

SULOCHANA
v.
RAJINDER SINGH
(Civil Appeal No. 3636 of 2008)

MAY 16, 2008

[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.]

Rent Control & Eviction:

Madhya Pradesh Accommodation Control Act, 1961; Ss. 11-A, 12, 23J and 23H:

Composite eviction suit on ground of bonafide requirement – Default in payment of rent and denial of title – Maintainability of – Held: Maintainable – In terms of s.23J of 1961 Act, a widow/divorcee wife amongst others constitute the classes of landlord who could file eviction petition on bonafide requirement – Jurisdiction of Civil Court could be ousted only when the matter comes within the purview of s.45 of the Act – Ex-facie s.45 has no application to the facts and circumstances of the case – S.12 of the Act confers jurisdiction upon Civil Court to entertain a suit for eviction on the grounds specified therein – Provisions excluding the jurisdiction of Civil Court are to be construed strictly – High Court has failed to notice the difference in the definition of 'landlord' as contained in s.2(b) and s.23-J of the Act – Ratio of the decision of Supreme Court in 'Dhannalal vs. Kalawatibai & Others' and 'Ashok Kumar Gupta vs. Vijay Kr. Agarwal' was wrongly applied by the High Court – Hence decision of the High Court not sustainable and set aside – Interpretation of Statutes – Strict construction.

The question which arose for determination in the appeal before this Court was as to whether a Civil Court has jurisdiction to entertain a composite suit filed for eviction of the tenant.

A Appellant-landlady contended that keeping in view
the pleadings of the parties as also the findings of the
trial judge, the High Court committed a serious error in
holding that the Civil Court had no jurisdiction to pass a
decree for eviction; and that the respondent-tenant was
B inducted as a tenant in the suit premises as far back as in
1978 by the previous owner and as the appellant pur-
chased the suit property on 23rd March, 1996 whereas she
became a widow, much earlier, i.e., on 9th July, 1990 and
in that view of the matter Chapter IIIA of Madhya Pradesh
C Accommodation Control Act, 1961 will not be applicable.

Respondent-tenant submitted that in view of Section
45 of Act, the Civil Court's jurisdiction is completely
ousted.

D Allowing the appeal, the Court

HELD: 1. Chapter III-A of the Madhya Pradesh Accom-
modation Control Act, 1961 provides for special provi-
sions. It is confined to eviction of tenants on grounds of
bona fide requirement of different classes of landlords
E specified therein. A summary procedure is provided for.
Recourse thereto can be taken only by the specified land-
lord within the meaning of the provision of Section 23-J
of the Act which means a 'landlord who is a widow or di-
F vided wife' amongst others. Amongst others a servant
of any Government including a member of defence ser-
vices, would also fall within the purview of the said defini-
tion. Only a landlord who comes within the purview of the
said definition is entitled to file suit on the ground of his
or her bona fide requirement. Section 23-H provides for
G deposit of rent pending proceedings for eviction or for
revision. The jurisdiction of the Civil Court can thus be
excluded only if the matter comes within the purview of
Section 45 of the Act of Chapter III thereof. It is beyond
any cavil that the application for eviction contemplated
H by Chapter III-A relates to an eviction of the tenant by the

landlord as defined in Section 23-J of the Act. (Paras – 16, 17 & 18) [436-G,H, 437-A,B,C] A

2.1 It is now well settled that the provision excluding jurisdiction of the Civil Court are to be strictly construed. They are not to be inferred readily. (Para – 20) [437-E] B

Swamy Atmananda and Others vs. Sri Ramakrishna Tapovanam and Others (2005) 10 SCC 51 – relied on.

2.2 The jurisdiction of civil court is also to be determined having regard to the averments contained in the plaint. It was explained as to why the civil court had the requisite jurisdiction. (Paras – 21 & 22) [437-F, 438-A] C

2.3 The issue as regards title over a property can be decided only by a civil court and, therefore, there cannot be any doubt whatsoever that the suit as framed was maintainable. (Para – 26) [440-B] D

2.4 It was not a case that no cause of action had arisen to file the suit for eviction on the ground of default or denial of title, but they were negatived having regard to the subsequent events. (Para – 26) [441-C] E

3.1 In the second appeal, a purported substantial question of law was framed as to whether, in the facts and circumstances of the case, Civil Court had the jurisdiction to entertain a composite eviction suit filed by a landlord covered by section 23(J) on various grounds including 12 (1)(f) of the Act. The said substantial question of law has been answered in favour of the respondent. The High Court proceeded on the basis that the civil court's jurisdiction would stand ousted if the provisions contained in Sections 11, 12, 23-A, 23-J and 45 of the Act are conjointly read. (Paras – 32, 33 & 34) [443-A,B,C] F G

3.2 Single Judge of the High Court failed to notice that the definition of 'landlord' as contained in Section 2(b) and Section 23-J of the Act are different. He furthermore H

A failed to notice the limited application of Chapter III-A of the Act. (Para – 35) [444-A]

Ashok Kumar Gupta vs. Vijay Kumar Agarwal, (2002) 3 SCC 717 – referred to.

B 3.4 It is not a case where the respondent was inducted as a tenant by the appellant. She was, thus, not a landlord within the meaning of Section 23-J of the Act. The relevant date for claiming the special benefit of Chapter III-A was the date of her becoming a widow. (Para – 37) [444-E,F]

C 4. Any matter which *stricto sensu* does not come within the purview of Chapter III-A would be entertainable by a civil court. This ratio of the decisions was wrongly applied. Hence, the decision of the High Court is unsustainable. The same is set aside accordingly. (Paras – 43 & 44) [449-F,G]

D *Winifred Ross and Another vs. Evi Fonseca and others* (1984) 1 SCC 288; *Dr. D.N. Malhotra vs. Kartar Singh*, (1988) 1 SCC 656 and *Bhagwat Dutt Rishi vs. Raj Kumar*, (1990) 1 SCC 324 – relied on.

E *Dhannalal vs. Kalawatibai & Ors.* (2002) 6 SCC 16 – held inapplicable.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3636 of 2008

From the final Judgment and Order dated 28.9.2006 of the High Court of Madhya Pradesh, Bench at Indore in Civil Second Appeal No. 260/2004

G Sushil Kumar Jain, Puneet Jain, Sarad Kumar Singhania and, Pratibha Jain for the Appellant.

Pramit Saxena, Amit Yadav and S.V. Deshpande for the Respondents.

H The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

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2. Whether the civil court has jurisdiction to entertain a composite suit filed by the appellant herein for eviction of the tenant is the question involved in this appeal which arises out of a judgment and order dated 28th September, 2006 passed by a learned Single Judge of the High Court of Madhya Pradesh at Indore in Second Appeal No. 260 of 2004, whereby and whereunder while allowing the appeal filed by the respondent, the suit filed by the appellant for eviction of the respondent was dismissed.

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3. The basic fact of the matter is not in dispute.

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4. The premises in dispute is a shop located on the ground floor of House No.370-D, Parasi Mohalla, Neemuch Cantt, in the State of Madhya Pradesh. Appellant purchased the property in question on 23rd March, 1996 from Smt. Anntu Jenra w/o Sh. Turab Bhai. Respondent was a tenant under the predecessor-in-interest of the appellant on a monthly rent of Rs.200/- per month. By a letter dated 29th July, 1996 the appellant informed the respondent in regard to the purchase of the property by her and requested the respondent for payment of monthly rent to her. Since, despite the service of the said letter, the respondent failed and/or neglected to make payment of rent, the appellant terminated the tenancy of the respondent and requested him to vacate the tenanted premises. It was also mentioned that the shop in question was required by the appellant bona fide so as to enable her son to carry out business therein. Respondent, while denying any liability to pay any rent to the appellant, also denied her title contending that he has not been informed of the sale of the property by the original landlord in favour of the appellant.

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5. Appellant thereafter filed a composite suit for eviction of the respondent on the grounds of :- (i) default in payment of rent, (ii) her bona fide requirement; and (iii) denial of her title on the part of the respondent.

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6. The trial court considered the merit of the suit for pass-

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- A ing a decree on the ground of bona fide requirement as also on arrears of rent. A decree for mesne profits was also passed. In regard to denial of title, the trial court noticed that since the earlier landlord did not give any notice of transfer to the respondent, the title of the appellant was although denied at that time
- B but the tenant now accepted his title.

It was furthermore held that since the court had condoned the delay for deposit/payment of rent and allowed the respondent time to pay the rent, the delay in deposit of the same cannot form the basis for grant of a decree for eviction on that count.

- C However, as stated earlier, the court decreed the suit on the ground of bona fide requirement on the part of the landlord and directed the respondent to handover vacant possession within two months.

- D 7. An appeal, being Regular Civil Appeal No.1A of 2004 filed by the respondent before the District Judge was dismissed by a judgment and order dated 17th February, 2004.

- E 8. Respondent preferred a second appeal before the High Court of Madhya Pradesh, which as stated earlier, was allowed by reason of the impugned judgment and the suit filed by the appellant was dismissed on that ground alone.

- F 9. The High Court in its judgment, relying on or on the basis *Nandlal v. Nangibai* [2006 (1) M.P.L.J. 231], held that the civil court has no jurisdiction as the suit was decreed only on the ground of bona fide requirement on the part of the appellant. *Nandlal* (supra) relied on two decisions of this Court in *Dhannalal vs. Kalawatibai and others*, [(2002) 6 SCC 16] and *Ashok Kumar Gupta vs. Vijay Kumar Agarwal*, [(2002) 3 SCC 717].

- G 10. Mr. Sushil Kumar Jain, leaned counsel appearing on behalf of the appellant, would submit that keeping in view the pleadings of the parties as also the findings of the learned trial judge, the High Court must be held to have committed a serious error in holding that the civil court had no jurisdiction to pass
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a decree for eviction. It was pointed out that the respondent-tenant was inducted as a tenant in the suit premises as far as back in 1978 by the previous owner and as the appellant purchased the suit property on 23rd March, 1996 whereas she became a widow, much earlier, i.e., on 9th July, 1990 and in that view of the matter Chapter IIIA of Madhya Pradesh Accommodation Control Act, 1961 (in short, 'the Act') will not be applicable.

11. Mr. Prमित Saxena, learned counsel appearing on behalf of the respondent, on the other hand, drew our attention to the provisions of Section 45 of Act to contend that the civil court's jurisdiction is completely ousted.

12. Before advertng to the rival contentions raised, we would notice some of the provisions of the said Act.

The Act was enacted for giving protection to tenants belonging to the weaker section of society who were incapable of building their own houses. Tenant has been defined in section 2(i) to mean :-

" 'tenant' means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express is, or, but for a contact express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act ; but shall not include any person against whom any order or decree for eviction has been made."

13. Eviction of the tenant is governed by Chapter III of the Act. Section 11-A of the Act excludes applicability to certain categories of landlords as specified in Chapter III-A of the Act and as defined in Section 23-J. Section 12, however, starts with a non obstante clause; it specifies the grounds only on the basis whereof the landlord may file a suit for eviction of tenant

A from any accommodation.

14. Admittedly, denial of relationship of landlord and tenant, arrears of rent and the bona fide requirement are some of the grounds on the basis whereof a suit for eviction can be filed.

B 15. Section 45 of the Act excludes the jurisdiction of the civil court stating :-

C “45. Jurisdiction of Civil Courts barred in respect of certain matters.- (1) Save as otherwise expressly provided in this Act, no Civil Court shall entertain any suit or proceeding in so far as it relates to the fixation of standards rent in relation to any accommodation to which this Act applies or to any other matter which the Rent Controlling Authority is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Rent Controlling Authority under this Act shall be granted by any Civil Court or other authority.

D (2) Nothing in sub-section (1) shall be construed as preventing a Civil Court from entertaining any suit or proceeding for the decision of any question of title to any accommodation to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such accommodation.”

E Sub-section (6) of Section 13 of the Act, however, provides for the benefit of protection against eviction, stating :-

F “13. When tenant can get benefit of protection against eviction.-

G (6) If a tenant fails to deposit or pay any amount as required by this Section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be.”

H 16. Chapter III-A provides for special provisions. It is confined to eviction of tenants on grounds of bona fide requirement of different classes of landlords specified therein. A summary

procedure is provided for. Recourse thereto can be taken only by the specified landlord within the meaning of the provision of Section 23-J of the Act which means a 'landlord who is a widow or divorced wife' amongst others. Amongst others a servant of any Government including a member of defence services, would also fall within the purview of the said definition. Only a landlord who comes within the purview of the said definition is entitled to file suit on the ground of his or her bona fide requirement.

17. Section 23-H provides for deposit of rent pending proceedings for eviction or for revision.

18. The jurisdiction of the civil court can thus be excluded only if the matter comes within the purview of Section 45 of the Act of Chapter III thereof. It is beyond any cavil that the application for eviction contemplated by Chapter III-A relates to an eviction of the tenant by the landlord as defined in Section 23-J of the Act.

19. Ex facie Section 45 of the Act has no application to the facts and circumstances of this case. Section 45 is subject to the other provisions contained therein; one of them, indisputably is Section 12 which confers jurisdiction upon the civil court to entertain a suit for eviction of the tenants subject, of course, to the case falling under one or more grounds specified therein.

20. It is now well settled that the provision excluding jurisdiction of the civil court are to be strictly construed. They are not to be inferred readily. [See *Swamy Atmananda and Others v. Sri Ramakrishna Tapovanam and Others* (2005) 10 SCC 51]

21. The jurisdiction of civil court is also to be determined having regard to the averments contained in the plaint. Appellant did not proceed on the basis that she was a 'specified landlord' within the meaning of Section 23-J of the Act. Furthermore a composite suit for eviction was filed, i.e., not only on the ground of bona fide requirement but also on the ground of default of payment of rent as also denial of relationship of landlord and tenant.

A 22. It was explained as to why the civil court had the requisite jurisdiction.

23. Requisite averment as regards the cause of action for the said suit was made in paragraph 10 of the plaint which reads as under :-

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“(10) That, despite communicating information through notice to the defendant about having purchased the disputed shop by the plaintiff, and about bona fide and reasonable necessity of the suit/disputed shop along with possession of excess area than that of tenanted portion, along with the arrears of the rent thereof, for opening of the shop for medicines by her son Rajesh Kumar, and because of denying by the defendant to recognize the plaintiff as the owner of the disputed shop, as also because of denial by the defendant to pay the arrears of the rent as well as handing over possession of the shop, the plaintiff has been compelled to file this suit.”

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24. It is also relevant to notice the prayers made in the said suit, which are :-

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“13) That the plaintiff prays for the following relief against the defendant :-

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a) That a decree of eviction may be passed in favour of the plaintiff and against the defendant, to vacate the municipal house No.370-D, in whose north is public road, in south is the house no.370-F; in east is the house No.370-D; and in west is joint gali and house No.370-E are located, and in which the defendant is in occupation against rent & is carrying on his business by the name & style of M/s. Rathore & Sons; and its vacant possession be peacefully awarded to the plaintiff from the defendant.

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b) That, the plaintiff be awarded arrears of the rent from the defendant amounting to Rs.3000/- and decree may be passed in favour of the plaintiff and against

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the defendant, and from the date of institution of the suit till the date of its remittance interest at the rate of Rs.2/- per hundred per month may also be awarded by way of compensation & belated payment-against use & utilization.

- c) That, from the date of the institution of the suit till receipt of vacant possession of the disputed premise, compensation be awarded at the rate of Rs.200/- per month against the use and utilization of the disputed premises by the defendant.
- d) That, the total expenses of the suit be awarded to the plaintiff from the defendant along with interest at the rate of Rs. 2/- per hundred per month, from the date of the insitution of the suit till its recovery.
- e) That, any other justified relief which may be considered to be eligible by the plaintiff may also be awarded from the defendant."

25. Respondent in his written statement not only denied and disputed the title of the appellatant but also denied and disputed that he was in default, apart from the contention raised as regards the bona fide requirement of the appellatant, inter alia stating :-

"1) That the contents of paragraph 1 of the plaint are not admitted. The ex-owner/landlord of the hosue Antu Jehara wife of Shri Turab Bhai (H.M. Fazal Hussain) resident of Bombay has not communicated any information uptill today to the defendant about transfer of proprietorship of the disputed premises; nor has appraised about this fact that presently the defendant has become tenant of the plaintiff. In the notice issued by the plaintiff, the date of purchase of the disputed premises has been shown as 29th of March, 1996 whereas in the plaint, the date of purchase has been shown as 23rd of March, 1996, and due to this reason it is not known as to on which date the plaintiff has become

A the owner/landlord of the disputed premises. The plaintiff has mentioned entire contents in paragraph No.1 of the plaint as false and illusionary. The plaintiff should prove the proprietorship of the disputed premises.”

B 26. Indisputably, the issue as regards title over a property can be decided only by a civil court and, therefore, there cannot be any doubt whatsoever hat the suit as framed was maintainable. Learned trial judge however, in regard to the issue of denial of relationship of landlord and tenant opined :-

C “20) But, the defendant has revealed the reason about denial of the title of the plaintiff due to non-communication of any information by his ex landlord Antu Jehara; and it has been made clear in para 26 of his cross-examination that when he had received the notice of the plaintiff, then he was not admitting the plaintiff as its landlord. But now D he admits the plaintiff to be the landlord and is also remitting the rent. Therefore, in such a circumstance, the defendant has disclosed the reason about the denial of the title of the plaintiff. Therefore, in this case, he is not found liable to be E evicted on the basis of denial of title, when he is accepting the title of the plaintiff.

As regards the ground of default, the trial court held :-

F “21) The plaintiff has also advanced an argument that the defendant has not deposited the rent within the prescribed period. He has not deposited the rent within a period of one (month) since receipt of the notice, then any benefit would not be accruable to the defendant by depositing the rent later on, and simply on the basis of having withdrawn and having received the rent through court, it would not be G an abdication by the plaintiff to have left the ground under Section 12(A); whereas the plaintiff himself does not abdicate this right of her own self. On the aforesaid point, following ruling have been cited on behalf of the plaintiff:-

H i) Hiralal v/s. Harisingh – 1990 M.P.A.C.J. 88 ;

- ii) R.C. Tambrakar & Others v/s. Nidhi Lekha – 2002 (1) L.S.C. (2) 22. A
- iii) Sushil Srivastava v/s. Nafis Ahamad – 2002 (1) M.P.S. 5 ; and
- iv) Kalyansingh v/s. Ramswarup – 1982 M.P.R.C.J. 62. B

But in these citations it is also mentioned that if permission is granted by the court for depositing the rent belatedly, i.e. delay is condoned, then simply on this ground, eviction should not be allowed.”

It was, therefore, not a case that no cause of action had arisen to file the suit for eviction on the ground of default or denial of title, but they were negated having regard to the subsequent events. C

27. One of issues which arose for consideration of the learned trial judge was the jurisdiction of the civil court. The learned Judge held: D

“24) During the course of the arguments, the defendant has also raised an objection to the effect that the plaintiff being a woman is widowed and on the basis of necessity, proper forum is not a civil court, but is the Rent Control Authority, and in support of this argument has cited the ruling of Narayan Rao v/s. Parvatibai – 1998 M.P.A.C.J. 162. E

25) In the aforesaid ruling, the suit was filed for eviction simply on the ground of bona fide necessity i.e. was filed for obtaining possession, in which the point about the arrears of the rent was not found; but in the present case the plaintiff has since beginning has instituted this suit for recovery of arrears of the rent amounting to Rs.3000/- and for eviction; and this issue has been framed being disputed amongst the rival parties, and therefore, in such a situation the facts of this case and the citation being different, any relief is not available to the defendant from the aforesaid F G H

A ruling, and in this respect the objection of the defendant is rejected."

28. So far as the ground of bona fide necessity on the part of the appellant is concerned, it was admittedly held in her favour.

29. The reliefs granted by the civil courts in favour of the appellant are as under :-

a) The defendant should hand over the vacant possession of the disputed premises of House No.370-D, Parsi Mohalla, Neemuch Cantt. to the plaintiff within two months of the date of the judgment.

b) The defendant should pay rent to the plaintiff in respect of the disputed premises from 23rd of March, 1996 to 22nd of June, 1997 at the rate of Rs.200/- per month, and thereafter upto handing over vacant possession, should pay at the rate of Rs.200/- per month against its use & utilization. In this context, the plaintiff would be entitled to recover the rent deposited by the defendant in the court."

30. It is, therefore, evident that not only a decree for eviction was passed, a decree for payment of arrears of rent, which otherwise could not have been granted by the Rent Controller, was also passed.

31. Before the first appellate court, inter alia, an application was filed for rejection of the plaint. It was rejected. The first appellate court held :-

"43. Because the plaintiff has filed the suit apart from the necessity for the business of her son, on the grounds of denial of title and default in payment of rent; therefore such a suit falls within the jurisdiction of a civil court. Therefore, the amendment which has been proposed by the plaintiff, the same is unnecessary and is not bona fide. Due to the reason of such a situation, there is no necessity

to dismiss the suit also.”

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32. In the second appeal, however, a purported substantial question of law was framed which reads, thus :-

“Whether, in the facts and circumstances of the case, Civil Court had the jurisdiction to entertain a composite eviction suit filed by a landlord covered by section 23(J) on various grounds including 12 (1)(f) of the Act.”

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33. As noticed hereinbefore the said substantial question of law has been answered in favour of the respondent.

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34. The High Court proceeded on the basis that the civil court's jurisdiction would stand ousted if the provisions contained in Sections 11, 12, 23-A, 23-J and 45 of the Act are conjointly read stating :-

“ After having heard learned counsel and going through material available on record, we do not think that learned counsel for the appellant is right in submitting that courts below had the jurisdiction to entertaining the composite suit for eviction in the facts of the present case. The point and controversy raised in this appeal stands decided by this court in Nandalal case supra. No contrary view of larger bench or Supreme Court was brought to notice. No doubt as a general rule, in all types of civil disputes, civil courts have jurisdiction unless a part of cause of action is craved out from such jurisdiction, expressly or by implication. In such a situation, it does not amount to splitting of cause of action. On a conjoint reading of relevant provisions of the Act and Code of Civil Procedure, to us it is clear that Civil Court's jurisdiction is barred in respect of composite claim for eviction on bona fide need set up by the special category landlord covered by Section 23(J) of the Act. In view of the above discussions, we have no hesitation in holding that in the facts of the case in hand, civil court acted without jurisdiction while granting an eviction decree on the grounds of bona fide need set up by the plaintiff

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A who is indisputably covered by Section 23-J of the Act.”

35. With respect, the learned Single Judge failed to notice that the definition of ‘landlord’ as contained in Section 2(b) and Section 23-J are different. The learned Judge furthermore failed to notice the limited application of Chapter III-A of the Act.
B Some decisions have been noticed by the learned Single Judge, including *Ashok Kumar Gupta vs. Vijay Kumar Agarwal*, [(2002) 3 SCC 717] to which we would refer to a little later.

36. The definition of ‘specified landlord’ as contained in Section 23-J of the Act is not as broad as the definition of the same term as contained in Section 2(b) thereof. A statute must be read, keeping in view the constitutional scheme of equality as adumbrated in Article 14 of the Constitution of India. Once a special benefit has been conferred on a special category of landlord, the same must receive strict construction. Even otherwise, it is well settled, that an exclusion provision must be construed strictly. A statute ousting jurisdiction of the civil court should also be strictly construed.
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37. Appellant has purchased the premises on 23rd March, 1996 whereas the respondent was inducted as tenant of the premises way back in 1978. It is, therefore, not a case where the respondent was inducted as a tenant by the appellant. She was, thus, not a landlord within the meaning of Section 23-J of the Act. The relevant date for claiming the special benefit of Chapter III-A was the date of her becoming a widow.
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38. An identical question came up for consideration in *Winifred Ross and another vs. Evi Fonseca and others*, [(1984) 1 SCC 288 wherein application of a pari materia provision contained in Section 13-A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 fell for consideration of this Court.
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Plaintiff therein was an officer of the armed forces. This Court while lauding the object of the Act, however, held :-

H “Even the widows of such landlords may under clause (b)

of Section 13-A1 can recover possession of such buildings if they satisfied the conditions mentioned therein. An analysis of clause (a) of Section 13-A1 shows that the person who wishes to claim the benefit of that section should be a landlord of the premises while he is a member of the armed forces of the Union and that he may recover possession of the premises on the ground that the premises are bona fide required by him for occupation by himself or any member of his family on the production of the required certificate either while he is still in service or after his retirement. The essential requirement is that he should have leased out the building while he was a member of the armed forces. His widow can also recover the premises of which she is or has become the landlord under clause (b) subject to fulfilment of the conditions. Having regard to the object and purposes of the Act and in particular Section 13-A1 it is difficult to hold that Section 13-A1 can be availed of by an ex-member of the armed forces to recover from a tenant possession of a building which he acquires after his retirement. Acceptance of this argument will expose the very Section 13-A1 of the Act to a successful challenge on the ground of violation of Article 14 of the Constitution for if that were so, a retired military officer who has no house of his own can purchase any building in the occupation of a tenant after his retirement, successfully evict a tenant living in it on the ground that he needs it for his use, then sell it for a fancy price and again because he has no house of his own, he can again acquire another building and deal with it in the same way. There appears to be no restriction on the number of times he can do so. It was argued that he would not be able to get the requisite certificate under the Act more than once. A reading of Section 13-A1 of the Act shows that the certificate should show that the person concerned has been a member of the armed forces and that he does not possess any other suitable residence in the local area where he or members of his family can reside. Those

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A conditions being satisfied the certificate cannot be
refused. A liberal construction of Section 13-A1 of the Act
as it is being pressed upon us would also enable
unscrupulous landlords who cannot get rid of tenants to
transfer their premises to ex-military men, as it has been
B done in this case in order to avail of the benefit of the said
section with a private arrangement between them. It is
also possible that a person who has retired from the armed
forces may after retirement lease out a premises belonging
to him in favour of a tenant and then seek his eviction at
C his will under Section 13-A1 of the Act.”

39. *Winfred Ross* and various other decisions came up
for consideration again before this Court in *Dr. D.N. Malhotra*
vs. Kartar Singh, [(1988) 1 SCC 656]. Following *Winfred Ross*
(supra), it was held :-

D “12. On a conspectus of the decisions referred to
hereinbefore more particularly the decision rendered by
this Court in the case of *Mrs Winifred Ross v. Mrs Ivy*
Fonseca it is well settled that in order to get the benefit of
eviction of the tenant in a summary way the ex-serviceman
E must be a landlord qua the premises as well as the tenant
at the time of his retirement from service. The ex-serviceman
is not competent to make an application to the Rent
Controller to get possession of his house by evicting the
tenant in a summary way unless and until he satisfies the
F test that he is a landlord qua the premises and the tenant
at the time of his retirement or discharge from service.”

40. The question yet again came up for consideration be-
fore a three Judge Bench of this Court in *Bhagwat Dutt Rishi vs.*
Raj Kumar, [(1990) 1 SCC 324]. The ratio laid down in *Winfred*
Ross (supra) and *Dr. D.N. Malhotra* (supra) was upheld stating :-

G “10. In *Malhotra* case, this Court was called upon to
consider Section 13-A1 of the very Act with which we are
now concerned. On the basis of the ratio in *Winifred Ross*
H case, this Court came to the conclusion that until the

landlord satisfied the test that he was a landlord qua the premises and the tenant at the time of his retirement or discharge from service, he would not be entitled to the benefit of Section 13-A of the Act.

11. It is not disputed that the appellant retired on September 30, 1981. On the finding the appellant is right in his submission that this was not a case of transfer with an oblique motive but as the property belonged to a Mitakshara father, upon his death the property has come to his hands. This feature which is different from the facts appearing in the two reported decisions, however, would not persuade us to give a different meaning to the definition in Section 2 (*hh*). In both the cases, for good reason this Court came to the conclusion that the public officer should have been a landlord of the premises in question while in service. Admittedly, the appellant was not the landlord before he superannuated."

41. We may now examine the decision whereupon reliance has been placed by the High Court, i.e., *Dhannalal* (*supra*). In *Dhannalal* (*supra*) the question which arose for consideration was as to whether a specified landlord could file a composite suit alongwith others for whose bona fide requirement the eviction of the tenant was sought for. Holding that in such a case even a suit by a co-owner alone would be maintainable, it was opined :-

"17. It follows that a widow, who is a co-owner and landlady of the premises can in her own right initiate proceedings for eviction under Section 23-A(*b*), as analysed hereinbefore, without joining other co-owners/co-landlords as party to the proceedings if they do not object to the initiation of proceedings by such landlady, because she is the owner of the property and requires the tenanted accommodation for the purpose of continuing or starting the business of any of her major sons. The major sons though co-owners/co-landlords may not have been joined as party to the proceedings but it would not adversely

A affect the maintainability of the proceedings. It would also not make any difference if they are also joined as party to the proceedings. Their presence in the proceedings is suggestive of their concurrence with the widow landlady maintaining the proceedings in her own right.”

B On the aforementioned narrow context of the factual matrix involved therein, it was held:-

C “19.The requirement pleaded is the requirement of a widow landlady for continuing or starting the business of her major sons. In proceedings for eviction of a tenant it is permissible for all the co-owner landlords to join as plaintiffs. Rather, this is normally done. Now, if they all file a claim before the civil court, an objection may possibly be raised on behalf of the defendant tenant that the widow landlady being one of the claimants for eviction she must go to the Rent Controlling Authority under Chapter III-A. If they collectively join in initiating the proceedings for eviction of the tenant before the Rent Controlling Authority under Chapter III-A the defendant tenant may object that the requirement being that of the major sons who are themselves applicant landlords the claim should have been filed before the civil court, as is the plea before us. How can such dilemma be resolved?

F 20. Both the learned Senior Counsel for the parties stated that there is no specific statutory provision nor a binding precedent available providing resolution to the problem posed. Procedural law cannot betray the substantive law by submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of the Judge then do stir to solve novel problems by neat innovations. When the statute does not provide the path and precedents abstain to lead, then they are the sound logic, rational reasoning, common sense and urge for public good which play as guides of those who decide.

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Wrong must not be left unredeemed and right not left unenforced. Forum ought to be revealed when it does not clearly exist or when it is doubted where it exists. When the law — procedural or substantive — does not debar any two seekers of justice from joining hands and moving together, they must have a common path. Multiplicity of proceedings should be avoided and same cause of action available to two at a time must not be forced to split and tried in two different fora as far as practicable and permissible.”

The said decision, therefore, in our opinion, cannot be said to have any application to the present case.

42. *Ashok Kumar Gupta* (supra) in fact runs counter to the contention of the respondent. Noticing Section 12, 23-A, 23-J and Section 45 of the Act it was held :

“10. The position after 16-1-1985 is that only in respect of the aforementioned categories of the landlords the Rent Controlling Authority has jurisdiction to order eviction of a tenant on grounds of bona fide requirement under Section 23-A. A conjoint reading of Sections 11-A, 12, 23-A, 23-J and Section 45 would show that in regard to the bona fide personal requirement of the landlord who does not fall within the specified categories in Section 23-J, the civil court has jurisdiction to entertain a suit and pass decree under clause (e) of sub-section (1) of Section 12 of the Act. It follows that the civil court rightly entertained counter-claim under Section 12(1)(e) of the Act so the decree passed by it is not vitiated for want of jurisdiction.”

43. Thus, any matter which *stricto sensu* does not come within the purview of Chapter III-A would be entertainable by a civil court. This ratio of the decisions, in our opinion, was wrongly applied.

44. We have, therefore, no hesitation to hold that the decision of the High Court is unsustainable. The same is set aside accordingly. The appeal is allowed with no order as to costs.