances repelling resort to that course in law
or justice. Rulings on this point are legion, even as situations for
applications of this equitable rule are myriad. We affirm the
proposition that for making the right or remedy claimed by the B
party just and meaningful as also legally and factually in accord with
the current realities, *the Court can, and in many cases must, take*
cautious cognizance of events and developments subsequent
to the institution of the proceeding provided the rules of
fairness to both sides are scrupulously obeyed.” C

(emphasis supplied)

37. In our judgment, the law is fairly settled. The basic rule is that
the rights of the parties should be determined on the basis of the date of
institution of the suit. Thus, if the plaintiff has no cause of action on the D
date of the filing of the suit, *ordinarily*, he will not be allowed to take
advantage of the cause of action arising subsequent to the filing of the
suit. Conversely, no relief will *normally* be denied to the plaintiff by reason
of any subsequent event if at the date of the institution of the suit, he has
a substantive right to claim such relief. E

38. In the instant case, in our opinion, the courts below were right
in holding that the date on which tenancy was determined, the right in
favour of the landlord got accrued. Such right could not have been set at
naught by the tenant by unilateral act by passing a resolution to reduce
'paid up share capital' of the Company. F

39. In this regard, it may be profitable to refer to a decision of this
Court in *Gajanan Dattatraya v. Sherbanu Hosang Patel & Ors.*, [1975]
2 SCC 668. In *Gajanan*, the Court was called upon to consider clause
(e) of Section 13(1) of the Bombay Rents, Hotel and Lodging House G
Rates Control Act, 1947 which read thus;

13(1)(e). That *the tenant has, since the coming into*
operation of this Act, unlawfully sublet, or after the date of
commencement of the Bombay Rents, Hotel and Lodging House H

A Rates Control (Amendment) Act, 1943, unlawfully given on licence, *the whole or part of the premises* or assigned or transferred in any other manner his interest therein.

(emphasis supplied)

B 40. The tenant took on lease the premises on January 1, 1960. He, however, sublet a part of the premises in August, 1965. The landlord issued a notice on April 1, 1967 and terminated the tenancy. The tenant denied that there was unlawful sub-letting of a part of the premises. It was further submitted that in any case, the so-called sub-tenant vacated the premises on April 14, 1967 i.e. before the suit was instituted by the landlord and hence, cause of action did not survive. It was contended on behalf of the tenant that Section 13(1)(e) used the expression "*has sub-let*", i.e. the present perfect tense which contemplated the event connected in some way with the present time. Since the sub-tenant had already vacated and left the premises, at the most it could be said that the tenant '*had sub-let*' the premises but it was not a ground for eviction under the Act and hence no decree could have been passed. Reliance was also placed on an earlier decision of this Court in *Goppulal v. Thakurji Shriji Shriji Dwarkadheshji*, [1969] 3 SCR 989 : [1969] 1 SCC 792.

41. Negating the contention, upholding the decree of eviction and distinguishing *Goppulal*, this Court said;

F "The provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e), namely, that he has sublet. The language is that if the tenant has sublet, the protection ceases. To accede to the contention of the appellant would mean that a tenant would not be within the mischief of unlawful subletting if after the landlord gives a notice terminating the tenancy on the ground of unlawful subletting the sub-tenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful subletting. In that way the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of subletting every time

G

H

by getting the sub-tenant to vacate the premises. *The tenant's liability to eviction arises once the fact of unlawful subletting is proved. At the date of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted*". A

(emphasis supplied) B

42. The Court approved the view taken by the High Court of Gujarat in *Maganlal Narandas Thakkar v. Arjan Bhanji Kanbi*, (1969) 10 Guj LR 837. In *Maganlal*, the High Court of Gujarat had an occasion to consider a *pari materia* provision under the Saurashtra Rent Control Act, 1951*. C

43. A similar argument was advanced before the Court. However, considering the scheme of the Act, the Court refuted the contention. The Division Bench observed;

"So far as the first point is concerned, Mr. Desai laid great stress, and relied very heavily, on the grammatical meaning of the words 'has sub-let'. His argument is that the meaning of the words 'has sub-let' include the element that the subletting must be continuing on the date when the plaintiff filed his suit. He stated, and there is no dispute on the point, that the words 'has sub-let' do not use of the verb 'sub-let' in the present perfect tense. He referred to page 61 of the Handbook of English Grammar by R.W. Zandvoort. In paragraph 140 of this Book it is stated that when a verb is used in present perfect tense, it denotes "a completed past action connected, through its result, with the present moment". The argument of Mr. Desai was that the subletting which started sometime after 1951, that is after the Act came into operation, must be connected with the present moment through its result; and his argument was that once the sub-tenancy was created, it must be connected with the present moment-the date of filing the suit-by its result by the sub-tenant continuing in possession of the premises D
E
F
G

* Clause (e) of sub-section (1) of Section 13 of the Act read as under;

"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." H

A upto that date. Mr. Desai thus urged before us that unless a sub-tenant were in possession of the property sublet on the date of the suit it cannot be said that the tenant 'has sub-let' the premises, even though a sub-tenancy was in fact created by the tenant. In our opinion if this interpretation were to be accepted, the result would be that a tenant can with impunity put some other person in possession of the premises as a sub-tenant and avoid an order for delivery of possession against him by seeing to it that the sub-tenant departs from the property before the plaintiff files a suit. Having regard to the scheme of the Rent Control Act, particularly the scheme of Sections 12 and 13 of the Act and the context in which the words 'has sub-let' are used, it appears to us that that is not the way in which the meaning of the words 'has sub-let' should be gathered. If the Rent Control Act were not in force and the parties were left to their ordinary rights under the Transfer of Property Act, the landlord will have a vested right to recover possession in him as soon as he terminates the tenancy of the tenant in the manner provided in the Transfer of Property Act. After terminating the tenancy he can immediately call upon the tenant to hand over possession to him. By enacting Section 12 of the Rent Control Act, the landlord's right to terminate the tenancy is not affected, but the enforcement of his right to recover possession immediately thereafter from the tenant is affected. The provisions of Section 12 prevent a landlord from recovering possession of the property from a tenant even after a lawful termination of his tenancy, provided the tenant fulfils the conditions mentioned in Section 12. Section 12 does not take away the right of the landlord to recover possession of the premises but merely postpones the enforcement of this right of the landlord so long as the tenant fulfils the conditions laid down in that section. Having put this impediment in the enforcement of the right of possession of the landlord or in other words, having clothed the tenant with an immunity from dispossession, the Legislature proceeds in Section 13 to lay down those conditions on the fulfillment of which the landlord is entitled to recover possession of the premises from the tenant. Section 13, therefore, provides for those contingencies on proof of which the

B

C

D

E

F

G

H

tenant loses the immunity from dispossession under Section 12. A
Some discussion took place on the question whether the tenant
has a right of possession or whether he has merely an immunity
from being dispossessed. Whether it be called an immunity from
dispossession or whether it be called a personal right of possession, B
the fact remains that by Section 13, the Legislature has provided
for dispossession of tenant, despite provisions of Section 12, if the
Court is satisfied that any one of the grounds mentioned in Section
13 does exist. One of such grounds is the subletting of the premises
or a part thereof by the tenant. In view of this scheme of the
provisions in Sections 12 and 13 of the Act, it is necessary for us C
to construe the meaning of the words 'has sub-let' keeping in mind
that the verb 'sub-let' is used in the present perfect tense. First, it
must be a completed past action, that is the subletting must be
completed. A subletting is complete as soon as the sub-tenant is
put in possession of the premises given to him on sublease. Now, D
this completed act of subletting must have a result. What would
be that result in the context of Sections 12 and 13 of the Act?
The result of subletting would be removal of the impediment in the
way of the landlord to recover possession of the premises. In other
words, the result of subletting would be to take away that personal E
right of possession which the tenant enjoyed under the provisions
of the Rent Act. Now, this result must be connected with the
present moment. The present moment will be the moment when
the suit is filed. How is this result connected with the filing of the
suit? The answer is quite obvious. It is this removal of the F
impediment in the way of the landlord's recovery of possession
which induces him to go forthwith to the Court and file a suit for
possession. Therefore, the words 'has sub-let' mean that a sub-
letting has taken place and as a result of that subletting the
impediment in the way of the landlord to recover possession has G
been removed, thus, inducing him to go to Court and ask for
recovery of possession. It is the result of the completed act, i.e.
the removal of the impediment in his way, which permits the
landlord to go to the Court and ask for a decree for possession.
It is not necessary, therefore, that subletting must continue enough H

- A if the premises have been sub-let sometime after the coming into operation of the Act. The provisions of Section 15 of the Saurashtra Rent Control Act make subletting unlawful. Therefore, any subletting by the tenant after the Act came into operation immediately removes the impediment in the way of the landlord to recover possession and entitles him immediately to go to the Court and ask for recovery of possession. In order to convey the correct meaning of the words 'has sub-let' it is not necessary to show that the subletting was in existence on the date of suit. *It is enough that the subletting has taken place sometime after the Act came into operation; it does not matter that the subletting came to an end before the landlord gave notice or before the landlord filed a suit*".
- B
- C

(emphasis supplied)

- D 44. In our opinion, the ratio laid down in the above cases applies to the present case as well. 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
- E 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 BIFR. 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
- F 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 provision. We, therefore, see no infirmity in the conclusions arrived at by the courts below.

EQUITABLE CONSIDERATIONS

- G 45. The learned counsel for the respondent-landlord is also right in submitting that the appellant-tenant does not deserve equitable relief under Article 136 of the Constitution. The tenant has not paid 'rent'/'mesne profits' since more than ten years. Even after approaching this Court, it
- H had made part payment pursuant to interim order made in April, 2005.

But nothing was paid/deposited thereafter even though two years have passed. These facts have not been disputed by the appellant. We are, therefore, of the view that even on that ground, the appellant-tenant cannot ask for discretionary and equitable relief and we are not inclined to grant such relief. A

46. For the foregoing reasons, the appeal deserves to be dismissed and is, accordingly, dismissed with costs. B

K.K.T.

Appeals dismissed.